Master Agreement

Between

Federal Transit Administration
(FTA)

and

American Federation of Government Employees
(AFGE)
Local 3313

July 16, 2021

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Preamble

This Collective Bargaining Agreement (CBA) is entered into by and between the United States Department of Transportation, Federal Transit Administration (hereinafter referred to as FTA, Management, or the Agency) and the American Federation of Government Employees Local 3313 (hereinafter referred to as the Union or AFGE), jointly referred to as the Parties. It reflects the values and commitment of the FTA and its employees through the Union, while maintaining a diligent focus on the public we serve. It is designed to recognize the realities of the 21st Century workplace by remaining flexible to technological and societal changes as they occur, in accordance with the provisions of the Civil Service Reform Act, Public Law 95-454 (October 13, 1978).

Pursuant to 5 U.S.C. § 7101 labor organizations and collective bargaining in the civil service are in the public interest.

Article 1: Recognition Coverage and Unit Description

Section 1 - Recognition

The Employer recognizes the Union as the exclusive representative for the unit certified in Federal Labor Relations Authority (FLRA) Case Number WA-RP-14-0003, as follows:

a. Included: All professional and non-professional employees of the Federal Transit Administration Headquarters, Washington, D.C.

b. Excluded: All supervisors, management officials, and other employees identified in 5 U.S.C § 7112(b)(2), (3), (4), (6), and (7).

c. If Management makes the decision to exclude any position from the existing bargaining unit as it stands on the effective date of this Agreement, before Management takes such action(s), the Union will first be notified, normally within two (2) pay periods before the effective date of the action. Upon receipt of the notice, the Union will meet with Management within five (5) business days to attempt to resolve the matter, taking into account relevant determinations by the FLRA and any new duties assigned. If the matter is not resolved, either party may allow the applicable FLRA procedures. If a Clarification of Unit (CU) petition is filed by the Union during the notice period, the position will remain in its current status unit until a decision is rendered by the FLRA.

d. If the Union, in the future, becomes certified as exclusive representative for FTA employees not currently included in the bargaining unit, this Agreement will extend automatically to those employees.

Section 2 - Coverage

a. The Union is recognized as the sole and exclusive representative for all bargaining unit employees as defined in this Article.

b. As the sole and exclusive representative, the Union is entitled to act for and to negotiate agreements covering all employees in the bargaining unit. The Union is responsible for representing all employees in the bargaining unit without discrimination and without regard to Union membership.

c. Management agrees that in regard to the bargaining unit, it will not enter into other agreements, understanding, or contracts with any other organization, association, group of employees, or union on matters concerning the conditions of employment of the bargaining unit.

Section 3 - Quarterly Bargaining Unit Employee Report

The Agency agrees to provide to the primary FTA Union Vice President, by the end of the first full pay period after the end of the quarter, as noted below, a list that includes the name, grade, job title and physical duty station of each bargaining unit employee. The Parties recognize that the listing will not be construed as action, or to confer action, by the Agency to unilaterally deny bargaining unit status to any employee.

- 1st Quarter, Calendar Year – January 1 – March 31
- 2nd Quarter, Calendar Year – April 1 – June 30
- 3rd Quarter, Calendar Year – July 1 – September 30
- 4th Quarter, Calendar Year – October 1 – December 31

Article 2: Effect of Law and Regulation on this CBA

Section 1 – Supersession

This CBA supersedes the previous CBA between Urban Mass Transportation Administration and American Federation of Government Employees Local 3313, AFL-CIO, dated July 7, 1983.

Section 2 – In Existence at Time of Effective Date of CBA

In accordance with 5 U.S.C. § 7116(a)(7) and § 7117, in the administration of all matters covered by this Agreement, the parties are governed by Federal law, Government-wide regulations, Department-wide regulations and policies, and Agency-wide regulations and policies in existence at the time this Agreement becomes effective.

Section 3 – Federal Law, Executive Orders or Government-Wide Regulation Changes Post-Effective Date

The parties recognize that changes to the CBA may be made in accordance with subsequent Federal law, Executive Orders or Government-wide regulation. Such changes will only be made subject to the Agency fulfilling its collective bargaining obligations.

Section 4 – Post-CBA Departmental or Agency Policy Changes

In the event of a subsequent change to Department-wide policy, rule or regulation, or FTA-wide policy, rule or regulation, effecting conditions of employment, the Agency shall fulfill its collective bargaining obligations, in accordance with Article 9.

Section 5 – Effect on Mid-Term Bargaining

Nothing in this Agreement will affect either Party's right to initiate mid-term bargaining, in accordance with its entitlements under the statute, as covered in Article 9.

Section 6 – Severability

If any provision of this Agreement or the application of any such provisions should be rendered or declared invalid or incapable of being enforced by any court action, or by reason of any existing or subsequently enacted State or Federal legislation, the remaining parts or portions of this Agreement shall remain in full force and effect, and the subject matter of such invalid provision shall be open to immediate negotiations between both parties.

Section 7 – Past Practices

Management and the Union agree that, in regard to the bargaining unit, they will not do anything by custom or practice that will contravene or violate this Agreement.

Neither Party can end a past practice without first bargaining with the other Party.

a. Generally, a past practice exists if the following three (3) criteria are met:

    1. It must exist for a reasonably long time;

    2. It must occur repeatedly; and

    3. It must be clear and consistent.

b. A practice that meets the standards of being a *bone fide* past practice is considered to be part of the CBA. Since it is part of the CBA, grievances can be filed if either Party violates a past practice.

c. Under certain conditions, a Party must wait until term negotiations to change a past practice.

d. If a Party proposes a change in policy or past practice, the other Party will be provided with:

    1. a copy or statement of the current policy or past practice;

    2. the nature, scope, and rationale for the proposed change;

    3. a copy or statement of the proposed new policy or practice; and

    4. the proposed implementation date of the change.

Article 3: Management Rights

Section 1—Purpose

This Article will be administered in accordance with 5 U.S.C. Chapter 71.

Section 2 – Authority

In accordance with 5 U.S.C. § 7106(a), nothing in the Agreement shall affect the authority of any Agency management official:

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

b. In accordance with applicable laws:

1. To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

3. With respect to filling positions, to make selections for appointments from:

a). Among properly ranked and certified candidates for promotion; or

b). Any other appropriate source; and

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

Section 3 – Permissive Subjects

In accordance with 5 U.S.C. § 7106(b), the Parties are not precluded from negotiating:

a. 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;

b. procedures that management officials of the Agency will observe in exercising any authority under this Section; or

c. appropriate arrangements for employees adversely affected by the exercise of any authority under this Section by such management officials.

Article 4: Union Rights

Section 1 – Representational Rights

The Union is the exclusive representative of the employees in the unit it presents and is entitled to act for, and negotiates collective bargaining agreements covering all employees in the unit. As exclusive representative, the Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

Section 2 – Formal Discussions

a. The Union, as exclusive representative, 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 condition of employment; or any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:

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

   2. The employee requests representation.

b. The Agency will give the Union sufficient advanced notice to exercise its rights under this Section. No formal discussion between the Agency and its employees will be unreasonably delayed by this provision.

c. At the start of any formal discussion, Union representatives present may request to introduce themselves. Furthermore, the Agency management representative will permit the Union representative to ask relevant questions, to present a brief statement before the end of the meeting outlining the Union's position concerning the issues presented by the Agency, and to have appropriate participatory rights during the meeting.

Section 3 – Employee Notice

Each year, the Agency will, in accordance with 5 U.S.C. § 7114(a)(2)(B), notify employees of their rights to Union representation by posting the notice on the Agency's intranet and via email.

Section 4 – Performance Counseling

Performance counseling during performance plan issuance, mid-year reviews, and presentation of the performance evaluations are excluded from Union Representation. Managers do have discretion to allow a Union Representative to be present at such meetings if desired by either party.

Article 5: Employee Rights

Section 1 – Right to Organize

In accordance with 5 U.S.C. § 7102, each employee will have the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided in this CBA or by law and/or regulation, such rights include:

a. The right to act for a labor organization in the capacity of a representative, and the right, in that capacity, to present the views of the labor organization to heads of Agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

b. The right to engage in collective bargaining with respect to conditions of employment through representatives.

c. An employee may be represented by an attorney or other representative other than the AFGE, of the employee's own choosing, in any appeal action not covered under the negotiated grievance procedure. The employee may exercise grievance or appellate rights, which are established by law, rule, or regulation.

Section 2 – Right to Representation

a. Employees have a right to the representation and assistance of the Union. Employees may contact and meet privately with a Union representative during duty hours for representational matters. The employee will be released from duties when she/he requests to exercise this right, unless there is a pressing operational necessity.

b. The Union will be given the opportunity to be present at any examination of an employee by a representative of the Agency in connection with an investigation, if the employee reasonably believes the examination may result in disciplinary action and the employee requests representation as authorized by 5 U.S.C. § 7114(a)(2)(B).

c. Annually, the agency will provide notice to all bargaining unit employees of record of their "Weingarten Rights," as per Article 4 of this CBA.

Section 3 – Expectation of Appropriate Conduct

All agency employees are expected to refrain from inappropriate workplace behavior, including bullying, and to adhere to a standard of conduct that is respectful and courteous to others.

Section 4 – Outside Activities

The Agency will not improperly interfere in, dissuade, or coerce an employee's private activities, including any employment, political, charitable, financial, or fraternal activities; notwithstanding this provision, the Agency will take all appropriate measures to enforce any law or regulation governing employees' ethics, conduct, suitability or political activities.

Section 5 – Requests for Reassignment

a. An employee may request, in writing, permanent or temporary reassignment to a different position or a different supervisor at any time, normally not more than once annually.

b. When the request is due to conflict with his or her work supervisor, and the employee has tried to resolve the conflict, the employee may request assistance from the next higher level of management and the Office of Human Resources.

c. Management will consider the request and will respond in writing, stating the reasons for the decision, within thirty (30) days.

Section 6 – Employee Records, Regulations and Warnings

a. Management will inform employees of rules, regulations, and policies under which they are obligated to work.

b. Employees will not be given warnings or statements of disapproval, counseled on conduct or unacceptable performance, or given verbal warnings except in a setting that provides reasonable privacy. Immediate public admonishment may, however, be appropriate in situations involving safety and/or well-being of employees.

c. Records maintained on an employee that are not maintained on a permanent basis will be removed from official files in accordance with the Agency's retention schedule, unless otherwise specified in this Collective Bargaining Agreement. Employees have the right to review the contents of their Electronic Official Personnel Folder (eOPF) and may access, view and download a copy of any documents from their electronic files.

Section 7 – Other Rights

a. If an employee is to be served with a warrant or subpoena, it will be done in private to the extent that the Agency has knowledge of and can control the situation.

b. An employee may refuse to comply with an unlawful order. To do so, the employee must

notify their supervisor of the concern and the underlying methodology leading to the concern. The supervisor should address the concern, involving the Office of Human Resources and/or Office of Chief Counsel or other appropriate organization(s). If the order is found to be unlawful, the employee may not be disciplined. If the order is found to be lawful, and the employee still refuses to comply, they may be subject to discipline.

c. Employees in receipt of a proposal or decision to be removed from the Federal Service may resign freely in accordance with prevailing regulations at any time prior to the effective date of the termination. The employee may withdraw his or her resignation prior to the effective date, as long as the position is uncommitted or unencumbered, and provided the employee has not committed to resign pursuant to a settlement agreement.

d. An employee's decision to resign or retire, if eligible, will be made freely and in accordance with prevailing regulations.

Section 8 – Communication/Surveys

a. Consistent with 5 U.S.C. Chapter 71, the Agency will not communicate with employees in a manner that attempts to bargain directly with employees regarding conditions of employment in a manner that will improperly bypass the Union.

b. **Surveys.** The Agency will provide the Union with reasonable advance written notice of surveys conducted by the Agency concerning conditions of employment that involve bargaining unit employees. Upon request, the Agency will also provide the Union with an advance written copy of survey results as soon as possible. If available to management and if such release protects the respondents' confidentiality, summary results based on bargaining unit respondents will be provided to the Union. This Section is not intended to preclude any Union involvement in such surveys that may exist in accordance with past practice, the Parties' mutual agreement, or by statute.

Section 9 – Break Areas

The Agency will provide employees with access to clean and comfortable break areas in proximity to their work areas. To the extent funding is available and in accordance with regulations and law, the break areas will include kitchen facilities including sinks, refrigerators, and appliances for heating food, making coffee and tea, etc.

Section 10 – Timely and Accurate Compensation

a. Employees are entitled to timely receipt of all compensation earned by them for the applicable pay period, provided funding has been made available through the appropriate sources for such compensation. The Agency will make every reasonable effort to ensure that employees receive their pay on the established payday and at the address or electronic site designated by the employee in accordance with Department of Treasury rules and regulations.

b. If the Agency fails to deliver a bargaining unit employee's earned pay (including overtime, holiday, night, and weekend pay) on the established payday, the Agency, upon request by the employee, will authorize an emergency payment in accordance with law and regulation, provided funding has been made available through the appropriate sources for such pay.

Section 11 – Whistleblower Protection

Employees are protected by law, including the Whistleblower Protection Act and its subsequent amendments, against reprisal for the lawful disclosure of information that the employee reasonably believes evidences a violation of law, rule, or regulation, or evidences gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 12 – Voluntary Activities

Contributions to the Combined Federal Campaign; purchase of U.S. bonds in any bond drive; and blood donations are voluntary activities. Participation or nonparticipation will not advantage or disadvantage employees.

Section 13 – Statutory Requirements

Personnel management will be conducted in accordance with applicable law, including 5 U.S.C. § 2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices.

Article 6: Voluntary Allotment of Union Dues

Section 1 – Purpose

a. Dues withholding from bargaining unit employees will be administered in accordance with 5 U.S.C. Chapter 71, and this CBA. The Agency agrees to permit employees, who are members of the unit, to pay dues to the Union through authorization of voluntary allotments from their compensation.

b. Bargaining unit employees may authorize the payment of labor organization dues to the Union by voluntarily completing a Standard Form (SF) 1187 "Request for Payroll Deductions for Labor Organization Dues" or its equivalent. Information as to which employees elect to pay dues will only be used in conducting official business and will not be disseminated to any individual without a need for this information.

c. Such payment will only be made provided that the employee receives compensation sufficient to cover the total dues.

Section 2 – Dues Subject to Withholding

The term "dues" includes regular and periodic dues, fees, and assessments of the exclusive representative of the unit. The Agency will honor the assignment and make allotments pursuant to the assignment. All regular and periodic dues allotments will be processed by the Parties in a timely manner.

Section 3 – Union Responsibilities

The Union agrees to assume the responsibilities for:

a. Providing and furnishing the SF 1187 to the Office of Employee & Labor Relations (ELR) for processing;

b. Notifying ELR of:

1. Any change in the amount of membership dues; and

2. The name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of the date of such final determination, so the Dues Withholding can be terminated.

3. Notify ELR of an employee's anniversary date in cases of revocation.

Section 4 – Agency Responsibilities

The Agency agrees to assume the responsibilities for:

a. Permitting and processing voluntary allotment of dues in accordance with this Article;

b. Withholding dues on a bi-weekly basis;

c. Notifying employees and the Union when an employee is not eligible for an allotment because he/she is not included in the unit to which this Agreement is applicable; and

d. Withholding new amounts of dues upon certification from the authorized Union officials so long as the amount has not been changed during the past 12 months.

Section 5 – Allotments (Payroll Deductions)

a. Bargaining unit employees who desire to make an allotment for payment of union dues can request such allotments by completing SF 1187. The Union will make the forms available to employees eligible to join the Union (i.e. bargaining unit employees).

b. Bargaining unit employees will complete the allotment forms and submit to the FTA Vice President or other authorized union representative, who will complete the certification portion of the form. The Union, in turn, will promptly submit all such forms received from employees to the authorized person as designated in writing by the Agency for processing.

c. The authorized person will provide acknowledgment of receipt of each SF 1187 received from the Union. The FTA authorized person will have overall responsibility for coordinating with the Payroll Office for payroll withholding for Union dues and providing assurance to the Union that Payroll deductions are effectively in place.

d. Allotments will be effective within two (2) pay periods following the receipt of a properly completed SF 1187 by ELR. The FTA Vice President or other authorized union representative will contact the FTA authorized person for resolving discrepancies. The ELR Director also will alert the FTA Vice President of any issues affecting the timeliness of establishing payroll deductions for employees; and inform when the issue is expected to be resolved.

e. The Agency will be responsible for the reimbursement of all payroll deductions if discrepancies were reported to the FTA authorized person, but not resolved within two (2) pay periods or if timeliness in effecting the payroll deduction was delayed due to the Agency.

f. The amount of the dues to be deducted as allotments from compensation may not be changed more frequently than once in each calendar year.

g. Subject to processing delays outside of the Agency's control, the Agency will complete dues actions within two (2) pay periods from receipt of SF 1187, SF 1188, or memorandum.

Section 6 – Employee Dues Revocation

a. Union members who have authorized Union dues withholding may revoke their authorization after the completion of a one (1) year membership.

b. In order for dues deductions to be stopped on the first full pay period after the anniversary date, the SF 1188 must:

    1. First be submitted to the Union, during a window period, thirty (30) days before the anniversary date, as ascertained by the Union.

    2. The Union must forward the SF 1188 to the authorized person in a timely manner if it is within thirty (30) days of the anniversary date.

    3. SF 1188s submitted by the employee after the anniversary date will not be accepted.

    4. The Agency may not process it earlier than thirty (30) calendar days prior to the anniversary date.

Section 7 – Automatic Dues Revocation

Notwithstanding the above, dues deductions will terminate with the start of the first payroll period after which any of the following occurs:

a. Loss of exclusive recognition by the Union;

b. Separation of the employee for any reason;

c. Notice to the Agency from the Union that the employee has been suspended or expelled from the membership of the Union;

d. Transfer, reassignment, promotion, or demotion of an eligible member to a position excluded from the Union's recognition; or

e. Activation of an employee into active duty military status.

f. Assignment to a temporary detail outside of the bargaining unit. Upon return from the detail assignment, dues deduction will resume.

Section 8 – Unit Determination Process

If the Agency removes or denies an employee from dues withholding based on a belief that the employee's position is outside the Bargaining Unit, and the FLRA determines that the Agency acted improperly, the Agency will promptly start or re-start the employee's dues withholding authorization.

Section 9 – Reinstatement of Employee Dues Withholding

If an employee who has been separated by the Agency is reinstated by an arbitrator, the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), or a court of competent jurisdiction, and the Agency is required to make the employee whole, and if the employee was a Union member at the time of his or her separation, dues withholding will be restored at the request of the employee, starting with the effective date of the reinstatement.

Article 7: Union Officers and Official Time

Section 1 – Purpose

a. The purpose of official time is to provide bargaining unit employees time to conduct Union representational activities, as described herein, during normal working hours, without loss of pay or charge to annual leave. This Article provides an equitable process for the allocation and approval of official time and recognizes that the appropriate use of official time benefits both Agency management and the Union. Official time is only to be used when the use is reasonable, necessary, and in the public interest.

b. Official time in the Agency will be administered in accordance with 5 U.S.C. Chapter 71, The Federal Service Labor Management Relations Statute (the Statute) as amended, and this CBA.

Section 2 – Representational Functions

a. Only those Union representatives for whom the Agency has received a written designation will be recognized. The Union will provide written notification to the Agency of the names of each person designated as Union officers, points of contact, and stewards, after their designation. The Union will also provide written notification of any change in designation of Union representatives.

b. Elected or appointed Union representatives may use official time for representational purposes as provided by 5 U.S.C. § 7131 during such time as they are otherwise in a duty status. This time will be without charge to leave.

c. Official time is prohibited for any activities performed by any employee relating to the internal business of the Union, including, but not limited to, the solicitation of membership, elections of Union officials, and collection of dues.

d. Official time for employees and representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the FLRA, the MSPB, and the EEOC. Official time is also authorized for CBA Negotiations and Impasse Panel proceedings.

Section 3 – Release Procedures for Official Time

a. Union representatives will be permitted to leave their assigned work area on official time as authorized under this CBA after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. The official time will be reported, approved and tracked in the Agency's time and attendance system. The representative will be released as requested, verbally or in writing, unless the representative's absence would unduly interfere with operational requirements. If the representative cannot be released at the time of the request, the representative and the

supervisor will arrive at a mutually agreeable time for release, normally within twenty-four (24) hours. The Union representative will be given time to inform the bargaining unit employee(s) involved about the delay.

b. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site and there is no other management official available to receive the request, the representative will attempt to contact the supervisor by telephone. If that fails, the representative will notify the supervisor by telephone voice mail, or by sending an email message indicating where he or she is and approximately how long he or she will be gone.

c. On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both may contact their supervisors via telephone or email to notify them of the need to extend the anticipated return time and request approval for additional time.

Section 4 – Allocation of Official Time

a. When doing so does not interrupt the Employer's work operations, or the Employee's work obligations, the Agency will provide Union representatives a reasonable amount of official time under the provisions of 5 U.S.C. § 7131(d) to prepare for and carry out statutory representational functions. A reasonable amount of official time is the amount of time necessary to accomplish the specific task for which official time is requested, to include local travel for conducting representational duties. Use of official time must be requested and approved in advance in a manner consistent with the terms of this agreement.

b. Supervisory approval will be in accordance with this Article.

c. Time spent regarding term collective bargaining meetings shall be charged as official time.

d. Upon mutual agreement, official time shall be provided in order for the Union to utilize subject matter experts, administrative support during negotiations, labor-management collaboration support, special projects, FTA initiatives, and etc.

e. In the rare event of an emergency or an urgent need for performing Union representational duties, whereby a request for official time cannot be made with advance notice, designated Union representatives may use official time and then submit the requests to their supervisor as soon as practical under the circumstances.

Section 5 – Duty Time for Employees

a. An employee may request a reasonable amount of duty time to meet with a Union representative regarding representational matters as described in this Article, to include preparation and response to proposed and issued disciplinary actions. The employee will inform his or her supervisor of the purpose of the meeting, the appointment time, and when he/she expects to return to the office. The employee should be released unless the

absence will cause a work disruption. If the time is denied, the employee will be advised as to the time when approval can be granted.

b. Brief, unscheduled, communications between a Union representative and an employee will not require prior approval.

Section 6 – Training

a. Consistent with the Agency mission requirements, the Agency agrees to grant up to 160 hours of official time per calendar year to the Union, to attend labor relations training or other training related to employees' conditions of employment. The Union may request additional hours of official time for training.

b. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances and information related to federal labor relations laws, regulations, and procedures, and the Union will provide the agenda to ELR two (2) weeks in advance.

c. A Union representative may not repeat the same training within a one (1) year period.

d. In the event of training conducted jointly with management and the Union, the time spent conducting this training will be charged as official time.

Article 8: Facilities, Equipment, and Services

Section 1 – Use of Agency Conference Rooms, Breakrooms, Furniture, Equipment

When acting on behalf of AFGE Local 3313, employees may be permitted use of meeting space, phones, printers and copiers, computers, and computer systems. Such use by representatives of Local 3313 will be when necessary in conducting labor-management activities. The parties agree that the Union will not make more than the de minimis use of the Agency's equipment to conduct any internal Union business.

Section 2 – Intranet

The Agency agrees to post the web link to the Collective Bargaining Agreement on the Agency's intranet.

Section 3 – Notification

The Agency agrees to forward the web link of the CBA to all bargaining unit employees no later than thirty (30) days after the effective date of this agreement.

Section 4 – Bulletin Boards

a. The Agency agrees for the Union to use bulletin board space for up to five (5) locations, located in the five (5) main pantries across FTA Headquarters, in areas with a large bargaining unit representation, for the display of Union literature, correspondence, notices, and related material. The names, work locations, and telephone extensions of the Union officers or stewards may also be displayed.

b. The Union agrees that literature posted will not be obscene, libelous, or of a partisan political nature.

c. The Union will be responsible for posting and/or removal of such material.

Section 5 – Access to Agency Conference Rooms

When doing so will not disrupt the employer's work operations, the Union will be allowed fifteen (15) hours of meeting space per calendar year for Union internal, educational, and representation affairs. Union officers may reserve conference rooms, subject to appropriate administrative processes. Subject to availability, space will be made available for Union meetings during the non-duty hours of the employees involved or while they are in a leave status. The Union agrees to exercise reasonable care in using such space and will leave it in the clean and orderly condition that it was prior to the meeting. Such requests shall be made in as far in advance as possible.

Section 6 – Government Electronic Devices

a. Employee use of electronic equipment is subject to applicable laws and regulations and

the standards set forth in Departmental Orders, including DOT Order 1351.33 "Departmental Web-based Interactive Technologies Policy (Social Media and Web 2.0)," and DOT Order 3902.10, "Text Messaging While Driving."

b. It is understood that employees do not have the right to privacy while using any government office equipment (e.g., telephone, computer, etc.) and that the use of such equipment is not secure, private, or anonymous, and is subject to monitoring. Limited personal use of government telephones and computers is authorized as set forth in DOT Order 1351.33. However, monitoring of personal or official use of government-owned equipment may be conducted for any purpose. For example, should an employee use a government computer to read or respond to email sent to a non-government email address (e.g., Google, AOL, Yahoo, MSN etc.), this use can be viewed by others and monitored.

c. The Parties recognize that the internet, intranet, and email traffic is traceable and identifiable as to its source; therefore, employees should be aware of the impression such use will have on the public.

d. The Agency may provide employees with effective equipment and sufficient resources necessary to perform the functions of their job assignments while on official travel. Government equipment is normally authorized for use by employees for official government business (the Agency is not required to supply employees with equipment if such equipment is not required to perform the employee's official government business).

e. Brief personal telephone calls at work by employees are acceptable, provided these do not interfere with work production, office efficiency, or are contrary to written policy.

Section 7 – Sign Language Interpreter Services

The Agency shall not discriminate against employees on the basis of Union affiliation. Upon request by the Union, the Agency shall provide sign language services to ensure employees in need of such services receive adequate representation.

Article 9: Mid-Term Bargaining

Section 1—Introduction

a. This Article sets forth the criteria and procedures to be used by the Parties when engaging in negotiations during the term of this CBA, otherwise known as Mid-Term Bargaining, and will be administered in accordance with 5 U.S.C. Chapter 71 and this CBA.

b. Where an obligation to negotiate during the term of this Agreement does arise, such notice and bargaining will be limited to only those negotiable changes in conditions of employment that are more than *de minimis*. Matters appropriate for Mid-Term Bargaining, as proposed by either Party, will include those issues within the scope of bargaining that affect conditions of employment of bargaining unit employees, and are either newly formulated or changes to established policies, practices, and procedures.

Section 2—Procedures for Bargaining

a. The initiating Party will provide the other Party with reasonable advance written notice, normally not less than 30 calendar days prior to the proposed implementation date.

b. The Agency will submit any proposed changes in writing to the Union. The Agency will make a good faith effort to provide the Union adequate information about the proposed change to allow bargaining to proceed. The notice will, at a minimum, contain the following information:

   1. The nature, scope, and description of the proposed change;

   2. An explanation of why the proposed change is necessary;

   3. A plan and proposed date for implementing the change; and

   4. The point of contact.

c. Management will not implement a proposed change until the notification period has ended, unless management has a *bona fide* need to act sooner, or if all Parties have agreed to post-implementation bargaining.

d. The receiving Party may request information and/or briefing in accordance with the Statute (5 U.S.C. 7114(b)(4)) and case law of the Federal Labor Relations Authority. If information and/or briefing is requested, it will normally be provided and/or scheduled within five (5) calendar days. If the information requested is denied, the denial will not delay bargaining.

e. The receiving Party will submit its written demand to bargain (DTB), if bargaining is desired, no later than fifteen (15) calendar days after the notice of the proposed change or receipt of information and/or briefing. The receiving party's demand to bargain will designate their Chief Spokesperson. Failure to submit a timely DTB will result in waiver of the right to negotiate on the matter.

f. The receiving party will submit its bargaining proposals no later than fifteen (15) days after its submission of the DTB, or the date the Union receives notice of the denial of information requested and the reason(s) therefore, unless otherwise agreed. The bargaining will commence as soon as possible.

g. Agreements may be in the form of Memorandums of Understanding (MOUs).

   If a MOU is used:

   1. The Chief Spokesperson for each Party (or designee) will signify agreement to the MOU by initialing and dating the working document.

   2. The Chief Spokesperson for each party will retain his/her copies and initial and date the other party's copy. Such agreements and understandings shall conclude negotiation on such matter(s).

   3. All MOUs signed by the parties and entered into during the life of the parties' CBA will be considered an addendum to the CBA and subject to its duration or as otherwise agreed to in the MOU.

Section 3—Extensions of Time

All time periods in this Article may be extended by mutual agreement. If a Federal holiday falls within a time period, the relevant time period will be extended accordingly.

Section 4—Ground Rules for Mid-Term Bargaining

The Parties may establish ground rules as necessary.

Article 10: New Employee Orientation

Section 1 – Introduction

An effective Orientation Program will help establish an effective, diverse, and motivated workforce by ensuring that all new employees receive information regarding their rights, benefits, roles, and responsibilities as Agency employees. The Agency will conduct the Orientation Program in accordance with 5 U.S.C. Chapter 41, 5 C.F.R. Part 410 and this Article.

Section 2 – Frequency

The Agency will conduct the Orientation Program, generally every two weeks, and will make a good faith effort to ensure that all new employees attend the Orientation session that coincides with their arrival at FTA. The Agency will notify presenters in advance of the date and time of the orientation.

Section 3 – Content

The Agency will determine the length, content and agenda of the orientation. The Union will be given an opportunity to address new bargaining unit employees as part of orientation, but agrees not to discuss internal Union business (e.g., solicitation of new members). The presentation may be on Union time in accordance with Article 5, Union Officers and Official Time. If a bargaining unit employee is unable to attend a scheduled orientation session, the Union may meet with the employee individually or may address the new employee during the next orientation session.

The Union will be provided Official Time to address bargaining unit employees for new employee orientation. Normally, the Union's presentation time will be scheduled as close as possible prior to the lunch break. If a bargaining unit employee does not attend a scheduled orientation session, the Union may request Official Time to meet with the employee as soon as practicable.

All new employees will receive either hard or electronic copies of the orientation information.

Section 4 - Attendees

The Agency will provide the Union a list of bargaining unit employees that entered on duty and are scheduled to attend orientation. When available, the list will include the following information: name, title, and organization.

Article 11: Safety, Health, and Wellness

Section 1—General

a. Maintaining safe and healthful work environments, as a shared value by the Union and Agency, is necessary for the accomplishment of the Agency's mission, and contributes to a high quality of life for employees. The Agency will, consistent with the applicable requirements of the Occupational Safety and Health Act of 1970, Executive Order 12196, 29 C.F.R Part 1960, agency policies and other applicable safety and health codes, provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working environments.

b. Nothing herein will prevent the Union from initiating additional negotiations to address safety, health, or wellness for issues not covered by this CBA.

c. Any OST Safety Inspection Report and FTA response shall be provided to the Union at least annually.

d. The parties will meet to discuss any patterns of injuries or illnesses found in any occupation or facility, with the goal of prevention and abatement.

e. There will be no restraint, interference, coercion, discrimination, or reprisal directed against any employee for filing a report of an unsafe or unhealthful working condition or for participating in Occupational Safety and Health Program activities or because of the exercise by an employee on behalf of him/herself or others of any right afforded by the Occupational Safety and Health Act (OSHA), Executive Order 12196, 29 C.F.R. Part 1960, or any provision of this Article.

f. If the Agency establishes agency-wide guidance for employees, the guidance will be made available on the Agency's intranet.

g. All newly-hired employees will be provided a safety orientation training and trained annually on its Safety Program.

h. The Agency Safety Officer will be identified on the Agency's intranet and will be made accessible to employees.

Section 2 – Agency and OSHA Health and Safety-Related Activities

a. The Agency will notify the Union of Agency and OSHA meetings and allow the Union the opportunity to attend, virtually or in person, and participate on official time.

b. If the Union is not satisfied with the Agency's response to a reported hazardous working condition in an FTA-controlled space, the Union may ask the Agency to request an evaluation and/or inspection from an outside organization.

c. In accordance with 29 C.F.R. § 1960.59(a), the Agency will provide bargaining unit employees with occupational safety and health training required by the duties of their jobs, including both introductory and specialized courses and materials that will enable bargaining unit employees to function appropriately in ensuring safe and healthful working environments and practices in the workplace, and enable them to effectively assist in conducting workplace safety and health inspections.

d. The Agency will ensure bargaining unit employees have access to water, first-aid kits, and defibrillators on each floor.

e. Upon request, the Agency will provide to the Union all incident or accident reports involving bargaining unit employees (subject to Privacy Act restrictions) and any recommended corrective actions.

f. Upon request, the Agency will forward all environmental test reports to the Union and any recommended corrective actions.

Section 3 – Personal Protective Equipment

a. Personal Protective Equipment (PPE), as required by appropriate federal and/or state government (or its subdivisions) standards to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to all employees who are required to operate in potentially hazardous environments. The provision and use of PPE shall comply with applicable requirements set forth in 5 CFR 1910 and/or 29 CFR 1926. PPE damaged on the job will be repaired and replaced by FTA. PPE that becomes unserviceable due to wear and tear will be replaced by FTA.

b. The parties shall negotiate a Memorandum of Understanding (MOU) regarding provision of specific PPE for eyes, head, hearing, extremities, protective footwear, protective clothing/harnesses, and respiratory devices to employees involved in rail safety inspection tasks in the field.

c. The Agency will provide employees information and any training required by OSHA standards on PPE provided.

Section 4 – Unsafe/Unhealthful Conditions

a. Any employee, group of employees, or Union representative of employees who believes that an unsafe or unhealthful working condition exists in any FTA worksite has the right to report such condition to any Agency supervisor, manager, executive, Safety Officer, or the Union. An inspection of potentially serious and other conditions will be made in accordance with DOT or FTA policy. All Agency determinations and actions on imminent danger reports will be put in writing to the reporting employee and the Union explaining the basis for the findings and actions within the timeframe established by applicable regulations.

b. When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, management will notify the bargaining unit employees at that worksite and the Union as soon as practicable as to the precautionary measures to be implemented.

c. If an emergency situation occurs in the workplace, the paramount concern is for the preservation of safety and health of employees. Should it become necessary to evacuate an area, the Agency will take precautions to ensure the safety and health of employees. Ordinarily, employees will not be readmitted to an evacuated area until it is determined that there is no longer danger to the evacuated personnel.

d. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within thirty (30) calendar days. Such plan will contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working environments and provided to the Local FTA Vice-President.

e. If the abatement plan cannot be immediately implemented, the Agency will inform affected employees of the interim measures that will be instituted for the protection of the employees. If the conditions cannot be immediately corrected, employees will be assigned work in a safe and healthy area, or will be excused without charge to leave until the condition is corrected.

Section 5 – Personal Security

a. The Agency will provide adequate security and protection to all employees and provide copies of all security alerts (e.g., DOT Alerts) to bargaining unit employees.

b. Violence constitutes a health and safety hazard in the workplace. Exposure to violence can result in both physical and emotional harm to employees. Although it is the Agency's obligation to provide a safe and secure working environment, the Agency and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace should it occur.

c. Upon request, the Agency will report all incidents of workplace violence to the Union, subject to the privacy rights of victims and perpetrators.

Section 6 – Emergency Preparedness

a. FTA will have an emergency preparedness plan that establishes procedures for safeguarding lives in the event of natural or man-made emergency.

b. The first concern when an employee is injured on the job is to make certain that the employee gets prompt emergency medical aid. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical aid.

c. When it is necessary to assist an employee to a medical facility because of illness or incapacitation, the Agency will arrange for transportation (e.g., calling an ambulance or family member).

Section 7 – Indoor Air Quality

a. Employees are entitled to work in an environment containing safe and healthy indoor air quality. The Agency will provide safe and healthy indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by federal regulatory agencies such as OSHA, Environmental Protection Agency (EPA), and General Services Administration (GSA).

b. Annually, the Agency will provide a report on the air quality in the DOT Headquarters, East Building, Floors 4 and 5, including information on dates when the air vents on those floors were cleaned.

Section 8 – Renovation and Construction

Wherever management decides to alter the physical work site of employees represented by the Union, the Union will be notified in advance in accordance with the Mid-Term Bargaining Article of this CBA. The topics for bargaining may include:

a. Schedule of the work to be performed (e.g., evenings and weekends);

b. Materials used for the renovation; and

c. Any isolation and ventilation plans.

Section 9 – Wellness Program

Employee wellness and the investment in programs to maintain employee health contribute directly to sustained productivity and reduction of lost employee time due to illness. Therefore, the Agency will facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries and illnesses, health screenings, and exercise.

Article 12: Contracting Out

Section 1 – General

The Agency retains the right to contract out work in accordance with 5 U.S.C. § 7106(a)(2)(b). The term "contracting out" refers to a decision or act by the Agency that results in the transfer of functions from performance by Federal employees to performance by a private contractor, such as when mandated by OMB Circular A-76 Revised, dated May 29, 2003 (A-76). The decision by the Agency to contract out is not subject to the negotiated grievance procedure.

Section 2 – Notification of Contracting Out

a. The Agency agrees to notify the Union, as required by law or regulation and this CBA, of its decision to conduct a cost comparison study that may impact bargaining unit employees.

b. Management will provide the Union with an opportunity to be present during any formal meetings or discussions with bargaining unit employees concerning the contracting out of work affecting bargaining unit employees, throughout all stages of the process.

c. The Agency will furnish to the Union information concerning the contracting out study, provided the information is not restricted by law, rule, regulation, or other directive or instructions.

d. During a study, the Agency will solicit and consider the Union's recommendations concerning contracting out. The Agency will invite the Union to participate in only the meetings that discuss bargaining unit employee conditions of employment.

e. The Agency will provide information such as the most efficient organization (MEO) and the performance work statement (PWS) processes of A-76 as they pertain to bargaining unit employees.

f. The Agency will provide the Union with copies of all notifications sent to Congress regarding contracting out activities and/or studies that pertain to bargaining unit employees at the same time these notices are provided to Congress, provided the information is not restricted by law, rule, regulation, or other directive or instructions.

Section 3 – Adverse Impact

a. If the Agency determines that work will be contracted out and that bargaining unit employees will be adversely affected, the Agency will notify the Union, as appropriate.

b. Upon request, the Agency will meet and negotiate, as permitted by law, rule, or regulation, concerning the procedures to be followed in implementing the decision to contract out work

and appropriate arrangements for bargaining unit employees who are adversely affected. Management will not implement a proposed decision until the notification period has ended, unless management has a bona fide need to act sooner, or if all Parties have agreed to post-implementation bargaining.

c. The Agency agrees to provide copies of relevant information used in the contracting out process, provided the information is not restricted by law, rule, regulation, or other directives or instructions.

d. The Agency agrees to follow RIF procedures when contracting out results in a release of any employee in the Bargaining Unit.

Article 13: Reorganization

Section 1 – Definition and Purpose

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

b. Since the implementation and impact of reorganization are of great concern and importance to employees, the Employer will keep the Union fully informed of all prospective reorganizations. Therefore, the Union will be advised of prospective reorganizations at the earliest possible opportunity.

Section 2 - Communications and Bargaining with the Union

a. The Agency will provide the Union, whose Bargaining Unit members may be impacted by a reorganization, with advance copies of all reorganization plans involving employees in the bargaining unit, together with any and all background information, studies and data necessary for the Union to make reasoned determinations of the impact of prospective reorganizations on employees and conditions of employment, excluding internal management planning documents. This includes written notice containing sufficient information regarding the scope, impact, and intended implementation of the reorganization.

b. The Union will be provided with periodic briefings by agency officials capable of providing such information in an informed manner. The emphasis of such briefings will be on the potential impact of the reorganization(s) on the numbers, types, and grades of employees assigned to any organizational subdivision, work project, or tour of duty; or the technology, methods, and means of performing work; and/or other conditions of employment. These topics are for information sharing only and not negotiation. Impacts on conditions of employment if necessary will be addressed in the briefings.

c. Upon request, additional briefings will be provided to the Union if sufficiency of the periodic briefings is determined to have not been met or if information provided is not sufficient to make determinations concerning the impact of the reorganization activities will have on potentially affected bargaining unit employees. These briefings will expound on the specifics/parameters of the proposed reorganization . Afterwards, the Union may request an opportunity to meet/survey the impacted bargaining unit employees and to bargain over the procedures and the appropriate arrangements for bargaining unit employees impacted by the reorganization.

d. Consistent with 5 U.S.C. § 7114(b)(4), the Agency will provide the Union with the information necessary to conduct bargaining in accordance with the Mid- Term Bargaining Article of this CBA.

e. Where there is a disagreement between the Agency and Union regarding whether a reorganization is taking place, determination will be made by the actions taken by the Agency, regardless of the absence of the word "re- organization" being used by Agency management.

f. The Agency will not use conspicuous terms, such as "organizational or office assessment or re-assessment," organizational or office reviews" or any other terminology in an attempt to disguise the action of a re-organization.

Article 14: Training and Career Development

Section 1 - General

a. The training and development of employees is important in carrying out the mission of the Agency. The Agency is responsible for determining the training necessary to meet its mission, and for making such training available to bargaining unit employees, subject to budgetary and workload considerations.

b. Employee training and development will be administered in accordance with all applicable laws, rules, regulations, policies, and the provisions of this CBA.

c. Either the employee or manager may initiate discussion of individual training needs. Such discussions may or may not be linked to an Individual Development Plan (IDP).

d. The Agency will, to the maximum extent practical, ensure that training occurs during the normal workweek, including travel to and from training.

e. Employees may be granted work schedule variations, leave options, or duty time for supervisor-approved training to improve the employees' job performance or mission-related career development.

Section 2 - Non-Discrimination

The nomination and/or selection of employees to participate in training and career development programs and courses shall be in accordance with EEO guidelines, and consistent with other applicable laws, rules, regulations, policies, and terms of this CBA.

Section 3 - Career Development

a. An IDP is a flexible document that is voluntarily developed by the employee with the assistance of the supervisor or an Agency-designated management official to be used as a guide to an employee's professional and career development. The Agency will give employees the opportunity to prepare an IDP.

b. Upon request, the supervisor or other Agency-designated management official will assist the employee in the preparation of the IDP and will review it with the employee to ensure that the plan conforms to organizational and individual career needs. Employees may seek assistance from others who may provide advice and assistance in the preparation of the plan.

c. The employee has the ultimate responsibility to develop and finalize the IDP. In partnership, the supervisor or an Agency-designated management official will assist the employee with reviewing his or her draft IDP within thirty (30) days and finalize the IDP within ninety (90) days of the employee's request for an IDP.

d. Each IDP will establish a series of milestones. The primary emphasis of the plan will be:

1. to address the competencies (or knowledge, skills, and abilities) needed for the bargaining unit employee to improve his or her ability to perform in his or her current position;

2. to address the competencies needed for advancement beyond his or her current journey level; and

3. to prepare the bargaining unit employee for new career opportunities within the Agency.

e. Bargaining unit employees who have an approved IDP will normally be granted duty time for any training or developmental activities approved by the supervisor.

f. Bargaining unit employees will not be penalized, including during the performance evaluation process, for not completing or not implementing an IDP. The scheduling of training will be consistent with Agency mission needs.

g. For approved government-sponsored training to meet mission and training requirements identified in the employee's IDP, the supervisor may adjust the bargaining unit employee's normal work schedule.

Section 4 – Notification and Approval of Training

a. The Agency recognizes its responsibility to ensure that all employees receive the training necessary for the performance of their assigned duties.

1. The Agency will post information concerning training and education programs as it comes available by e-mail and on Agency websites.

2. The Agency will remind employees, at least annually, of the availability of government-sponsored training programs, the general scope of training, the criteria for approval of training, and the nomination procedures.

3. The Agency will advise individual employees, upon request, of currently available government-sponsored training courses so as to provide the employee the opportunity to express timely interest.

4. Supervisors and employees should discuss career development opportunities during one-on-one meetings and how those opportunities can be fulfilled.

b. Training nominations and/or approvals will be based on its potential to support mission-related agency goals of improving organizational performance and:

1. Supports the Agency's strategic plan and performance objectives;

2. Improves an employee's current job performance;

3. Allows for expansion or enhancement of an employee's current job;

4. Enables an employee to perform needed or potentially needed duties outside the current job at the same level of responsibility; or

5. Meets organizational needs in response to human resource plans and reengineering, downsizing, restructuring, and program changes.

c. Nomination and selection for training and career development programs and courses will be made in a fair and equitable manner.

d. When an employee is nominated for or requests training, a copy of the employee's IDP (if any) will be considered in the process.

e. An employee must submit an SF 182 (Authorization, Agreement and Certification of Training) to the employee's supervisor, who must notify the employee in a timely manner of the approval or disapproval of the training request.

f. Employees will be notified in writing of the approval or disapproval of their nominations and the reason(s) for disapproval. To the extent feasible, employees will be notified of the approval or disapproval prior to the start date of the training.

Section 5 - Training and Career Development Expenses

a. Subject to the availability of funds, the Agency will pay for supervisor-approved, Agency-required training, including all or part of the necessary expenses.

b. When training not required by the Agency is approved, the Agency may pay costs of tuition, required textbooks, and other expenses as appropriate, and pay travel costs, pursuant to applicable laws, rules, regulations, and this CBA, subject to fiscal considerations.

c. Subject to the availability of funds, the Agency will pay employees' expenses for attending supervisor-approved conferences and meetings authorized by 5 U.S.C. § 4110 when the following criteria are met, as provided in 5 C.F.R. § 410.404:

1. The announced purpose of the conference is educational or instructional;

2. The content is germane to improving individual or organizational performance;

3. Most of the conference consists of planned, organized exchanges of information between presenters and audience; and

4. The employee will derive developmental benefits through attending.

d. Subject to the availability of funds, the Agency may reimburse employees' appropriate costs associated with the pursuit of an academic degree in accordance with 5 U.S.C. § 4107.

e. Subject to availability of funds, the Agency may reimburse appropriate costs for

mandatory study required to obtain certification and/or licensure related to the employee's current position pursuant to 5 C.F.R. § 5946 and 5 C.F.R. § 5757.

Section 6 - Equipment and Time for Continuing Education/Training

a. The use of duty time may be approved by the Agency for training that is directly related to the employee's position, or for maintaining an employee's job-related professional certification or licensure.

b. LWOP may be granted at the discretion of the supervisor for personal development or approved Agency-sponsored community service for educational purposes when the course of study or research is in line with a type of work performed by the Agency and would contribute to the mission of the Agency.

c. With supervisory approval, employees may use the Agency's computers to enroll in and take Agency-sponsored electronic or online courses on duty time.

Section 7 - Reports

The Agency will provide the Union with a copy of the annual training data report provided to DOT within fifteen (15) calendar days after its submission.

Article 15: Employee Assistance Program

Section 1 – Introduction and Policy

a. This Article will be administered in accordance with applicable Federal laws and regulations, including 5 C.F.R. Part 792 governing Federal Employees' Health and Counseling Programs.

b. The Agency agrees to promote an Employee Assistance Program (EAP) that provides no-cost, short-term, confidential counseling to assist employees with issues of a personal nature, related to work and family. The EAP website will be linked to the FTA TransPort webpage and the Agency will annually forward EAP information to all bargaining unit employees via email.

c. The program includes referral services for problems related to: alcohol and/or drug abuse; personal/emotional, financial, marital, family, and legal matters; and follow-up services to help an employee readjust to his or her job during and after treatment.

d. The Agency will maintain an EAP and make this service available to bargaining unit employees. The EAP will be staffed with professional counselors who will assist employees in addressing problems that have had an adverse effect on their job performance, reliability, and health.

e. As appropriate, supervisors will offer the availability of the EAP to employees who are experiencing performance and conduct issues. However, supervisors will not attempt to diagnose employee problems; e.g., alcohol or drug abuse, depression, etc. The EAP can be important in preventing and intervening in workplace violence incidents; delivering critical incident stress debriefings; and providing assistance to management and employees during Agency restructuring or other major organizational transitions or developments.

f. The Agency will follow the Departmental EAP Program and will notify the Union of any proposed changes to that program.

Section 2 – Voluntary Participation and Employee Responsibility

a. No employee will be required to use an EAP service nor be penalized for declining EAP services unless participation is required as part of a settlement agreement or to comply with DOT's Federal Employee Drug and Alcohol Testing Program, DOT Order 3910.1, DOT Drug and Alcohol Testing Guide, and Executive Order 12564, "Drug Free Federal Workplace."

b. Prior to leaving the workplace to meet with an EAP counselor, the employee must inform his or her supervisor and make appropriate arrangements for the absence. When employees do not want their supervisors to know of their attendance or their supervisor does not grant duty time, the employee must make arrangements for

EAP appointments outside of duty hours or request leave.

Section 3 – Access to EAP Services

a. Should counseling appointments with an EAP Counselor require absence from duty; the employee will make the appropriate arrangements with the employee's supervisor, including requesting duty time for counseling appointments. Such duty time will be approved except when there is an immediate or pressing operational need or requirement that would preclude use of the requested time. Such duty time will not exceed eight hours for each issue for which the employee seeks EAP Services (typically 1-6 counseling sessions), unless additional duty time is necessary for reasonable travel time to and from the counseling appointments. The supervisor is encouraged to approve requests for leave for any employee undergoing a prescribed program of treatment as a result of an EAP referral.

b. Employees who are referred to community services for treatment will request leave in accordance with the Leave Articles established in this CBA.

Section 4 – Confidentiality of the Program

a. The Parties recognize that all confidential information and records concerning an employee's counseling and treatment through the EAP will be maintained in accordance with The Privacy Act of 1974 (5 U.S.C. § 552a).

b. Employee participation in, and information obtained through, the EAP is confidential and may be released only with the written consent of the employee or as required by law.

Section 5 – Confidentiality: (Unacceptable Performance, Disciplinary and Adverse Actions)

a. Failure to complete or lack of progress in a counseling program shall not, in itself, be the basis for disciplinary or adverse actions related to poor conduct.

b. For an action regarding performance or conduct, a supervisor may postpone action based on whether the employee is cooperating with a recommended plan of counseling.

c. On the first determination of a violation related to substance abuse, the initiated action to remove or otherwise discipline an employee will be held in abeyance while the employee is offered a conditional opportunity for rehabilitation, per the current DOT Drug and Alcohol Testing Order, DOT 3910.

Article 16: Equal Employment Opportunity

This article will be administered in accordance with Federal laws, regulations and directives governing equal employment opportunity (EEO), including Title 7 of the Civil Rights Act (Title 7), the Age Discrimination in Employment Act (ADEA), the Rehabilitation Act, the Equal Pay Act, the Genetic Information Nondiscrimination Act (GINA), and OPM Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace. The rules, policies and procedures applicable to matters arising under this article shall be those set forth in the Federal Sector Equal Employment Opportunity regulation (29 C.F.R. Part 1614). The procedure for processing requests for reasonable accommodation shall be those set forth in the current DOT Order 1011 (series).

Section 1 – Agency Commitment

The Agency commits to:

a. Providing equal employment opportunities to all employees and applicants for employment or promotion, based on merit, without regard to race, color, sex, national origin, religion, age, sexual orientation, disability, genetic information, or any other protected category, or previous participation in any stage of administrative or judicial proceedings under the statutes identified above;

b. Creating a work environment that is free from unlawful discrimination or harassment;

c. Accommodating qualified employees and applicants with disabilities unless doing so imposes an undue hardship;

d. Taking steps to identify and eliminate any internal policies, practices or procedures that result in unlawful discrimination;

e. Promoting equal employment opportunity in the recruitment, hiring, development and retention of a diverse, highly skilled, public-centered workforce through integrating the Agency's EEO program into its Strategic Mission, conducting EEO training, encouraging the use of Alternate Dispute Resolution (ADR) procedures throughout the EEO process, and tracking and reporting the progress of the Agency's EEO program in accordance with applicable laws, regulations and directives;

f. Seeking Union input on issues relating to the Agency's EEO Program, including, but not limited to, giving the Union an opportunity to comment on the Agency's MD-715 report on an annual basis;

g. Providing the Union in a timely manner with all reports and assessments, internal and external, relating to the Agency's EEO Program, including reports submitted to the EEO Commission (EEOC) and EEOC evaluations of the Agency programs; and

h. Making available an ADR process that may be used by individuals during the EEO process.

Section 2 – Union Commitment

The Union commits to:

a. Assisting and cooperating with the Agency in ensuring and promoting equal employment opportunity;

b. Promptly advising the Agency of any potential problems it perceives in the Agency's EEO Program;

c. Participating in meetings, upon request of the Agency, to discuss issues relating to the Agency's EEO Program; and

d. Providing timely comments to the Agency on its MD-715 on an annual basis and on drafts of other documents, as appropriate.

Section 3 – Internal EEO Complaints

The Agency will process all EEO complaints in accordance with the government-wide Federal Sector EEO regulation (29 C.F.R. Part 1614).

a. Pre-Complaint Processing: The Agency, through its Office of Civil Rights (TCR), will conduct pre-complaint processing in accordance with the requirements of Part 1614. During the pre-complaint processing, a trained FTA EEO Counselor will:

1. Explain to the individual the EEO complaint process;

2. Advise the individual about the individual's rights and responsibilities under Part 1614, including the duty to mitigate damages, administrative and court timeframes, and that only the claims raised in pre-complaint counseling (or issues or claims like or related to issues or claims raised in the pre-complaint counseling) may be alleged in a subsequent complaint filed with the Agency;

3. Explain the Agency's alternative dispute resolution (ADR) program and that the individual may choose between participation in the ADR program or the pre-complaint counseling activities;

4. Identify the claim(s) and basis(es) raised by the individual;

5. Conduct a limited fact-finding inquiry during the initial interview for the purposes of determining jurisdictional questions, including timeliness of the individual's contact with the FTA TCR or EEO Counselor and identification of the legal claims, should the individual file a formal complaint at the conclusion of the pre-complaint processing;

6. Conduct a final interview and issue a Notice of Right to File, advising the individual of his/her right to file a formal discrimination complaint, within 30 days of the date that the individual first contacted the EEO Counselor or the FTA TCR, if attempts to resolve the

dispute through EEO counseling or ADR fail to resolve the dispute; and

7. Prepare a report sufficient to document that the EEO Counselor undertook the required counseling actions and to resolve any jurisdictional questions that arise.

b. Formal Complaint Processing: The Department's Office of Civil Rights (DOCR) is responsible for accepting and processing of all formal complaints of discrimination filed by FTA employees at the conclusion of pre-complaint counseling.

c. Filing deadlines:

1. An aggrieved person must initiate contact with an FTA EEO Counselor within 45 days of the date of the matter alleged to have been discriminatory or within 45 days of the effective date of the personnel action that is believed to have been discriminatory.

2. Counseling must be completed within 30 days of the date the aggrieved person contacted the FTA EEO Counselor to request pre-complaint counseling. An individual may agree to an extension of up to an additional 60 days. However, the entire pre-complaint stage cannot exceed 90 days.3. In order to process the complaint, an aggrieved person must file a formal discrimination complaint with the Department's Office of Civil Rights within 15 days of receipt from an FTA EEO Counselor of the Notice of Right to File.

Section 4 – Election of Remedies

a. A bargaining unit employee wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either the Federal Sector EEO regulation (Part 1614) or the negotiated grievance procedure set for in Article 24 of this Agreement, but not both. An election to proceed under Part 1614 is indicated only by the filing of a formal written complaint with DOCR. Use of the pre-complaint process as described in Section 3(a) does not constitute an election.

b. A bargaining unit employee who elects to file a complaint under Part 1614 may not thereafter file a grievance under Article 27 on the same matter or to address the same claims.

c. A bargaining unit employee who elects to have a dispute involving a claim of discrimination addressed by filing a grievance under Article 27 of this Agreement may not thereafter file a discrimination claim under Part 1614. This bar to a subsequent formal EEO complaint holds true even if the complainant failed to raise the discrimination claim in the grievance, as long as the grievance process could have addressed the discrimination allegations.

Section 5 – ADR

The Agency will make all reasonable efforts to resolve potential EEO conflicts informally, when possible, and to the mutual satisfaction of the employee and the Agency. An employee may use the EEO ADR process prior to or following the filing of an EEO complaint or grievance or to resolve any underlying EEO issue consistent with this Article. The ADR program will be administered in accordance with FTA Order 4700.1 (FTA Equal Employment Opportunity Alternative Dispute Resolution Program).

Article 17: Workers' Compensation

Section 1 – Coverage

a. The Federal Employees' Compensation Act (FECA) provides workers' compensation to employees who become disabled due to an employment-related disease or injury sustained in the performance of duty. Administered by the U.S. Department of Labor, the Office of Workers' Compensation Programs (OWCP), the applicable laws and regulations are set forth in 5 U.S.C. Chapter 81 and 20 C.F.R. Part 10.

b. In accordance with appropriate regulations in 20 C.F.R. Part 10, an employee may request to buy back annual or sick leave that was used in lieu of injury compensation. The employee will complete a CA-7 form to initiate this process.

Section 2 – Responsibilities

a. The Office of Human Resources will serve as the liaison for the OWCP to provide guidance to bargaining unit employees on the procedures for filing claims.

b. Employees are responsible for promptly reporting job illnesses and injuries to their immediate supervisor or another appropriate management official.

c. When notice of a job illness or injury is received by the supervisor, the supervisor will:

1. Provide employees with the appropriate CA form(s);

2. Assist employees in completing their portion of the forms, as necessary;

3. Complete the supervisory portion of forms;

4. Ensure the completed forms are submitted to the Federal Aviation Administration's Workers' Compensation Program Office in a timely manner; and

5. Be responsible for obtaining any witness statements and entering the proper codes required on the appropriate CA form; and also for submitting any other information or evidence pertinent to the merits of the claim to the appropriate office.

Article 18: Overtime

Section 1 - General

a. The assignment of overtime is a function of the supervisor and the supervisor retains the right to determine the need for overtime work. All overtime must be officially ordered or approved. For employees to receive overtime, all overtime must be officially ordered or approved in advance by the immediate supervisor.

b. Employees shall be compensated for overtime hours worked in accordance with the provisions of the Fair Labor Standards Act (FLSA), the Fair Employment Practices Agency (FEPA), and other applicable statutes, government-wide regulations, and provisions of this CBA.

c. All Bargaining Unit positions will be determined to be FLSA "exempt" or "non-exempt" at the time the position is classified. When classification actions are proposed that will result in a change to the FLSA determination, the proposed changes will be provided to the employees and the Union thirty (30) calendar days prior to the effective date.

d. Overtime will not be distributed or withheld to reward or penalize employees. Management will ensure fair and equitable assignments of overtime work, and maintain documentation of overtime worked and/or refused by the employee. Documentation will be made available upon request to employees and the Union. Hold-over overtime assignments will first be offered to qualified employees currently on duty.

e. When overtime work is transferable among similarly qualified employees, the supervisor will offer overtime on a volunteer basis before directing overtime.

f. Employees may submit a request to refuse overtime on occasion by providing a reason in writing. The supervisor retains the authority to accept or deny the request.

Section 2 - Overtime Pay

a. Overtime pay for FLSA non-exempt employees is equal to one and one-half (1.5) times the employee's hourly rate of pay.

b. Overtime pay for FLSA exempt employees is equal to one and one-half (1.5) times the employee's hourly rate of pay. However, if the employee's rate of pay exceeds the rate for a GS-10, Step 1, including any applicable special rate of pay or special pay adjustments, a locality-based comparability payment, or any applicable special rate of pay, the overtime rate is the greater of:

    1. One and one-half (1.5) times the applicable minimum hourly rate of basic pay for GS-10, Step 1; or

    2. The employee's hourly rate of basic pay.

Section 3 - Types of Overtime

a. Regularly Scheduled Overtime is any overtime work scheduled in advance, normally seven (7) days of the administrative work week as part of an employee's regularly scheduled work week, is considered regular overtime. An employee shall be compensated for every minute of regular overtime work, in fifteen (15) minute increments, in accordance with the statutes and provisions of the Office of Personnel Management (OPM) regulations.

b. Irregular or Occasional Overtime work is any overtime work that was not scheduled in advance of the administrative work week and made a part of an employee's regularly scheduled work week. Irregular or occasional overtime work is paid in accordance with the FLSA, the same as regular overtime work, unless the employee requests in writing to receive compensatory time off in lieu of overtime premium pay. No advance notice is required for this type of overtime, which must be directed and approved by the supervisor.

c. Call-Back overtime is a form of irregular or occasional overtime work performed by an employee on a day when work was not scheduled for the employee or for which they are required to return to his or her place of employment after having already concluded his or her tour of duty and departed the work site. It is understood that employees' safety is paramount and call-backs will be held to a minimum, and that employee rest requirements will be considered. In all call-back situations, the employee will be paid a minimum of two (2) hours of overtime, as provided for by government-wide regulation. Two (2) hours of advanced notice will be required.

Section 4 - Impact on Leave

a. Leave usage or balance will not be a factor in offering or assigning employees overtime. However, employees in a leave status will not be offered or assigned overtime until they return to duty. Overtime in conjunction with leave usage in the same pay period is permitted.

b. Employees on Military Leave under 5 U.S.C. § 6323(a) or Court Leave under 5 U.S.C. § 6322 are entitled to the same compensation they would have otherwise received but for their absence on military or court leave. This overtime duty must be regularly scheduled overtime work, which would have otherwise required the employee to work overtime.

Section 5 - Compensatory Time in Lieu of Overtime Pay

a. For FLSA non-exempt employees, the Agency shall provide overtime pay for all overtime work performed. After considering mission requirements, the Agency may grant compensatory time off for overtime work performed; however, non-exempt employees shall not be required to accept compensatory time off in lieu of payment for any overtime work performed. The Agency will consider employee-initiated requests, in writing, for compensatory time off in lieu of overtime pay.

b. Employees are strongly encouraged to use any compensatory time off earned by the end of the 26th pay period after such time it was earned.

c. Upon expiration of twenty-six (26) pay periods or upon separation of the employee from the Agency, the Agency will pay FLSA non-exempt employees for any unused compensatory time off earned in lieu of overtime pay to the employee's credit, at the overtime rate in effect when the compensatory time off was earned.

d. FLSA exempt employees' earned compensatory time off will be forfeited if not used prior to the expiration of twenty-six (26) pay periods. However, if an employee is prevented from using compensatory time off due to an exigency of the Agency's business, the unused compensatory time off will be paid out at the overtime rate in effect when earned.

e. For FLSA exempt employees, whose rate of basic pay is above the rate for GS-10, Step 10, the Agency may at its discretion require the employee to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime.

f. FLSA exempt employees whose rate of pay does not exceed the rate for GS-10, Step 10, may request, in writing, to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime. Such written requests will normally be granted, subject to mission requirements. If the employee does not make such a written request, or if the Agency does not approve that request, the employee is entitled to compensation in accordance with the overtime requirements.

Section 6 - Standby Duty and On-Call

a. Standby duty: Time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his or her own purposes. Employees are compensated if the standby conditions are met in accordance with 5 C.F.R. Part 550 for exempt employees and 5 C.F.R. Part 551 for non-exempt employees.

b. On-call status: Time spent in an on-call status is not hours of work, and the employee shall be considered off duty:

   1. If the employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

   2. If the employee is allowed to make arrangements for another qualified person to perform any work that may arise during the on-call period.

Article 19: Reduction-In-Force

Section 1 – Introduction

When the Agency determines that a Reduction-In-Force (RIF) may be necessary, it must comply with RIF procedures when an employee is faced with separation or downgrading for a reason such as reorganization, contracting out (A-76), lack of work, shortage of funds, insufficient personnel ceiling, or exercise of certain reemployment or restoration rights. The RIF process will be administered in accordance with 5 U.S.C. Chapter 35 and 5 C.F.R. Part 351.

Section 2 – Procedures

The Agency will:

a. Make efforts to accomplish a RIF through attrition prior to implementing RIF procedures; identify all continuing positions for which the Agency faces shortages of applicants; and, to the maximum extent feasible within budgetary limitations, train employees affected by the RIF who have potential for reassignment to those positions.

b. Keep outside hiring and internal promotions to the minimum necessary to maintain the efficient operation of the Agency. The Agency will release promotion-eligible positions once it has been determined that these positions will not be impacted by the RIF.

c. If feasible, request approval from OPM to use the Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP). Meet individually with employees eligible for VERA and/or VSIP, upon an employee's request.

d. In accordance with law, provide the Union with advance notification and an opportunity to bargain over the procedures for implementing the RIF and the appropriate arrangements for employees who are impacted by the RIF.

e. Provide the Union with all information that is necessary to satisfy its bargaining obligations and representational responsibilities consistent with 5 U.S.C. § 7114, such as:

    1. Total number of positions to be affected;

    2. Type of anticipated action (separation, downgrades, reassignments, etc.);

    3. The competitive levels;

    4. Title, grade, and series of all affected positions;

    5. Proposed beginning date of the RIF;

6. Which employees received performance credit on their Service Computation Dates;

7. The location of the retention records; and

8. Copies of the retention registers.

f. Give employees and/or their representatives the opportunity to review retention registers for positions that the employees and/or their representatives reasonably believe may affect the employee's RIF action. The retention registers will list other employees who may be entitled to displace the affected employees as well as employees they may be entitled to displace.

g. To the maximum extent possible, provide a reasonable offer of employment to employees affected by the implementation of the RIF procedures in a position as close to their current grade as possible. Any offer letter, if issued, will include:

1. The position title, series, and grade;

2. The geographic and organization location of the position;

3. The deadline for responding to the offer;

4. What could happen to the employee if the placement offer is rejected;

5. If applicable, information on the employee's grade retention, pay retention, records rights, and severance; and

6. The reasons for retaining a lower standing employee in the same competitive level.

h. Instruct supervisors to discuss training needs with the employees on a continuing basis and provide necessary and appropriate training when needed.

Section 3 – Agency Notice to Employees

a. The Agency will inform all employees as fully and as quickly as possible of plans or requirements for a RIF, in accordance with applicable rules and regulations.

b. The Agency notice to affected employees will identify the regulations that govern the RIF and the kinds of assistance available.

c. Employees on detail will be released from their permanent positions (not their detailed positions) as a result of a RIF.

d. The Agency will provide a specific written notice to each employee affected by the RIF, if they are to be released from his or her competitive level, at least sixty (60) calendar days prior

to the effective date. If faced with an unforeseeable situation (e.g., a natural disaster), the Agency may, with OPM approval, give the employee a specific written notice of fewer than sixty (60) calendar days, but at least thirty (30) calendar days prior to the effective date. At a minimum, the notice will include the following information:

1. The specific action being taken (e.g., separation, demotion, etc.);

2. The reason(s) for the action;

3. The effective date of the action;

4. The employee's Service Computation Date;

5. The employee's subgroup;

6. The employee's competitive area;

7. The employee's competitive level;

8. Why any lower standing employee is retained in his or her competitive level;

9. The employee's rights to appeal under the negotiated grievance procedures or MSPB, but not both; such notices shall include time limits for filing appeals; and

10. The last three (3) performance ratings.

Article 20: Within-Grade Increases

Section 1 – General

a. In accordance with 5 CFR Part 531, Subpart D, within-grade increases (WIGIs) are provided to employees who occupy permanent positions who have maintained an acceptable level of competence.

b. Denial of a WIGI is not to be used as a punitive measure for an act of misconduct in lieu of appropriate disciplinary actions. Denial of a WIGI will only be based on unsatisfactory performance.

c. The WIGI will be effective on the first day of the first pay period following the end of the required waiting period, provided:

   1. The employee has attained at least an acceptable level of competence, defined as "Achieved Results" (or equivalent) performance on his or her most recent rating of record under the Performance Management Article; and

   2. The determination to grant or withhold a WIGI is based on the employee's appraisal of record and his/her current performance under a performance plan for ninety (90) days or more.

   3. The employee has not received an equivalent increase in pay during that required waiting period.

Section 2 – Procedures for WIGI Denial and Reconsideration

a. At any time, but normally not later than thirty (30) days prior to the end of the WIGI waiting period, the supervisor will notify the employee if his or her job performance is falling below an acceptable level, and unless his or her performance improves, the WIGI may be denied. The notice may be in the form of written counseling, progress reviews, or the performance appraisal.

b. When it is determined that current performance is not at an acceptable level, a rating must be prepared to document current performance.

c. When an employee is denied a WIGI, the Union and the employee will be notified formally in writing prior to the end of the pay period in which the WIGI is due. The notice will include the following:

   1. A statement that the employee's work has been reviewed;

   2. A statement that the employee's work has been determined to be of less than an acceptable level of competence;

3. A statement that identifies the performance elements in which the employee's performance was less than fully successful;

4. Specific examples of how the employee's performance failed to meet the fully successful level for that particular performance element;

5. A statement that the employee has the right to request, in writing, a reconsideration of the negative determination, provided the request is made within fifteen (15) calendar days of the employee's receipt of the negative determination;

6. The name and title of the reconsideration official to whom the employee may submit a request (the reconsideration official will normally be at a level higher than the rating official);

7. A statement that the employee may have Union representation to assist in presenting a request to the reconsideration official; and

8. A statement that the employee is authorized a reasonable amount of duty time to review the materials relied upon in reaching the negative determination and to prepare a response.

d. A decision on reconsideration will be made within thirty (30) calendar days from the date of the request. If the reconsideration official determines that the employee has met an acceptable level of competence, the WIGI effective date will remain the first day of the first pay period following the end of the required waiting period.

e. If the reconsideration official upholds the negative determination, the employee may file a grievance. The grievance would be filed with the applicable Associate Administrator, or designee.

Section 3 – WIGI Approval after a Denial

a. At any time during the WIGI Denial period, the rating official may conclude that WIGI Denial is no longer necessary because the employee's performance has improved to an acceptable level of competence (at least "Achieved Results"). The rating official will formally notify the Union and the employee of this determination in writing.

b. When an employee's performance is determined to be at an acceptable level of competence (at least "Achieved Results") following an earlier negative final determination, the effective date of the WIGI will be the first day of the first full pay period following the new determination and rating of record.

Article 21: Position Descriptions

Section 1 – Provision of Position Descriptions

Employees will be provided with a copy of their position descriptions upon entering the position, whenever changes are made, and upon appropriate request.

Section 2 – Content of Position Descriptions

Position descriptions must state the principal duties, responsibilities and supervisory relationships of a position in a manner necessary for proper classification. However, position descriptions are not expected to contain a comprehensive or exhaustive listing of every task and duty which is performed by an employee. Minor duties may be omitted from the position description or covered by a brief statement that minor duties may be performed.

Section 3 – Other Duties as Assigned

The phrase "other duties as assigned" and other phrases having similar meaning as used in PDs, means duties related to the basic duties of the position. Management should not regularly assign work to an employee that is not reasonably related to the duties listed in the PD or not documented in the employee's performance plan. However, employees may not refuse to carry out assignments related to the mission of the agency on the grounds that the assignments are not covered by their position descriptions

Section 4 – Requests for Position Review

An employee may initiate a request for a position review by bringing to the attention of his or her supervisor, in writing, significant aspects of his/her duty assignments which he or she believes are not covered by the official position description. An employee may meet with appropriate management officials to discuss any position description problems. If the supervisor agrees that material differences exist, he/she will either propose a new position description or amendment or take action to make the employee's duties consistent with the current position description.

Section 5 – Right to Appeal Position Classification

An employee can appeal the classification of his/her position or grieve the content of his/her position description at any time. An employee who has filed a classification appeal shall not be subject to any penalty reprisal, discrimination, or harassment because he/she has filed such an appeal.

Article 22: Merit Promotion (Career Ladder Promotions)

Section 1 – Introduction and Application of Rules and Regulations

a. The Agency will adhere to all applicable Government-wide rules and regulations, including 5 CFR § 335 and the FTA Merit Staffing Plan (FTA O 3300.2B, dated May 18, 1994) to ensure that merit staffing principles are applied consistently, with equity for all employees, and based solely on job-related criteria.

b. Any new merit staffing policy will be negotiated between the parties, in accordance with the mid-term bargaining article of this CBA.

Section 2 – Application

This Article shall apply to all promotions to positions within the bargaining unit except in the following cases:

a. Promotions provided for in an Upward Mobility or other formal career development program;

b. Promotions resulting from reclassification, either without a change in duties or as a result of the addition of duties to an existing position;

c. Remedial promotions, e.g., to implement the decision of an arbitrator or appellate authority;

d. Promotions of persons downgraded without personal cause, e.g., in a reduction-in-force;

e. Promotions following conversion of a cooperative education student, a Veterans Readjustment Act appointee, or a participant in a comparable program; or

f. Temporary promotions of 120 days or less.

Section 3 – Management Rights

Nothing in this Article shall preclude the agency from filling positions by other appropriate means, e.g., lateral reassignment, reinstatement, transfer-in, conversion of a temporary employee etc., without regard to this Article, or from deciding at any time not to fill a position.

Section 4 – Merit Principles

Actions taken under this Article shall be solely on the basis of merit, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, gender, national origin, non-disqualifying physical handicap, or age; and shall not be based on any criteria that are not job-related, including favoritism based on personal relationship or patronage.

Section 5 – Promotion Advertisement

Before a promotion is made under this Article, all bargaining unit employees who are qualified and eligible will be afforded an opportunity for consideration by advertisement.

Section 6 – Forwarding Vacancy Announcements

When advertisements are used to identify promotion candidates, lists of vacancy announcements will be forwarded via email to all bargaining unit employees within the area of consideration.

a. Vacancy announcements will be open for at least 5 work days.

b. The Union will be provided a copy of each vacancy announcement at the time it is posted.

Section 7 – Notification of Non-Selection

Employees who apply for vacancy announcements and are not selected will be notified of the reason for non-selection, i.e., were not qualified, were not eligible, were not among the best qualified candidates, or were not selected from among the best qualified.

Section 8 – Evaluation Board

If more than 10 qualified and eligible candidates from within the bargaining unit are identified by either a skills search or advertisement, the Agency will appoint an Evaluation Board of three members to evaluate the potential of the qualified and eligible candidates to perform in the vacant position. The selecting official will not serve on the Evaluation Board.

a. The Board will consider each candidate's performance evaluation, past experience, educational background, incentive awards and other relevant information which indicates potential or lack of potential to perform in the vacant position. The assessment of each candidate will be based solely on the documentation before the Board and not on the personal opinions of the Board members.

b. The specific factors considered by the Board and their relative weights will be made part of the merit promotion record. This record, sanitized to prevent clearly unwarranted invasions of privacy, will be made available on request to an unsuccessful candidate or his/her representative in the event of a grievance. Nothing in this Section shall interfere with the Union's statutory right to information.

Section 9 – Selection Technique

The selecting official will consider all pertinent data which he/she is provided on each candidate certified. A selection technique utilized in regard to one candidate, e.g., an interview, will be utilized for all.

Section 10 – Counseling for Improvement

Upon request by an employee(s), they will be entitled to counseling by appropriate agency officials regarding the areas, if any, in which he/she could or should improve in order to increase chances for future promotion.

Section 11 – Grievability

Non-selection for promotion shall not be grievable unless it is claimed that one or more sections of this Agreement have been violated. The bare claim, however documented, that the would-be grievant was, in fact, the best qualified candidate, will not suffice to meet this test.

Section 12 – Career-Ladder System

a. **Intent:** The FTA and the Union agree that the opportunity for bargaining unit employees to develop and advance in their careers is the intent and expectation of the career-ladder system. Career-ladder positions provide opportunities for promotion, but career-ladder promotions are not automatic. Nothing in this Article shall be interpreted as requiring management to promote an employee when the circumstances do not warrant such action.

b. **Career-Ladder Positions:** A career-ladder position is a position for which the grade progression from entry level to the full performance level is identified, and the employee in the position is given grade-building experience. Career-ladder positions are generally developmental. Employees performing within a career-ladder position are eligible to be promoted to the full performance level without further competition when they:

    1. Meet qualification and eligibility requirements for the position and, education requirements, if applicable;

    2. Perform at the "Achieved Results" or equivalent level in their current position and demonstrate the ability to perform at the next higher grade;

    3. Meet time-in-grade requirements; and

    4. The Agency has the appropriate level of work available and necessary budgetary resources to support the promotion.

c. **Career-ladder Promotions:** A career-ladder promotion is a type of promotion that generally permits an employee to progress towards the full performance level of the position without competition, when appropriate competition was held at an earlier date; that is, the employee was selected from an Office of Personnel Management (OPM) or Delegated Examining Unit (DEU) Certificate or under competitive merit promotion procedures. Career-ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career-ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career-ladder by:

1. Competitive procedures; or

2. Non-competitive appointment under special authority.

d. **Expectations:**

1. At the time an employee meets time-in-grade and any other legal promotion requirements, the supervisor will decide whether to promote or not to promote.

2. The supervisor may not deny a career-ladder promotion to an eligible employee based on personal bias or non-work-related reasons.

3. The Employee will receive written notice when a promotion could not be approved solely because the Agency does not have the appropriate level of work available and necessary budgetary resources to support the promotion.

4. If an employee satisfies the career-ladder promotion criteria, and all required documentation is received by the Office of Human Resources, the promotion will normally be made effective at the beginning of the next pay period.

5. Once the promotion has been made, supervisors will assign work at the new grade level.

6. Supervisors will endeavor to give employees in career-ladder positions the opportunity to reach the full potential of their assigned career-ladders. Upon placing an employee in a career-ladder position, the supervisor will identify the job requirements and expectations to reach the next higher level. Subsequently, the supervisor will hold discussions with the employee at each level of the employee's progression within the career-ladder.

e. **Failure to Meet Promotion Criteria**

1. Employees not meeting the criteria for promotion will, upon written request, be counseled by their supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.

2. The supervisor and employee will work together to assist the employee in meeting the specific promotion requirements. Such assistance should identify applicable training as well as any other appropriate support. Employees may request Union assistance.

Article 23: Details and Temporary Duty Locations

Section 1 – Definition

A detail is a temporary assignment of an employee to a different position, or an unclassified set of duties for a specified period, with the employee returning to his or her regular duties at the end of the detail. The rules and procedures applicable to details will be consistent with 5 U.S.C. § 3341 and 5 C.F.R. Part 300, Subpart C. Both parties agree that the Agency may use details to meet Agency needs and/or for employee career development; and that all qualifications being equal, details will be assigned on a fair, equitable, and legal basis.

Section 2 – Detail Requirements

a. A record of detail assignments will continue to be maintained. The record will be provided to the Union upon written request, and when any named Union representative is detailed.

b. Details will not be used as a means of formal or informal disciplinary action, or as a punitive action.

c. Details will be assigned by management on a fair and equitable basis among qualified employees.

Section 3 – Procedures

a. If a supervisor does not approve an employee-request for a detail, they will provide the employee with a written reason for the denial. The denial shall not be based on supervisory personal preference.

b. The supervisor will provide reasonable advance notice to an employee selected for a detail, normally ten (10) business days in advance.

c. Employees will be recognized for the work they perform. Therefore, details in excess of thirty (30) days and detail extensions will be documented and maintained as a permanent record in the employee's e-OPF. In addition, employees may request amendment of their e-OPF for details of less than thirty (30) days, in accordance with OPM guidelines, as set forth at 5 C.F.R. Part 297.

d. Barring emergency circumstances, the Agency will make a reasonable effort to avoid placing Union officials on details that would prevent them from performing their representational functions.

e. Employees may be detailed to positions at the same, or to unclassified duties, in increments of one hundred twenty (120) calendar days or less.

Section 4 – Details to Lower and Higher Grades

a. The Agency does not normally detail employees to lower graded duties. However, if an employee is detailed to lower graded duties, there will be no loss of time-in-grade of the employee's permanent position, the detail will not be used as the basis for a lowered performance appraisal, and it will not have any adverse effect on the employee's eligibility for promotion opportunities.

b. If an employee is detailed to a higher graded position for more than thirty (30) calendar days, barring any legal or regulatory constraints, the Agency will promote the employee temporarily if they meet all qualifications. Details will not last longer than thirty (30) calendar days for employees who do not meet the qualifications.

c. For a detail of more than one hundred twenty (120) calendar days to a higher grade or a position with known promotional potential greater than that of the employee's current position, the Agency will follow the FTA Merit Staffing Plan (FTA Order 3300.2B), dated May 18, 1994.

d. The Agency will not bypass FTA Order 3300.2B in holding an employee who is performing in a detail at a higher grade level for more than 120 days.

e. FTA Order 3300.2B will apply, without exception, for an employee who is performing on a detail for more than one (1) year to a higher graded position or to a position with known promotion potential greater than the employee's present position. Unclassified details will be automatically assigned a classification after the second (2^{nd}) 120-day detail increment.

f. The Agency will be accountable for all detail arrangements within its offices. No office will be allowed to unilaterally initiate and conduct a detail arrangement with employees, absent coordination with the Agency's Office of Human Resources.

Section 5 – Temporary Duty Location

a. A temporary duty (TDY) location is a place away from an employee's official station, where the employee is authorized to travel.

b. TDY work assignments will be distributed based on Agency needs and employee qualification requirements. When qualifications are equal among eligible employees, TDY work will be assigned to employees on a fair and equitable basis. A record of TDY assignments will be maintained by the Agency and provided to the Union upon written request for which they have a particularized need.

c. If an employee requests or volunteers for a TDY or requests to take the place of another employee's assigned to a TDY, but the supervisor does not approve the request, the supervisor will provide the employee with a reason for the denial.

d. Travel for TDY work assignments will be reimbursed according to the Federal Travel Regulations (FTR).

Article 24: Performance Management

Section 1 – Overview

a. The Agency will implement a performance management system that conforms to Chapter 43 of Title 5, United States Code (5 U.S.C. Chapter 43), Part 430 of the Code of Federal Regulations 5 C.F.R. (5 C.F.R. 430), Department of Transportation (DOT), Departmental Personnel Manual (DPM), Chapter 430, Performance Management, June 1, 2011 (DPM 430), and the FTA Performance Management System Order (FTA O 3402.1).

b. The purpose of the performance management system is to provide a framework to ensure honest feedback and open, two-way communications between employees and their rating officials. The performance management system must focus on contributions within the scope of the employee's performance standards in achievement of the Agency's overall service mission and goals.

c. The Union recognizes that it is the Agency's responsibility to appraise employee performance. Performance appraisals are used by the Agency to establish and apply objective, reasonable, and relevant standards of work performance. The Agency and Union understand that performance appraisals work best when senior management, supervisors, and employees contribute to standards, communicate regularly on the status and quality of actual performance against the standards, and collaborate on the means to improve and achieve excellence in performance. The Agency also recognizes that employees possess particular technical knowledge about their positions and annual performance goals.

d. The Agency and the Union are committed to providing quality public service. Accomplishment of the Agency mission should be achieved in an environment that recognizes the value of its employees and the importance of teamwork.

e. Performance of Agency objectives is a function of systems implemented and administered by management, and individual performance by motivated, trained, and valued individual employees.

f. At a minimum, the performance management system will emphasize employee development and their contribution to the Unit and group achievement of the Agency's mission/objective(s).

g. The Agency will not prescribe a distribution of levels of ratings for employees covered by this CBA. Each employee’s performance will be judged solely against his or her performance standards only.

Section 2 – Definitions

a. In this Article, the following terms are defined in 5 CFR 430.203:

1. The appraisal is the process under which performance is reviewed and evaluated.

2. The appraisal period is the established period of time for which performance will be reviewed and a rating of record will be prepared.

3. A Critical Element is a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

   Such elements will be used to measure performance only at the individual level.

4. A Non-Critical Element is a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

5. Performance is the accomplishment of work assignments or responsibilities.

6. The Performance Plan is all of the written or otherwise recorded, performance. Elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.

7. The Performance Rating is the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and noncritical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern (as specified in 5 CFR § 430.208(d)).

8. A Performance Standard is the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance. Performance Review means communicating with the employee about performance compared to the performance standards of critical and non-critical elements.

9. The performance management system is a framework of policies and parameters established by the Agency as defined at 5 USC 4301 (1) for the administration of performance appraisals under subchapter (i) of Chapter 43 of Title 5 USC in this subpart.

10. A Rating of Record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in 5 CFR §430.208(d)), or (2) in accordance with 5 CFR §531.404(a)(1). These constitute official ratings of record.

11. The Rating Official is usually the immediate supervisor.

12. The Reviewing Official is normally one (1) level above the Rating Official.

13. The Performance Improvement Plan (PIP)/Opportunity to Improve (OIP) is discussed in **Section 10** of this Article.

Section 3 – Coverage and Functions

a. The performance management system will:

1. Apply to all bargaining unit employees.

2. Be fair, equitable, reasonable, and related to the employee's Position Description (PD) and actual duties assigned.

3. Provide for periodic appraisals of job performance of employees to achieve accountability at all levels;

4. Encourage and/or involve employee participation in establishing performance standards including the performance planning process that develops critical elements and standards tailored to the individual employee's role in accomplishing actual job performance which addresses the Agency's goals;

5. Assess employee contributions to the achievement of Agency requirements, goals, and priorities;

6. Strengthen communication between employees and supervisors;

7. Communicate and integrate Agency goals, priorities and strategies to all levels of employees; and

8. Use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

b. The performance management system will not:

1. Be used as a disciplinary tool;

2. Foster individual competition;

3. Be based on numerical goals and/or numerical performance levels not contained in the employee's performance standards;

4. Be punitive, adversarial, or overly labor-intensive for meeting an acceptable level of performance;

5. Represent absolute performance standards except where they are crucial to the mission;

6. Be based on expectations or requirements that are unrealistic and unattainable by most employees working under normal conditions; or

7. Include conscious or unconscious bias or pre-conceived notions against certain employees and/or employee groups by the rating official in the development of appraisal standards, evaluation of their performance and/or the overall rating assigned employees.

Section 4 – Critical Elements

a. Critical elements are those work assignments or responsibilities of such importance that unacceptable performance on an element would result in a determination that the employee's overall performance was unacceptable.

b. To the maximum extent feasible, the critical elements will be consistent for like positions. Variations from these critical elements will be based on significant differences in the job.

c. Consistent with Management's right to assign work, the critical elements should normally be consistent with the duties and responsibilities contained in an employee's PD.

Section 5 – Performance Standards

a. For each employee's performance plan, to the maximum extent feasible, performance standards will be based on objective, reasonable, and measurable criteria that permits an accurate evaluation of the employee's job performance.

b. Performance standards for each element will be written at the performance level that will satisfy the requirements at the acceptable level of performance.

c. There will be at least one (1) standard per element.

d. The supervisor and employee will meet to discuss the development of the performance standards for each element and what is required for the employee to meet an acceptable level of performance. The employee will have sufficient input in the development of reasonable and attainable performance goals.

e. To the maximum extent feasible, the performance standards will be consistent for like all positions and job series.

f. Application of all performance standards will be fair and equitable, realistic, and consistent with regulatory requirements.

g. Performance standards will not be unilaterally changed by the rating official or other management official(s) absent knowledge and the opportunity for input by the employee.

h. Planned tasks established at the beginning of a performance period will not be arbitrarily removed and added to another employee's appraisal standards to build one employee's appraisal while deflating another employee's appraisal due to bias and/or practices of favoritism.

i. The Office of Human Resources will, when reported by an employee, investigate allegations of rater bias.

j. All performance evaluations will have a second-level of review by the reviewing official.

Section 6 – Standardized Critical Elements and Performance Standards

If standardized critical element(s) and performance standard(s) are created for a new job series, or changed for a job series, the Agency will provide a copy of the critical element(s) and performance standard(s) to the Union.

Section 7 – Communications During the Performance Year

a. To the extent possible, within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the rating official will discuss the performance plan with each employee (whenever possible these discussions will be face-to-face). The rating official also will present to the employee a proposed performance plan, which contains the critical elements, and any other performance elements, as well as the performance standards for each of those elements. An employee will have the right to discuss his or her supervisor the expected performance goals to receive an "Exceed Expectations" or higher performance rating.

b. Discussions between the employee and rating official will be held about changes in his or her critical elements or performance standards when there is a change in the work situation such as, but not limited to, changes regarding the following:

    1. Details or absences of ninety (90) days or more;

    2. Organizational goals or objectives;

    3. Work assignments; or

    4. The work process or product of the organization.

c. Ongoing performance discussions:

    1. Informal discussions are a standard part of supervision and should occur throughout the performance appraisal period. Discussions may be initiated by the rating official or employee. Discussions may be held one-on-one or in a work group. If an employee requests a discussion with his or her rating official to discuss his or her performance, it will be scheduled within fifteen (15) calendar days if possible.

    2. Discussions should be candid, forthright dialogues between the rating official and employee aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and progress and identify and resolve problems.

3. As appropriate, the rating official should provide additional guidance aimed at developing the employee, removing obstacles, and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance and offer suggestions for improving processes.

Section 8 – Procedures

a. To the extent possible, within thirty (30) days of appointment or reassignment, the employee will be issued a new performance plan. Where there is a change in supervision, the new supervisor will meet with the employee to review and discuss the performance plan.

b. The rating official and employee should work in collaboration to establish written performance standards identifying the critical job elements, including at a minimum goals and expectations. If the rating official and employee disagree on the performance standards, the rating official will explain the reasons why the employee's recommendations were not adopted. Thereafter the rating official will ask the employee to sign the performance plan, and provide the employee with a copy of the final performance plan. Once the employee receives a signed copy of the plan, it becomes effective.

c. If the employee refuses to sign the performance plan, mid-year review and/or final performance evaluation, the rating official will neither coerce nor threaten the employee to sign any document presented. The rating official will write "employee declined to sign" on the document and provide the employee with a copy. The employee's signature on the performance document is to acknowledge receipt and does not indicate agreement.

d. If the employee and rating official do not agree on the development of performance standards or final performance rating, he or she will have the right to discuss the matter with the reviewing official without discouragement from the rating official or fear of retaliation. In such a situation, the reviewing official will exercise a thorough review and determine a fair and equitable resolution, rather than returning the employee to the rating official for resolution.

e. Rating officials will give employees at least one (1) progress review, normally during the mid-point of the rating period (mid-year review). This review will be documented with a written progress review or with a signature on the appraisal form to signify that the mid-year review took place. There can be more progress reviews, and one (1) is required if the rating official believes that the employee is not performing in a successful manner. The progress review will indicate to the employee what would be necessary for the employee's performance to improve. All information will be clearly defined and provided to the employee in writing so that there is no misunderstanding.

f. Bargaining unit employees will receive an annual performance rating for the performance appraisal period. The performance ratings will be issued in writing to the employees within thirty (30) days following the end of the rating period. The performance cycle will be extended when an employee is on a Performance Improvement Plan (PIP) to allow for completion of the PIP.

g. New employees must work under a performance plan for a minimum of ninety (90) days before a rating can be provided.

h. In rare instances, when performance plan changes are made fewer than ninety (90) days before the end of the rating period, the rating period will be extended to allow the employee the minimum observation time for an appropriate performance rating.

Section 9 – Uses of the Performance Rating

The performance rating given to employees under this performance management system will be used for many purposes, to include but not limited to:

a. An employee, whose most recent rating of record is at least "Achieved Results," will be eligible for the appropriate Within-Grade Increases (WIGIs);

b. The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions;

c. The performance rating will be considered in making determinations regarding Agency Reductions-In-Force (RIF) in accordance with the law, government regulation, and this CBA;

d. The rating of record may be used in evaluating candidates under the merit promotion system contained in this CBA; and/or

e. Identifying systemic changes in operations, work processes, training, teamwork, etc.

Section 10 – Performance Improvement Plan (PIP)

a. It is the responsibility of the Agency to monitor employee performance throughout the performance appraisal period. At any time during the performance appraisal period, if the rating official determines the employee is performing at an "Unacceptable" level in one (1) or more critical elements, the rating official may consider placing the employee on a PIP. The purpose of a PIP is to help the employee improve his or her performance to an acceptable level.

b. If the rating official chooses to place the employee on a PIP, they will hold a meeting with the employee to discuss the employee's performance.

c. Prior to the issuance of the PIP, the rating official and employee will meet to determine possible causes of the performance problem and to discuss the performance goals in the

PIP, which will be set by the supervisor after this meeting.

d. The PIP will identify the critical element(s) and assigned task(s) for which performance is unacceptable and clearly inform the employee of the performance standard(s) goals that must be attained in order to demonstrate acceptable performance. The plan will state that unless performance in a critical element(s) improves to, and is sustained at, an acceptable level for a minimum period for one (1) year, the employee may be reduced in grade, reassigned, or removed from Federal service.

e. The PIP will afford the employee a minimum of a sixty (60) day opportunity to improve his or her performance and resolve the identified performance-related problem as noted in PIP. If the Agency determines in its sole and exclusive discretion that a longer period is necessary to provide sufficient time to evaluate an employee's performance, the PIP time may be extended.

f. The PIP will be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a mentor, or other assistance as appropriate.

g. The PIP will state which supervisor or management official(s) will be available to guide, coach, and otherwise assist the employee in reaching "Achieved Results" performance and establish periodic counseling and reassessment by the supervisor during this period.

h. The employee will be informed in writing that a WIGI or award will be withheld while this level of unacceptable performance continues.

i. At any time during the performance improvement period, the rating official may conclude that assistance is no longer necessary because the employee's performance has improved to at least "Achieved Results." The rating official will notify the employee of this determination in writing.

j. No performance-based action (5 C.F.R. Part 432) will be proposed until the completion of the PIP.

Section 11 – Action Based on Unacceptable Performance

a. If remedial action fails and the employee's performance is determined to be unacceptable, the supervisor will provide written notification to the employee of one (1) of the following actions:

1. The employee may be reassigned to another position in the same grade for which he or she qualifies.

2. When the employee is not capable of performing any position at the same grade, but is capable of performing a position at a lower grade in the same or different job series,

the supervisor may propose a demotion to a position at a lower grade.

3. The supervisor may propose a removal; the Agency will accept an employee's request to resign in lieu of removal.

b. An employee who is reassigned or demoted to a position at a lower grade based on unacceptable performance will receive a new performance plan, in accordance with this Article.

c. An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:

1. A thirty (30) day advance written notice of the proposed action, which identifies the specific basis for the proposed action, including specific instances of unacceptable performance;

2. A representative (the employee must inform the deciding official, in writing, of the representative's name);

3. A reasonable time, normally not to exceed fifteen (15) days, to answer orally and in writing and to provide witnesses and work product or other evidence to challenge the proposed action; and

4. Requests for reasonable extensions of time to answer a proposed action, which will normally be granted absent extenuating circumstances.

d. The employee will be given a decision on the proposed demotion or removal in writing. Unless the action is proposed by the Head of the Agency, the deciding official will be at the equivalent or higher management level than the proposing official. The decision will:

1. Specify the instances of unacceptable performance and the critical element(s) for which the employee did not achieve "Achieved Results" performance, and on what the decision is based; and

2. Specify the action to be taken, the effective date, and inform the employee of his or her right to appeal to the Merit Systems Protection Board (MSPB), file an Equal Employment Opportunity (EEO) complaint in accordance with applicable law, and timely file a grievance to the extent allowed under the terms of this CBA, but can only exercise one of these options. An employee shall be deemed to have exercised his or her option when the employee timely initiates an appeal, complaint, or grievance under the respective procedure.

Article 25: Tardiness

Section 1 – Employees' Responsibility

All employees are responsible for reporting to work promptly at the beginning of their assigned work shifts. Employees must make every reasonable effort to be at their assigned areas and ready for work at their specified start time. If an employee is not going to report at the beginning of his or her scheduled start time, he or she must notify his or her supervisor as soon as possible via telephone (or text messaging), email, or in person upon arrival to their work location.

Section 2 – Supervisors' Discretion

a. Immediate supervisors are responsible, on a case-by-case basis, for addressing the tardiness of the employees whom they supervise in a fair and equitable manner.

b. An employee's supervisor may excuse, without charge to annual leave, infrequent or unavoidable absence from duty of less than one (1) hour, including tardiness, if the absence is the result of circumstances beyond the control of the employee. If leave is charged, it will be in increments of fifteen (15) minutes. Unavoidable absence or tardiness of one (1) hour or more will be charged to annual leave, except as provided in Section 2c. below.

c. Subject to supervisory discretion, tardiness may be handled in one of the following manners:

   1. The supervisor may allow the employee to compensate for the absence by additional work for an equivalent period, if the tardiness is a rare occasion for the employee.

   2. The absence may be charged against any compensatory time to the employee's credit.

   3. The supervisor may approve the employee's request for the use of sick leave, if applicable, or LWOP for the period of absence.

   4. In cases of chronic or excessive tardiness, the employee's supervisor may decline to excuse the tardiness and charge the employee with AWOL.

Article 26: Disciplinary & Adverse Actions

Section 1 – General

a. Disciplinary actions are written reprimands and suspensions of fourteen (14) or fewer days. Adverse actions are suspensions of more than fourteen (14) days, reductions in grade, reductions in pay, furlough of thirty (30) or fewer days, or removals. Adverse actions and suspensions of fourteen (14) days or fewer will be taken in accordance with 5 U.S.C. Chapter 75.

b. The primary objective of discipline is to correct and improve employee behavior.

c. Counseling and oral warnings are informal in nature. Memoranda of caution or warning (including written admonishments) and letters of counseling are not disciplinary actions under this Article, but are used to correct employee conduct or behavior.

d. Discipline, memoranda of caution or warning, admonishments, and negative counseling will not be conducted publicly or in such a manner as to embarrass the employee.

e. Letters of caution will not be included in the employee's personal record, but may be retained unofficially by the supervisor for up to one (1) from the date of issuance of the letter to the employee.

f. The concept of progressive discipline, which encourages supervisors to use the lowest level of discipline necessary to correct a problem, is designed to correct and improve employee conduct or behavior, and will guide supervisors in making disciplinary decisions. A common pattern of progressive discipline is written reprimand, short-term suspensions of 14 days or fewer, then adverse actions. A deviation from progressive discipline may be necessary depending on the circumstances of individual cases.

g. If the Agency believes that disciplinary or adverse action is necessary, such action will be initiated within a reasonable period of time after an investigation.

h. In cases where a disciplinary or adverse action is issued or proposed for reasons of off- duty misconduct, the Agency's written notification will contain a statement of the nexus between the specific off-duty misconduct and the efficiency of the service. .

i. The deciding official in suspensions and adverse actions will normally be different from the official who proposed the action, although in certain instances they may be the same person. The deciding official will be at an equivalent or higher level than the proposing official.

j. Upon request, employees and their representatives are entitled to copies of all the material relied upon by the Agency in proposing any disciplinary action.

k. Termination is a phrase used exclusively in referring to terminating a probationary or trial period employee's employment. The termination of a probationary employee is not

governed by this Article.

Section 2 – Reprimands

a. A reprimand is the lowest level of discipline and is issued to an employee for misconduct. An official reprimand is a written disciplinary action that specifies the reasons for the action and does not require prior notice to the employee. If a discussion is held with the employee when a reprimand is to be given, the employee may request Union representation prior to the start of the discussion. The official written reprimand will specify that the employee may be subject to more severe disciplinary action upon any further offense; that he or she has the right to file a grievance under the negotiated grievance procedure; that he or she has the right to Union representation during all aspects of the grievance procedure; the timeframe by which a grievance must be filed; and the name, telephone number, and email address of the management official to whom a grievance should be filed.

b. An official letter of reprimand and its related documents may not remain in an employee's e-OPF for more than two (2) years from the date of the reprimand.

c. The reprimand will be made in writing.

Section 3 – Procedures for Disciplinary/Adverse Actions

When a supervisor proposes to suspend, demote or remove an employee, the following procedures will apply:

a. For proposed suspensions of fourteen (14) or fewer calendar days:

1. The employee will receive notice at least fifteen (15) calendar days prior to the effective date of the proposed disciplinary action and will have ten (10) calendar days to answer the charges and specifications, orally and/or in writing. The employee may submit affidavits and/or other documentary evidence in support of his/her reply. The Agency may provide the employee with an extension of time in which to reply, if requested in advance of the deadline in writing, setting forth the reason for the request. Generally, the Agency will not grant an extension for the reply that would have the effect of extending the notice period beyond thirty (30) calendar days.

2. The employee will be given a reasonable amount of duty time to prepare and present an oral and/or written response to the proposal. If an oral reply is the only response provided by the employee, a summation of that response will be made by the deciding official for the record. A copy of this summation will be provided to the employee or the employee's representative, if requested. The employee or representative will have one (1) business day to review the summation and provide edits as necessary. If the employee does not provide edits, the document will be considered final.

3. In the event that the employee cannot report to work, the charges and specifications may be furnished to him or her by any mail service that utilizes a tracking system.

b. For proposed suspensions of fifteen (15) calendar days or more, removals, and reductions in grade or pay, the following procedures will apply:

1. The Agency will give employees written notice at least thirty (30) calendar days prior to the effective date of any proposed adverse action, and the employee will have a reasonable time, but no fewer than ten (10) calendar days to answer the charges and specifications, orally and/or in writing, subject to the exceptions set forth in 5 CFR § 752.404(d). The employee may submit affidavits and/or other documentary evidence in support of the employee's reply. The Agency may provide an extension of time in which the employee may reply, if requested in advance of the deadline by the employee in writing, setting forth the reason for the request. Generally, the Agency will not grant an extension for the reply that would have the effect of extending the notice period beyond thirty (30) calendar days.

2. The employee will be given a reasonable amount of duty time to prepare and present an oral and/or written response to the proposal. If an oral reply is the only response provided by the employee, a summation of that response will be made by the deciding official for the record. A copy of this summation will be provided to the employee or the employee's representative, if requested. The employee or representative will have one (1) business day to review the summation and provide edits as necessary. If the employee does not provide edits, the document will be considered final.

3. In the event that the employee cannot report to work, the charges and specifications may be furnished to him or her by any mail service that utilizes a tracking system.

Section 4 – Agency Decision

a. In arriving at its written decision on any proposed disciplinary or adverse action, the Agency will not consider any reasons for action other than those specified in the notice of proposed action. It will consider any answer that the employee and/or his or her representative made to a designated official and any medical documentation furnished, as well as all the information and/or evidence relied upon in the proposal notice. It will explain how the Agency resolved any factual disputes that were raised or developed. The decision will summarize how the "Douglas Factors" (i.e., the mitigating or aggravating factors) were treated in the deciding official's determination of the imposed penalty. If the imposed penalty is less severe than what was proposed, the decision will also specify why the penalty was mitigated.

b. In the rare instances where additional information is considered beyond the material relied upon in the proposal notice, the employee will be given an opportunity with a reasonable amount of time to respond to the additional information.

c. If the decision is to affect a proposed action, it will specify the reasons, the effective date, the action to be taken, and the employee's appeal and/or grievance rights regarding the decision. A second copy of the letter and any attachments will be provided to the employee's representative upon request.

d. In response to a final decision on an adverse action, employees may appeal the decision to the MSPB, grieve the decision in accordance with the negotiated grievance procedures of this CBA, or the employee may file an EEO complaint.

Section 5 – Employee Rights

The employee will have the right to:

a. Be represented by a representative designated by the Local Union or another representative as authorized by law. Verbal designations will be confirmed in writing.

b. Raise any defense to the deciding official allowed by applicable laws and regulations.

Section 6 – Investigations

a. If an employee is interviewed regarding potential misconduct, the following information will be provided:

    1. The general subject of the interview or allegation;

    2. That he or she is the subject of the investigations; or

    3. Whether he or she is being interviewed as a witness.

b. If the matter being investigated concerns potential criminal misconduct, the matter will normally be referred to the Office of Inspector General (OIG). Should the OIG decline to investigate and the Agency conducts an administrative investigation of a matter that concerns potential criminal misconduct, then the following warnings will be provided to interviewed employees as appropriate:

    1. Garrity Warnings: Inform a Federal employee who may face criminal prosecution that he or she will not be subject to discipline for refusing to answer questions if answering may tend to incriminate him or her.

    2. Kalkines Warnings: Inform a Federal employee that the possibility of criminal prosecution has been removed, usually by a declination to prosecute by the Department of Justice, and that the employee is required to answer questions relating to the performance of his or her official duties or be subject to disciplinary action.

Article 27: Negotiated Grievance Procedures

Section 1 – Purpose

The purpose of this Article is to provide a method for the timely processing and resolution of all grievances of bargaining unit employees and the Parties to this Agreement. Every effort will be made to settle grievances at the lowest possible level of the grievance procedure. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal in seeking resolution of grievances. This Article will be administered in accordance with this CBA, 5 U.S.C. Chapter 71, and other governing laws.

Section 2 – Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) processes, including mediation, may be used at any stage in a grievance upon mutual agreement of the Parties. If ADR/mediation is used, the grievance time limits are suspended until the conclusion of the ADR process.

Section 3 – Definitions

a. For grievance purposes, day means calendar days, including Saturdays, Sundays, and Federal holidays in accordance with FLRA regulations, 5 CFR § 2429.21.

b. Grievance means any complaint:

   1. By any employee concerning any matter relating to the employment of the employee;

   2. By the Union or the Agency concerning any matter relating to the employment of any employee; or

   3. By any employee, the Union, or the Agency concerning:

      a) The effect, the interpretation, or a claim of breach regarding the collective bargaining agreement; or

      b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 4 – Exclusions

The following are specifically excluded from coverage of this Article:

a. Any claimed violation of Subchapter III of 5 U.S.C. Chapter 73 relating to prohibited political activities;

b. Retirement, life insurance, or health insurance;

c. A suspension or removal under 5 U.S.C. § 7532 relating to national security;

d. Any examination, certification, or appointment;

e. The classification of any position which does not result in the reduction in grade or pay of an employee (5 U.S.C. Section 7121);

f. The termination of a probationary or trial period employee;

g. A notice of proposed disciplinary, adverse, or performance-based action;

h. The granting of or failure to grant an award or general pay increases, or the amount of an award or general pay increases;

i. Non-selection from a group of properly ranked and certified candidates;

j. The content published in an Agency policy or regulation;

k. An action that terminates a detail or temporary or term promotion;

l. Supervisory determination of job elements and performance standards; or

m. Decisions to remove any employee from the Federal Service for misconduct (5 U.S.C Chapter 75).

n. Assignment of ratings of record.

Section 5 – General Procedures for Employee Grievances

a. All grievances under this Article must be filed within thirty (30) days following:

   1. The date of the incident which gives rise to the grievance; or

   2. The date upon which the aggrieved became aware of the incident out of which the grievance arises. Under no circumstances, however, may a grievance be filed more than twelve (12) months from the date of the incident which gave rise to the grievance.

   3. Grievances about a continuing practice or condition must be filed within sixty (60) days following the date upon which the aggrieved first became aware or could reasonably be expected to become aware of the continuing practice or condition. Under no circumstances, however, may a grievance be filed more than twelve (12) months from the date of the start of the continuing practice.

b. A grievance will be filed in writing and will contain the following:

   1. Name(s) of the grievant(s);

   2. The date the grievance is submitted;

3. A statement of the circumstances giving rise to the grievance, including the date the alleged grievance arose and the responsible management official(s) alleged to be involved;

4. The specific Article and Section of this CBA alleged to have been violated, and/or the law, rule, policy, or regulation claimed to have been violated or the specific condition of employment in contention;

5. Include attachments that may clarify and provide proof, and statements or other documents that can be used to assist the recipient in understanding the issues of the grievance;

6. The relief requested;

7. Whether the employee will be self-represented or represented by the Union;

8. The name and contact information of the Union representative, if any; and

9. A statement indicating whether the grievant wishes to also present the grievance orally at a meeting.

c. All grievances, responses, and other submissions related to any grievance shall be hand-delivered, delivered by certified mail, or emailed to the other Party.

d. Any grievance at any step will be considered filed when initialed and dated by the person receiving the grievance or on the date contained on the certified mail receipt.

e. Bargaining unit employees have the right to be represented by a Union representative in the processing of any grievance filed under the provisions of this Article and to be accompanied by a Union representative at any meeting that the employee may attend concerning the grievance.

f. Bargaining unit employees also have the right to file and process a grievance under these procedures without Union representation. If the grievance of an employee is resolved, the resolution will be consistent with the terms and provisions of this CBA. The Union has the right to be present and participate during any meeting held between representatives of the Agency and bargaining unit employees to discuss any grievance. Upon request, the Union will be provided copies of all documentation generated by any grievance.

g. A reasonable amount of official time will be given to the grievant to present the grievance if they would otherwise be in a duty status.

h. Matters not raised in the first step of the grievance procedure by any of the Parties shall not be raised in later steps, unless germane to the original issue(s) grieved.

i. Issues of non-grievability or non-arbitrability may be raised at any step prior to the time limit for the written answer, but shall not delay procedures. If the Parties move to arbitration, the arbitrator shall first resolve the threshold issue of grievability.

Section 6 – Election of Forum

a. An aggrieved employee may elect either to file under the negotiated grievance procedure or the statutory procedures listed below, but not both:

1. EEO complaints of discrimination or harassment;

2. Prohibited Personnel Practices (5 U.S.C. Section 2302(b)(1));

3. Appeals permissible under 5 U.S.C. Chapter 71, to include, in accordance with 5 U.S.C. § 7121, matters covered under 5 U.S.C. § 4303 (unacceptable performance); and

4. Appeals permissible under 5 U.S.C. § 7512, to include suspensions of more than fourteen (14) days, removals, furloughs without pay for thirty (30) days or fewer, or reductions in pay or grade under either the appellate procedures of 5 U.S.C. § 7701, except as modified by those exclusions agreed to in this article.

b. Employees shall be deemed to have exercised their options under this Section when they timely initiate an action under applicable statutory procedures (e.g., EEO, FLRA, MSPB) or file a timely grievance in writing under the negotiated grievance procedure, whichever event occurs first. Discussions between an employee and an EEO counselor would not preclude an employee from opting to select the negotiated grievance procedure if the grievance is otherwise timely.

Section 7 – Processing and Resolving Employee Grievances

a. The Parties agree that it is preferable for workplace issues to be resolved informally at the lowest organizational level possible. Therefore, the Parties encourage employees to seek informal resolution of concerns with their first-level supervisor prior to filing a grievance under this procedure. The employee may have a Union representative during this discussion, if he/she requests one.

b. Step 1

1. The Union may submit grievances on behalf of the employees or employees may submit grievances on their own behalf with the first-level supervisor as the Grievance Official.

2. If requested in the written submission, a grievance meeting will be held within ten (10) days of receipt of the Step 1 grievance.

3. Within fifteen (15) days of receipt of the written Step 1 grievance or of the conclusion of the Step 1 grievance meeting, whichever is later, the Step 1 Grievance Official will issue a written decision on the grievance.

c. Step 2

1. If the grievance is unresolved at Step 1, the employee or his or her Union- designated representative may file a written Step 2 grievance with the designated next level supervisor within fifteen (15) calendar days after the Step 1 Grievance Official's response is due or received.

2. If the employee's first-level supervisor is a Director or equivalent level, the Step 2 grievance shall be filed with a designated appropriate management official at an equivalent level.

3. If requested in the written submission, a grievance meeting will be held within ten (10) days of receipt of the Step 2 grievance.

4. Within fifteen (15) days of receipt of the written Step 2 grievance or of the conclusion of the Step 2 grievance meeting, whichever is later, the Step 2 Grievance Official will issue a written decision on the grievance.

d. Arbitration

1. If the resolution at Step 2 is unsatisfactory, the Union may within twenty-one (21) days upon receipt of the Step 2 decision, or the date that the Step 2 decision was due (if not provided), advise the Employer's Labor Relations Director or other designated representative of its desire to submit the matter to an impartial arbitrator under the Arbitration article.

Section 8 – Processing and Resolving Party Grievances

a. Union-initiated grievances shall be submitted to the FTA Employee and Labor Relations Director, or other Agency-designated official.

b. Management-initiated grievances shall be submitted to the FTA Vice-President or another Union-designated official.

c. Timelines:

1. Grievances initiated by the Parties must be filed within thirty (30) days of the date of the action being grieved, or the date the moving Party first learned of its occurrence.

2. Within fifteen (15) days upon receipt of a grievance by either Party, the representatives of the Agency and the Union shall meet and attempt to resolve the grievance.

3. A written response from either the Agency or the Union, as appropriate, shall be provided to the aggrieved Party within fifteen (15) days after the initial meeting.

4. If the grievance is not resolved, or if a mutually acceptable settlement is not reached, the grievance may be submitted to arbitration pursuant to the Arbitration article of this CBA.
5. Nothing in this subsection shall preclude such additional meetings as may be mutually agreeable to the Parties to explore the issues of or settlement of the grievance.

Section 9 – Time Limits

a. Grievances that fail to comply with the requirements of filing a grievance, found in this Article, will be returned to the grievant for the required information.

b. If the grievant fails to meet any of the time limits set forth in this Article, the grievance shall be considered terminated.

c. If the respondent fails to meet any of the time limits set forth in this Article, the grievant will be entitled to move the grievance to the next step of the process.

d. All time limits in this Article may be extended by mutual consent.

Section 10 – Grievance Decisions

a. All grievance decisions will be in writing and state the issue being grieved, a summary of the findings, and the rationale for the decision. The responding Party will provide copies of relevant documents cited in the decision.

b. For employee grievances that are denied, the Agency's decision letter will identify the official for the next step of the grievance process.

Section 11 – Withdrawal

The Union, acting as the responsible representative of all employees in the bargaining unit, may, at any step of the grievance procedure, without prejudice, withdraw from any grievance.

Section 12 – Appeal of Unresolved Grievances

Unresolved employee grievances may only be invoked to arbitration by the Union. For unresolved grievances initiated by the Parties, only the moving Party may invoke arbitration.

Article 28: Arbitration

Section 1 – Purpose and Definitions

a. This Article will be administered in accordance with 5 U.S.C. Chapter 71, and this CBA. This Article establishes the procedures for the arbitration of disputes between the Union and Agency that are not satisfactorily resolved by the negotiated grievance procedure Article of this CBA. A referral to arbitration can be made only by the Union or the Agency.

b. In computing periods of time for the purpose of this Article, the first day of counting will be the day after the day of the act or event (e.g., the day after the grievant received the final grievance decision, or the day after the deadline for submitting a response to a grievance).

Section 2 – Invoking Arbitration

The Union or the Agency may invoke arbitration by serving written notice on the other Party within twenty-one (21) days following receipt of a final decision under the Negotiated Grievance Procedure. The notice will identify the grievance and will be signed and dated by an authorized representative on behalf of the Party submitting the matter to arbitration. Requests for arbitration by the Party shall be signed by the authorized representative, and shall be either hand-delivered, sent by email, or sent by certified mail to the Respondent's designated representative.

Section 3 – Selection of an Arbitrator

a. Within ten (10) days from the date of invocation of arbitration, the Moving Party shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS). A copy of the request to FMCS will be served on the other Party. The Parties shall meet within ten (10) days after the receipt of such list to select an arbitrator. The Agency and the Union will each strike one arbitrator's name from the list and will then repeat this procedure until one name remains, who shall be the duly-selected arbitrator. The initial strike shall be completed by the Moving Party.

b. In the event the Responding Party refuses to participate in the selection of an arbitrator, or upon inaction or undue delay, the Moving Party will be empowered to make a unilateral selection of an arbitrator to hear the case.

c. Upon selection of the arbitrator, the Parties will jointly communicate with the arbitrator and one another to select an agreeable date for the submission of motions and responses dealing with questions of arbitrability, if any, and establish a date for the hearing.

d. The hearing will normally be scheduled within ninety (90) days after arbitration is invoked. If a hearing cannot be scheduled with the selected arbitrator within the ninety days, the Moving Party has the option for asking for a new panel from FMCS, at their expense, with the process for striking repeating as stated above.

e. Following selection of an arbitrator and their acceptance, the Parties will prepare a joint letter submitting the matter in dispute to the arbitrator. The letter shall present the issue(s)

upon which arbitration is sought, including questions of arbitrability, and the Parties' positions regarding the issue(s). If a statement of the issue(s) cannot be agreed upon, each Party shall prepare and submit to the arbitrator its own statement of the issue(s) and its position(s). The submission letter(s), the grievance file, a copy of this Agreement, and/or applicable agency or government regulations, shall be forwarded to the arbitrator as soon as practicable after his or her selection. The grievance file shall consist of the written grievance, responses at each step, and the notice invoking arbitration.

f. Absent cooperation from either Party, in any phase of the arbitration process, the other Party may move the process forward.

Section 4 – Arbitrability

The arbitrator has the authority to make all grievability and/or arbitrability determinations. If either Party raises an issue of grievability/arbitrability, the arbitrator will hear and decide the grievability/arbitrability issue first, either as threshold issues in the hearing on the merits or in a separate hearing upon mutual agreement of the Parties. If the Parties cannot agree which process will be followed, it will be decided by the assigned arbitrator. The arbitrator's decision regarding the matter shall be final and binding, subject to an appeal to the Authority under 5 U.S.C. 7122.

Section 5 – Hearing Location and Witnesses

a. The Agency will arrange for the hearing to be conducted in a room located in the Headquarters building in Washington, DC.

b. The arbitrator will be requested to hold the hearing during regular business hours of Federal Transit Administration. The grievant (unless the Union is the grievant) who would otherwise be in a duty status will be granted official time during that period involved with the hearing. Employees that are called as witnesses who would otherwise be in a duty status will be granted time away from their workspace.

c. The grievant(s), one (1) representative, a technical advisor, if any, and all employees identified as witnesses, will be granted duty time, to the extent necessary to participate in all phases of the arbitration proceeding, either as a Party or to testify as a witness, without loss of pay.

d. The Agency will ensure that all witnesses who are employed by the Agency are available for the hearing. In those instances when a witness cannot be made available on the day required, the arbitration may be postponed.

e. All expenses incurred by a witness who is not an employee of the Agency will be borne by the Party calling that witness.

Section 6 – Authority of Arbitrator

The arbitrator's award shall be binding on the Parties. However, either Party may file an exception to the award with the Federal Labor Relations Authority under 5 U.S.C. 7122 and procedures established by the Authority. The arbitrator will be bound by the terms of this CBA and will have no authority to add to, subtract from, alter, amend, or modify any provision of this CBA. The arbitrator may retain jurisdiction over a case when necessary to clarify the award, and will retain jurisdiction in all cases where exceptions are taken to an award and the FLRA sets aside all or a portion of the award.

Section 7 – Hearing Procedures

a. The grievant shall bear the burden of proving their case by a preponderance of the evidence, except in cases where a different statutory burden has been established, in which case the latter shall apply.

b. The arbitrator shall determine the procedures to be followed at the hearing, consistent with this CBA. The arbitrator shall receive or exclude evidence, as appropriate, and will consider all relevant evidence submitted by the Parties, including affidavits, and give such weight as the arbitrator deems appropriate to the evidence and to any objection made over the submission of the evidence. All documents which the Parties wish to submit for consideration by the arbitrator will be introduced at the hearing.

c. Normally, there will be no communication with the arbitrator unless both Parties are participating in the communication.

d. All documents filed with the arbitrator, including post-hearing briefs, if submitted, shall be simultaneously served on the other party.

e. The arbitrator shall transmit the written award to the parties within thirty (30) days of the submission of any post-hearing briefs or the close of the hearing if no post-hearing briefs are to be submitted.

Section 8 – Costs and Fees

a. All expenses incurred by the arbitrator and for the court reporter will be shared equally by the Parties.

b. All expenses incurred by a witness, who is not an employee of the Agency, will be borne by the Party calling that witness.

c. All arbitration hearings will have a court reporter to maintain a verbatim record of the hearing. Each Party and the arbitrator will receive a transcript. The cost of a reporter and transcript will be shared equally by the Parties. Upon mutual agreement, the Parties may elect not to have a reporter and transcript.

d. If, prior to the arbitration hearing, the Parties resolve the grievance or mutually agree to postpone, any cancellation fees will be borne equally by both Parties. If a Party requests postponement without mutual agreement, that Party will bear the full cost of any rescheduling fees or postponement fees.

Article 29: Effective Date and Duration

Section 1 – Duration

This Agreement shall remain in effect for three (3) years from the effective date shown on the cover of the Agreement. The CBA shall automatically renew itself from year-to-year thereafter unless notice of desire to renegotiate is given by either Party.

Section 2 – Renegotiation

a. If either Party desires to renegotiate terms of this CBA, it will furnish written notice to the other Party, identifying the Articles that it wishes to change.

b. The notice must be provided within a forty-five (45)-day period that starts no earlier than one hundred and five (105) days prior to the expiration date (three years from effective date) and ends more than 60 (sixty) days prior to the expiration date, unless otherwise mutually agreed.

Section 3 – Renegotiation Procedures

a. In the event such notice is given by either Party, as provided for in Section 2 of this Article, the Parties will begin negotiating ground rules for the new negotiations within sixty (60) calendar days from the date of receipt of notice of desire to renegotiate, unless otherwise agreed. Ground rules should include designation of the time and place for negotiations. Each Party will designate a Chief Negotiator who will have appropriate collective bargaining authority.

b. If negotiations are not completed by the expiration date of this Agreement, the Agreement shall be automatically extended until negotiations are completed and a new Agreement is approved; or the impasse resolution provisions of 5 U.S.C. 7119 have been exhausted; or the Union loses its representational rights, whichever occurs first.

Section 4 – Amendments and Modifications

Either Party may propose negotiations during the term of this CBA to reopen, amend, or modify this CBA, but such negotiations may be conducted only by mutual consent of the Parties, in accordance with the Mid-Term Bargaining Article.

Section 5 – Publication

a. As possible, within sixty (60) calendar days of the effective date of the agreement, the Agency will make the final signed version of the CBA available in PDF format. As technically feasible, the Table of Contents and references to statute will be hyperlinked and the document will be searchable. The PDF version of the CBA will be located on the Employee and Labor Relations page of the Agency's intranet, and will serve as the primary method to access the CBA.

b. The Parties are free to print copies of the final signed version of the CBA as needed.

Section 6 – Training

Within one-hundred twenty (120) days after the effective date of this CBA:

a. The Agency will train managers and supervisors on the major changes in the CBA, as well as any new responsibilities that they may have under the new CBA.

b. The Agency and Union will consider holding joint training sessions on the new CBA. These sessions will be open to any Federal FTA employee who wishes to attend.

c. The Union may hold up to three (3) open sessions for bargaining unit employees to attend Union-specific training sessions while on official time and in Agency-controlled space.

This Agreement is effective July 16, 2021.

For the Union:

Jennifer Rodes
President, AFGE Local 3313

Cynthia Cox-Grollman

Cynthia Cox-Grollman
Vice President for FTA,
AFGE Local 3313

Paul Veltri

Paul Veltri
2nd Vice President for FTA,
AFGE Local 3313

For the Employer:

Reginald E. Allen
Associate Administrator for Administration

Tracy Schulberg
Director, Employee and Labor Relations
Chief Negotiator

Brian Whitehead

Brian Whitehead
Employee and Labor Relations Specialist
Negotiator