

2015
Army National Guard
Labor Management
Agreement

MEMORANDUM OF AGREEMENT

BETWEEN
THE ADJUTANT GENERAL
STATE OF ARIZONA
AND
ASSOCIATION OF CIVILIAN TECHNICIANS
ARIZONA ARMY CHAPTER 61

**LABOR MANAGEMENT AGREEMENT
 BETWEEN
 THE ADJUTANT GENERAL OF ARIZONA AND
 ASSOCIATION OF CIVILIAN TECHNICIANS, ARIZONA ARMY CHAPTER 61
 TABLE OF CONTENTS**

Table of Contents

PREAMBLE	7
ARTICLE 1 PURPOSE OF AGREEMENT	8
1.1 General Purpose of Agreement.....	8
1.2 National Guard's Reason for Existence	8
ARTICLE 2 UNIT DESIGNATION	8
2.1 Certification.....	8
2.2 Included Unit Members.....	8
2.3 Excluded Unit Members	8
ARTICLE 3 CONFORMITY	8
3.1 Agreement Not to Strike	8
3.2 Business Courtesy.....	9
3.3 Compliance with Appropriate Directives.....	9
ARTICLE 4 RIGHTS OF THE EMPLOYER	9
4.1 Law	9
4.2 Prohibited Negotiations	9
4.3 Permissible Negotiations.....	9
4.4 Management Officials.....	9
ARTICLE 5 RIGHTS OF THE ORGANIZATION	9
5.1 Exclusive Representation.....	9
5.2 Representation - General.....	10
5.3 Representation during an Examination	10
5.4 Representation - Other than by the Organization.....	10
5.5 Officers and Stewards	10
5.6 Stewards and Area of Responsibility.....	10
5.7 Utilization of Workspace	10
5.8 Distribution System.....	10
5.9 Office Equipment.....	10
5.10 Bulletin Boards.....	11
5.11 Meeting Rooms.....	11
5.12 Office Space	11
ARTICLE 6 RIGHTS OF EMPLOYEES	11

6.1 General.....	11
6.2 Right to Meet with Supervisor.....	11
2.3 Right to Join/Not Join the Organization.....	12
ARTICLE 7 NEW EMPLOYEE ORIENTATION.....	12
7.1 Procedures.....	12
7.2 Orientation.....	12
7.3 Notification.....	12
ARTICLE 8 OFFICAL TIME ALLOWANCE.....	12
8.1 Official Time Entitlement.....	12
8.2 Procedure.....	12
8.3 Examples of Permissible Purposes for Official Time.....	13
8.4 Wear of Military Uniform Not Required on Official Time.....	13
8.5 Meetings Scheduled by Employer after Normal Duty Hours.....	13
8.6 Time Accountability.....	13
8.7 Labor Organizational Training.....	13
ARTICLE 9 TRAINING.....	13
9.1 Employer Commitment to Training.....	13
9.2 Financial and Leave Loss to Employees.....	13
ARTICLE 10 EQUAL EMPLOYMENT OPPORTUNITY.....	14
10.1 General.....	14
10.2 Equal Opportunity.....	14
10.3 EEO Counselors.....	14
10.4 Employee Assistance Program (EAP).....	14
ARTICLE 11 HOURS OF WORK.....	14
11.1 Normal Workday.....	14
11.2 Notification of Work Schedules.....	14
11.3 Core Work Hours.....	14
11.4 Physical Fitness Training.....	15
ARTICLE 12 ASSIGNMENT OF WORK.....	15
12.1 Other Duties as Assigned.....	15
12.2 Details.....	16
12.3 Seniority (within series and grade).....	16
ARTICLE 13 SAFETY / HEALTH.....	17
13.1 Employer and Organization Responsibility.....	17
13.2 Employee Responsibility.....	17
13.3 Standard for Safe Performance of Work.....	17
13.4 Safety Committees.....	17
13.5 Safety Inspections.....	17

13.6 Personal Protective Equipment (PPE)	18
13.7 Hazardous Work Situations	18
13.8 Extreme Temperature / Work Situations	19
13.9 Contaminated Clothing	20
13.10 Health Examinations	20
13.11 Injuries to Employees	20
13.12 Light Duty	20
13.13 Smoking in the Workplace	20
13.14 Personal Hygiene	20
13.15 Sanitation and Health Standards of Facilities	21
13.17 Hazardous Material and Emergency Responses	21
ARTICLE 14 LEAVE	21
14.1 Leave and Excused Absences	21
14.2 Compensatory Time	22
14.3 Furlough	22
14.4 Standby / On-Call Status	22
ARTICLE 15 PERFORMANCE MANAGEMENT	22
15.1 Responsibilities	22
15.2 Official Time	22
ARTICLE 16 GRIEVANCE PROCEDURES	22
16.1 Grievance Procedures	22
16.2 Grievance Definition	23
16.3 Grievance Representation	23
16.4 Employees Right to Grieve Without Representation	23
16.5 Procedure – Employee Grievance	24
16.6 Official Time	24
16.7 Right to Information	24
16.8 Procedure – Organizational Grievance	24
16.9 Extension of Time Limits	25
ARTICLE 17 GRIEVANCE ARBITRATION	25
17.1 Invoking Arbitration	25
17.2 Requesting Arbitration	25
17.3 Selection of an Arbitrator	25
17.4 Non-Participation by Either Party	25
17.5 Cost of Arbitration	25
17.6 Filing of Briefs	25

17.7 Arbitrator's Rendering of Decision.....	25
17.8 Exceptions to Arbitrator's Decision.....	25
17.9 Matter Appropriate for Arbitration.....	25
17.10 Stipulation of Issue.....	25
17.11 Scope of Arbitration.....	26
17.12 Arbitration Without a Hearing.....	26
ARTICLE 18 DUES WITHHOLDING.....	26
18.1 General.....	26
18.2 Employee Eligible.....	26
18.3 Definition.....	26
18.4 Organization Responsibilities.....	26
18.5 Employer Responsibilities.....	27
18.6 Processing of Allotments.....	27
18.7 Standard Anniversary Date.....	28
18.8 Process for Suspension of Organization Dues.....	28
ARTICLE 19 DISCIPLINE.....	28
19.1 Administration.....	28
19.2 Appeals.....	29
19.3 General.....	29
19.4 Adverse Actions.....	29
19.5 Records.....	29
18.6 Processing of Allotments.....	27
ARTICLE 20 EXCHANGE OF INFORMATION.....	29
20.1 Employer Information.....	29
20.2 Organization Information.....	29
20.3 Bargaining Unit Member Information.....	30
ARTICLE 21 MISCELLANEOUS.....	30
21.1 Technology.....	30
21.2 Break Rooms.....	30
ARTICLE 22 IMPACT AND IMPLEMENTATION BARGAINING.....	30
22.1 Right to I&I Bargaining.....	30
22.2 Scope.....	30
22.3 Procedures.....	30
ARTICLE 23 REDUCTION IN FORCE.....	31
23.1 General.....	31
23.2 RIF Procedures.....	31
ARTICLE 24 CONTRACTING OUT WORK.....	31

24.1 Notification	31
42.2 Meetings	31
24.3 Contracts	31
24.4 Contracted Work Requiring a RIF	32
ARTICLE 25 DRESS CODE	32
25.1 Military Uniform	32
25.2 Appropriate Professional Attire for Competitive Civilian Employees	32
ARTICLE 26 WAGE BOARD REPRESENTATION	32
22.1 Organization Participation	32
ARTICLE 27 MERIT PROMOTION AND INTERNAL PLACEMENT	33
27.1 Purpose	33
27.2 Employer Merit Placement Plan	33
27.3 Position Announcements	33
27.4 Interview Panels	33
27.5 Interview Questions	33
27.6 Grievances of Restricted Practices	33
27.7 Changes in the Merit Placement Plan	33
ARTICLE 28 CONTRACT DISTRIBUTION	34
28.1 Employer Responsibility	34
28.2 Cost Sharing	34
ARTICLE 29 EFFECTIVE DATE, DURATION AND MODIFICATIONS	34
29.1 Effective Date and Term	34
29.2 Reopener Clause	34
29.3 MOU for Contract Window Dates	34
Signature Page	35
APPENDIX 1 Grievance Form	36
APPENDIX 2 Official Time Form	38
APPENDIX 3 Duty Status Report CA-17	39
APPENDIX 4 Glossary of Terms	43
APPENDIX 5 Current Regulations, DEMA Directives and & Resources	61

PREAMBLE

Pursuant to authority set forth in Public Law 95-454, the following Articles constitute an agreement by and between the Adjutant General of Arizona, hereinafter referred to as the Employer, and the Association of Civilian Technicians, Inc. (ACT Arizona Army Chapter #61), hereinafter referred to as the Organization and collectively known as the Parties. The Employer and the Organization affirm that the public purpose to which both are dedicated can be advanced best through the understanding and cooperation achieved through collective bargaining.

ARTICLE 1 PURPOSE OF AGREEMENT

1.1. General Purpose of Agreement. It is the purpose of this agreement to:

- a. Identify the parties to the agreement and define their respective rights and obligations
- b. Promote and improve the efficient administration of the Arizona Army National Guard and the well being of its employees within the meaning of Public Law.
- c. Provide for the highest degree of efficiency in the accomplishment of the operation of the Arizona Army National Guard.
- d. Promote employee communications and information of personnel policy and procedures, and adjustment to matters of mutual interest.
- e. Subject to all applicable Executive Orders, laws, and regulations.

1.2. National Guard's Reason for Existence. The Organization and Employer agree that the enacting of Technician Act of 1968 is the primary basis for the existence of a National Guard Technician workforce. The mission is to support the National Guard as a complement to the Active Component.

ARTICLE 2 UNIT DESIGNATION

2.1. Certification. It is hereby certified that the Arizona Association of Civilian Technicians, Inc. (Army Chapter), has been designated and selected by the employees of the Arizona Army National Guard as their representative for purposes of exclusive recognition and that pursuant to the authority of Public Law 95-454, the said organization is the exclusive representative of all the employees in such unit.

2.2. Included Unit Members. All federal civil service employees employed by the Arizona Army National Guard not excluded by Section 2.3 are considered Bargaining Unit Members regardless of their military rank or their position.

2.3. Excluded Unit Members. All professional, managerial, supervisory employees and employees engaged in Federal personnel work in other than a purely clerical capacity, as determined by a periodic joint review conducted by the Employer and the Organization. Other excluded employees are (a) those with temporary appointments of indefinite duration and no reasonable expectation of employment for more than one year; (b) those with term appointments of one year or less and no reasonable expectation of employment for more than one year; and (c) members of the uniformed service (AGR). The joint review will take place at least annually or on request from either party, defining what a bargaining unit member is and who are identified as current members.

Article 3 CONFORMITY

3.1. Agreement Not to Strike. In compliance with Public Law 95-454, the Organization agrees not to strike in any manner against the operation of the National Guard.

3.2. Military and Business Courtesy. All employees shall comply with military customs and courtesies. Supervisors shall be cognizant of technician status and limit purely military functions. Civilian titles of address shall be used by union officers and stewards while performing their representational duties. Civilian titles of address (e.g. Mr. or Ms.) shall be used in disciplinary and adverse actions written communication. Military customs and courtesies includes saluting and titles of address. Technicians may stand in formation on a voluntary basis. Note: The military salute will be used while outdoors in uniform. The salute will not be rendered indoors during meetings with the supervisor and/or during interview processes.

3.3 Compliance with Appropriate Directives. A provision of this Agreement is valid to the extent it does not conflict with the Constitution of the United States, a federal statute, a rule or regulation, or a government-wide regulation that was prescribed on or before the effective date of the provision. The Employer shall comply, and may require employees to comply, with agency rules or regulations to the extent these rules or regulations do not conflict with this Agreement or any supplement or amendment thereto.

ARTICLE 4 RIGHTS OF THE EMPLOYER

4.1 Law. Management officials of the agency retain the following rights, in accordance with applicable laws and regulations:

a. To determine the mission, budget, organization, number of employees, and internal security practices of the Employer, in accordance with applicable laws to hire, assign, direct, layoff and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees. To assign work, to make determination with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted.

B. With respect to filling positions, to make selection for appointments from:

- (1) Properly ranked and certified candidates for promotion; or
- (2) Any other appropriate source.

c. To take whatever actions may be necessary to carry out the agency mission during emergencies.

4.2. Prohibited Negotiations. Nothing in this agreement shall impose upon the Employer the obligations to negotiate with the Organization, at the election of the agency, on matters with respect to the mission of the Employer, its budget, its organization and the number of employees.

4.3. Permissible Negotiations. Nothing in this agreement shall preclude the parties from negotiating procedures that the Employer will observe in exercising any authority in carrying out the above rights. Nothing in this agreement precludes negotiating appropriate arrangements for employees adversely affected by the exercising of the above-mentioned Employer's rights.

4.4. Management Officials. Wherever language in this Agreement refers to specific duties and responsibilities of specific employees or management officials, it is intended only to provide a guide as to how a situation may be handled. It is agreed that management retains the sole discretion to assign work and to determine who will perform the function discussed.

ARTICLE 5 RIGHTS OF THE ORGANIZATION

5.1. Exclusive Representation. The Organization is the exclusive representative of the bargaining unit and is entitled to act for, and to negotiate agreements covering, all employees in the bargaining unit. The Organization is responsible for representing the interests of all members of the bargaining unit it represents without discrimination and without regard to Organization membership

5.2. Representation – General. An exclusive representative of the local Organization shall be given the opportunity to be present at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policies or practices, or other general conditions of employment. Reference 5 U.S.C 7114 (a) (1).

5.3. Representation during an Examination. An exclusive representative of the local Organization shall be given the opportunity to be present at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and if the employee requests the representation.

- a. The Employer representative will advise the employee of his right to representation prior to any examination that may result in disciplinary action.
- b. if in the course of an examination the employee makes a request for Organization representation, the Employer must cease the examination until the representative arrives or ends the interview.
- c. The local Organization representative will be authorized to attend such meetings without charge to leave or loss of pay.

5.4. Representation – Other than by the Organization. A bargaining unit member is not precluded from being represented by an attorney or other representative, other than the Organization, of the employees own choosing, or exercising grievance or appellate rights established by law, rule or regulation, except in cases of negotiated grievance or appeal procedure negotiated within this agreement. With respect to the negotiated grievance procedure employees have the right to present grievances on their own behalf (not withstanding provisions found in 16.4)

5.5 Officers and Stewards. The Organization shall supply the Human Resource Office (HRO), in writing on a current basis, a complete list of all Organization officers and all authorized stewards. No person shall be recognized as an officer or steward of the Organization unless his/her name appears on the most recent listing supplied to the Employer. The Organization will ensure a copy of this list is posted on all bulletin boards established under authority of Article 5, Section 11 of this agreement.

5.6. Stewards and Area of Responsibility. The Organization has the right to select up to twenty (20) stewards in addition to the Chief Steward. The area a steward is responsible for will be determined by the Organization. A list of the steward names and areas of responsibility will be provided to the Human Resource Office (HRO) by the Organization as changes occur.

5.7. Utilization of Workspace. The Employer agrees to permit employees who are representatives of the Organization to utilize a secure desk or filing cabinet within their work area to maintain Organization records. If this interferes with the mission of the Employer, the Employer will provide representatives a secure desk or filing cabinet for this purpose at a convenient alternative location.

5.8. Distribution System. The Organization will be permitted use of the agency internal distribution system. This distribution will not include internal Organization business or literature for general distribution to members. The Employer will not be responsible for any Organization material sent through distribution.

5.9 Office Equipment. The Organization will be allowed access to and use of office equipment when available for representational duties. Use for non-representational purposes will occur only during non-duty time. Consumable supplies (i.e.: ribbons, ink, paper, etc.) used for non-representational purposes will be replaced by the Organization at the Organization's expense, to the extent the consumption is significant and reasonably capable of determination.

5.10. Bulletin boards.

a. A minimum of twelve (12) square feet will be designated for bulletin boards in major work areas, where more than three (3) bargaining unit members are employed, for the display of Organization literature, correspondence, and notices. The Organization agrees that items posted will not violate any law or contain scurrilous or defamatory material. Material found to be in violation of this provision will be promptly removed. It is the responsibility of the Organization to keep bulletin boards neat and orderly. Organization officials or their designated representatives are the only authorized personnel to post or remove material on the bulletin board areas designated for Organization use.

b. Annually and upon request, representatives from the Employer and the Organization will confirm the actual location of the Organization bulletin boards. The bulletin boards will not be moved without prior notice and agreement of both parties.

5.11. Meeting Rooms

During normal duty hours, the Organization is entitled to use Employer meeting rooms, when available, for representational purposes. When the Organization desires meeting rooms for the purpose of conducting general membership meetings or other non-representational purposes, the Employer will provide available space when it can be provided without any additional cost other than normal utilities, and when it will not create a need for additional security personnel. The Organization will submit all requests for the use of meeting rooms to the Employer or his designated representatives as soon as possible before the date of the meeting, to include the date, time and facilities desired.

5.13. Office Space.

a. The Employer agrees to provide two separate office spaces, one in the Phoenix / Papago area and one in the Marana / Silverbell Heliport area. These offices will be environmentally controlled with heating, ventilation and air conditioning (HVAC), and accessible at the Organization's discretion. The entry door will remain consistent with FMO locksets throughout the state.

b. The Employer agrees to allow the Organization to erect a sign outside of the location that meets Facility Maintenance Office (FMO) standards. The Organization agrees to pay for any cost incurred to the Employer for phone service.

**ARTICLE 6
RIGHTS OF EMPLOYEES**

6.1. General. The Employer and the Organization agree the employees shall have and shall be protected in the exercise of the right, freely and without fear of penalty of reprisal, to form, join or assist that Organization or to refrain from any such activity. The freedom of employees to assist the Organization shall be recognized as extending to participation in the management of and acting for the Organization in the capacity of any Organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. This agreement does not authorize participation in the management of a labor organization, or acting as a representative of such an organization by a supervisory or an employee when the participation or activity would be incompatible with law or with the officials' duties of the employee. The Employer shall take such action, consistent with law or with directives from higher authority, as may be

required in order to assure employees are apprised of the rights described in this Article, and that no interference, restraint, coercion, or discrimination is practiced within the activity to encourage or discourage membership in the Organization.

6.2. Right to Meet with Supervisor. The terms of this agreement do not prevent any employee from discussing matters of personnel concern with his supervisor without using the grievance procedure.

6.3. Right to Join/Not Join the Organization. Nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization. Voluntary, written authorization by a member will be the basis for payment of dues through payroll deductions.

ARTICLE 7 NEW EMPLOYEE ORIENTATION

7.1 Procedures. The Employer will establish procedures to ensure new bargaining unit employees are counseled on all aspects of employee employment.

7.2. Orientation. An orientation guide checklist for newly appointed employees will be used to cover all items of which each new employee should be made aware of.

- a. After the employee has been counseled, the employee and the counselor will sign the guide checklist form and it will be placed in the employee's personnel record.
- b. One of the items in the checklist will be that the Labor Relations Officer is a point of contact, should the employee desire to know the Organization representative assigned to his/her area. The Employer will provide, upon request, a copy of the Organization's contract to all new employees and a current list of union representatives.

7.3. Notification.

- a. Notification: A letter with the names of new employees will be forwarded to the Organization within one (1) pay period after the effective date of employment. This will serve as the official notification of any new hires.
- b. The supervisor may allow a reasonable amount of time for the new employee to meet with the Shop Steward. The Shop Steward will briefly explain the contents, purpose and importance of the agreement.

ARTICLE 8 OFFICIAL TIME ALLOWANCE

8.1. Official Time Entitlement. Employees are entitled to use official time for any purpose permitted by the official time law, i.e. 5 U.S.C. § 7131 and any amendment thereto. The amount of official time to which an employee is entitled is the amount reasonably necessary to accomplish its purpose. The Employer may delay the start of official time to the extent reasonably necessary to ensure agency mission accomplishment, but must agree to adjust events for which the official time is needed—to the extent the Employer controls or influences them and adjustment is reasonably necessary. (For example, if the Employer delays official time needed to represent an employee who is to be interrogated by the Employer, or needed to prepare for collective bargaining, the Employer also must agree to delay the interrogation, or the next bargaining session, as appropriate.)

8.2. Procedure. An employee who requests official time will state its purpose and requested timing and duration. The Employer promptly will grant the request if (a) it is for a purpose permitted by the official time law and (b) the amount of time requested is reasonably necessary to accomplish the purpose. The Employer may grant the request but delay the start of the official time, and any related events, to the extent reasonably necessary, as provided in Section 8.1. If the Employer determines that (a) the request is not for a purpose permitted by the official time law, (b) the amount of

time requested is not reasonably necessary to accomplish the purpose, or (c) delay of the start is reasonably necessary, the Employer must state in writing the facts and reasons on which the determination is based. The written statement must be provided contemporaneously with, or within a reasonable time after, the determination. If the determination delays the start, the Employer will state the approved start time, with supporting facts and reasons. If the determination disapproves the amount of time, the Employer will state the amount deemed reasonably necessary, with supporting facts and reasons.

8.3. Examples of Permissible Purposes for Official Time. Examples of purposes for which official time is permitted include, but are not necessarily limited to, investigation, discussion, research of subjects, and drafting of documents relevant to representational functions or other matters covered by 5 U.S.C. Chapter 71; preparation for and attendance at meetings, investigations, or hearings in connection with these matters; and travel to and from locations where these functions or matters occur or are performed. Representational functions and other matters covered by 5 U.S.C. Chapter 71 include, but are not necessarily limited to, actual or contemplated collective bargaining, grievances, arbitration cases, impasse proceedings, or other matters within the jurisdiction of the Federal Labor Relations Authority; pre-decisional involvement under Executive Order 13522; training in labor or personnel law or processes, or other representational subjects; and presenting views of the Labor Organization to agency or other executive branch officials, Congress, or other appropriate authorities to the extent not prohibited by law

8.4. Wear of Military Uniform Not Required on Official Time When on official time, employees are not required to wear military uniforms. When official time is granted, it will include time reasonably necessary to change out of and back into military uniforms.

8.5 Meetings Scheduled by Employer after Normal Duty Hours. When meetings for purposes for which employees are entitled to official time are scheduled by the Employer to occur after normal duty hours, the Employer will change the duty hours of the employees to include the meeting time, so that but for grant of official time the employees would be in duty status. Employees will be granted official time for the meeting and the duty hours added by the change will count in determining employees' entitlement to compensatory time. Employer agrees that to the greatest extent possible, official time will be scheduled during normal duty hours and the Organization will make employee representatives available during these times.

8.6. Time Accountability. Time accountability will be kept on the agency approved STARC AZ Form 690-2, dated 10 Dec 2014. The form will be generated by the representative and presented to the supervisor for annotation on the time and attendance report at the conclusion of the official time.

8.7 Labor Organizational Training. The Organization will be administratively excused by HRO, upon receipt of training agenda and projected attendance list. Training agendas and projected attendance lists will be submitted by the Organization to HRO no later than two weeks prior to the start of training. The purpose of this time is to allow these employees to attend Organization – sponsored training that is of mutual concern to the Organization and Employer, and in the best interest of the government for the employee to attend.

ARTICLE 9 TRAINING

9.1. Employer Commitment to Training. It is necessary and desirable in the public interest that education, self-improvement and self-training by employees be supplemented and extended by Employer sponsored programs. Such training of employees in the performance of official duties and the development of skills, knowledge and abilities will best qualify them for the performance of official duties. The Employer agrees that all employees who are required to be skilled in their work or trade will be provided opportunity to learn new ideas and methods related to assigned duties, as necessary, and to consider recommendations from the Organization.

9.2. Financial and Leave Loss to Employees. The Employer will strive to ensure that the employee will not incur a financial or leave loss when directed to attend training.

ARTICLE 10 EQUAL EMPLOYMENT OPPORTUNITY

10.1. General. The Employer and the Organization agree to cooperate on providing equal employment opportunity for all employees, regardless of sex, race, religion, color, national origin and age, and to ensure that all personnel programs, procedures and assignments are free of prohibited discriminatory practices. This section does not apply to dual-status positions subject to specifically exempted military requirements such as age and gender.

10.2. Equal Opportunity. The Employer will provide opportunity and promotion and advancement for all employees, competitive and excepted, in accordance with PL 92-261.

10.3. EEO Counselors. The Employer agrees to appoint and train, in accordance with applicable regulations, the number of Equal Employment Opportunity counselors required by the National Guard Bureau.

10.4. Employee Assistance Program (EAP). Although particular emphasis will be given to those technicians with health problems related to drug abuse and alcohol abuse that may affect a technician's work performance, nothing in this contract shall prohibit a technician from receiving assistance under this program for other personal problems, such as financial difficulties, legal, family or other problems, that may affect job performance. EAP coordinator also responsible for providing advice, assistance and training to commanders, managers, and supervisors on effective use and participation in the program; ensuring their understanding of the procedures for dealing with technicians with alcohol or drug problems and the benefits derived from successful rehabilitation (per current reference TPR 792 dated 8 February 2011).

ARTICLE 11 HOURS OF WORK

11.1. Normal Workday. The normal workday shall be eight (8) hours. The normal workweek will be Monday through Friday. The basic forty (40) hour work week will normally consist of five (5) consecutive eight (8) hour workdays, except for those employees whose services are determined by the Employer to require a different tour of duty. An Alternate Work Schedule (AWS), which compresses the 80-hour pay period requirements into less than ten (10) days, is a viable alternative. Workweek requirements will be established consistent with the mission.

11.2. Notification of Work Schedules. The Employer recognizes the requirement to negotiate with the Organization regarding the changing of work schedules of employees. However, the Employer retains the right to unilaterally change the work schedules of up to, but not more than, two (2) employees at any shop or activity, without I & I Bargaining. The Employer will make reasonable effort to give fourteen (14) days notice of a change in the work schedule.

a. Changes to the normal work schedule will be approved through management channels. The Employer agrees to negotiate the change of work schedules when three (3) or more bargaining unit members are affected, prior to implementing the change.

b. Work schedules may be temporarily changed on short notice as the mission dictates.

c. For the terms of this contract and attachments, the term 'Working Days' will count Monday through Friday, not counting federal holidays, no changes for flex or alternative schedules unless otherwise stated. The term 'Days' will be understood as calendar days unless otherwise stated.

11.3. Core Work Hours.

a. The core work hours scheduled for all bargaining unit (BU) employees are 0700-1600. Employees performing shift operations will not be affected by the core hours.

b. Supervisors will have the flexibility to schedule the hours their employees work, so long as the core hours (0700-1600) are included in the workday and the employees work a full scheduled day. Exceptions can be negotiated between supervisors and employees on a case by case basis. The purpose of this flexibility is to let employees make arrangements for childcare, transportation, school, etc. When possible the employees will schedule non-work activities (as stated above); to prevent conflicts with their normal work schedule. Supervisors may refuse to accommodate the employee when the mission requirements cannot be accomplished without his/her presence. Ref. letter: I & I Bargaining of Compressed Work Schedule, dated 7 February 1994.

11.4. Physical Fitness Training

a. All bargaining unit members (technicians) will be afforded an opportunity to participate in the physical fitness training program during duty hours.

b. All Bargaining Unit members (technicians) are authorized up to one (1) hour of duty time each day on three (3) different workdays per week.

c. On any given day it is the management's right to cancel physical fitness training on that day based on mission requirements.

d. Any physical fitness training program performed outdoors on a DEMA/AZNG installation is to be performed using a buddy or group system when the temperature is greater than 100°F degree Fahrenheit.

e. Physical fitness training may be conducted in APFT uniform or appropriate civilian workout attire.

f. The program must start or finish at the workplace location.

g. The location and type of physical fitness must be communicated to the supervisor (written authorization required if using off base facilities).

ARTICLE 12 ASSIGNMENT OF WORK

12.1. Other Duties as Assigned.

a. Employees should not be required to perform duties unrelated to their primary employment except as required by special circumstances. The employer and the Organization agree that the cleanup of employees' immediate work area and general facility cleanup, where janitor service is not available, are appropriate as other duties as assigned. When an employee is assigned to recurring unrelated duties, an HRO Form 904-20 will be initiated to document these assignments.

b. The term "other duties as assigned" as part of the position description is defined to mean, reasonably related duties to the job/position, and should be of the same level and classification that the individual is currently graded. This does not preclude management from assigning unrelated additional duties. If unrelated duties are assigned on a routine basis, the position description should be amended to include such. Work assignments shall not be in violation of prohibited personnel practices or any relevant law, rule, regulation or this agreement. Supervisors should avoid insofar as possible assigning additional or incidental duties to employees, which are inappropriate to their positions and qualifications. However, an employee refusal to carry out legitimate work assignments may be cause for disciplinary action.

c. Employees assigned to duties requiring specific training or certification will be provided adequate formal training or paired with a trained or certified employee and adequately cross-trained prior to being graded or evaluated on assigned work (e.g. Aircraft transmission technician assigned to assist in hydraulics shop). Management will implement adequate quality control measures to check work performed while cross-training.

d. Supervisory duties will not be assigned to bargaining unit members without being recorded on an SF-52. The senior technician in an area may be assigned leadership duties necessary to continue operations (e.g. assigning work, setting priorities, scheduling, etc) but may not perform supervisory duties (e.g. approving leave, grading or evaluating employees, counseling or disciplinary action), these responsibilities will fall on the next supervisor in the management chain

12.2. Details.

a. A detail is the temporary assignment of an employee to a different position for a specified period, with the employee returning to his or her regular duties at the end of the detail.

b. Details for over 120 days that are made to a higher grade position or to a position with known promotion potential must be made under competitive promotion procedures as set forth in the Merit Placement Plan. Competition may be held from the onset if management feels that the position will be filled permanently.

c. Details of more than 30 calendar days will be recorded on SF52, and a copy filed in the official personnel folder (OPF). Details for periods less than 30 calendar days, but more than one pay period, will be recorded on a SF 52 with one copy for the employee and one copy to be filed in his/her OPF, at the request of the employee.

d. Where possible, qualified volunteers for details will be sought and used before non-volunteers are assigned.

12.3 Seniority (within series and grade):

A. Seniority will be used to fill crew or shift vacancies. Positions should be offered to most senior qualified technician first. If no volunteers are found, crew or shift vacancy will be assigned to the least senior first.

b. Crews and shifts will be bid using seniority at least every 6 months or when a crew changes are required.

C. Employer will post a list of the positions that need to be filled on each crew and/or shift.

d. Management will post a seniority list in each facility based on grade, seniority and job title for every non-supervisory technician. The table may be in list or flow chart format as long as it is clearly understood by the employees within that work area. This list will be used to form an equitable plan for work assignment, shift assignments, compensatory time, training opportunities, and temporary promotions. This does not preclude management's right to assign work or to have employees compete for assignments. Work areas with three

technicians or less may provide this information to employees in writing, areas with four technicians or more will post the seniority list in a common area.

ARTICLE 13 SAFETY / HEALTH

13.1 Employer and Organization Responsibility. The Employer will make every reasonable effort to provide and maintain safety equipment and safe working conditions. The Organization will co-operate to that end and encourage the employees to work in a safe manner IAW government directives and regulations.

13.2. Employee Responsibility. Each individual has a primary responsibility for his/her own safety and an obligation to know and observe safety rules. These practices are for the protection of each individual and his/her fellow employees, and for the conservation of valuable (often irreplaceable) resources and equipment. Employees are responsible to appropriately utilize personal protective equipment (PPE) or be subject to disciplinary action consistent with laws and regulations and this agreement.

13.3. Standard for Safe Performance of Work. Management agrees to take reasonable precautions to ensure employee safety prior to assigning duties that directly or indirectly threaten the health, safety and/or welfare of the employee. Management agrees to provide briefings, instructions, training, or schooling, safety precautions, devices and PPE required by the TM, SOP, and standard shop practices whenever possible.

13.4. Safety Committees.

- a. Each activity / shop will meet safety committee requirements IAW appropriate safety rules and regulations.
- b. The Organization will nominate, for appointment by the Employer, employees from within the bargaining unit to serve as members of safety committees when established. At least fifty (50%) percent of the activity/shop safety committee will be made up of bargaining unit members.
- c. The names of personnel serving on local safety committees will be published and posted on appropriate bulletin boards.
- d. Bargaining unit members on safety committees should be trained for their additional duties. They will be notified as to the availability of safety schools and, when such schools become available, will be allotted space for attendance at these schools.
- e. The State Safety Council will have at least one member nominated by the Organization.

13.5. Safety Inspections.

a. The Employer agrees that a bargaining unit member designated by the Organization be provided the opportunity to be present on official time as an observer during:

1. Any safety inspection or survey conducted by OSHA.

2. Any safety or building inspection conducted by a state or municipal fire marshal or building inspector.

3. Any safety inspection conducted by the State Safety Officer.

b. The supervisor of each activity agrees to notify an Organization representative of the date and time of the above safety inspections as soon as they are known. The results of safety inspections will be posted to the appropriate safety bulletin board. Copies, if requested, of safety inspections will be provided to the Organization representative.

13.6. Personal Protective Equipment (PPE).

a. The Employer and the Organization agree to promote the use of PPE by employees.

b. Required PPE needed before a position or task will be provided to the employee before work begins.

c. The Employer agrees to provide PPE at no cost to the employee. Unserviceable PPE will be replaced on a direct exchange basis or put on order (and annotated that this is a safety item).

d. Each shop or facility in accordance with applicable rules and regulations will maintain adequate supplies of PPE.

e. Prescription safety eyewear will be made available at no cost to the employee. The employee at their own personal expense to the Employer will submit a current prescription. The employee will have an option of clear or tinted lenses. The employee will furnish current eyeglass prescriptions and new prescriptions as his/her vision changes. All issued safety glasses broken on the job will be replaced at no cost to the technician.

f. Supervisors will ensure required PPE is in compliance with local SOP, government wide rules and OSHA regulations.

g. The following items will be issued to full-time technicians required to work outdoors in cold climate areas, which include Flagstaff, Prescott, Kingman, Show Low, Payson and Sierra Vista.

<u>NOMENCLATURE</u>	<u>SOURCE</u>	<u>QUANTITY</u>
Gloves, Insulated Black	L/P/CIF	1 Pair
Coveralls, Dark Green Insulated	L/P CIF	1 Pair
Boots, Insulated w/Safety Toe	L/P CIF	1 Pair
Parka, Extreme Cold Weather	L/P CIF	1 Each
Liner, Extreme Cold Weather	L/P CIF	1 Each
Trousers, Extreme Cold Weather	L/P CIF	1 Each

h. The items listed below will be issued to all full-time technicians required to work outdoors in the performance of their duties, upon request from the employee.

<u>NOMENCLATURE</u>	<u>SOURCE</u>	<u>QUANTITY</u>
Parka, Wet Weather	CIF	1 Each
Trousers, Wet Weather	CIF	1 Each
Overshoes	CIF	1 Each
Boonie Hat	CIF	1 Each

i. The Employer will establish a Personal Protective Clothing and Equipment (PPC&E) file on each employee. It will contain the record of all PPC&E items issued to the employee for the performance of his/her duties. Personal Protective Clothing and Equipment hand-receipted for use in the employee's position will be recouped upon transfer or termination.

13.7. Hazardous Work Situations. All applicable safety directives and regulations shall be followed in the performance of an employee's duties. All employees and supervisors will address any safety violations in the workplace immediately.

a. Imminent danger is defined as any condition where there is reasonable certainty that a danger exists that can be expected to cause death or serious bodily harm immediately or before the danger can be eliminated by redress through normal hazard reporting and abatement procedures.

b. When it is determined that an imminent danger exists, employees will not be required to subject themselves to such danger. The employee may refuse to work if imminent danger exists and this refusal will not subject the technician to punitive or disciplinary action, unless the refusal can be conclusively proven to have been made under false pretenses.

c. An employee may refuse to perform a task when both of the following criteria are met:

(1) There is reasonable belief that there exists an imminent risk of life or serious bodily harm and;

(2) There is sufficient time for the individual to have the situation resolved by any method other than refusing to perform the task.

d. The Employer recognizes that in some circumstances, the interruption of utility services such as water, electricity, and heating, ventilation, air-conditioning (HVAC), can violate OSHA and other safety regulations and place employees at increased risk of injury. The Employer agrees to abate or correct any safety violation, hazard or increased risk of injury to employees, and make every effort to provide advance notice to the Organization and employees, when such interruption is planned and foreseen. When unforeseen utility interruption occurs, the Employer will inform an Organization representative as soon as possible. Examples include but are not limited to:

(1) Not performing work on batteries when deluge shower and eye wash stations are inoperative when water service is interrupted.

(2) Providing alternative sources of heating, ventilation, and air conditioning (HVAC) when service is inoperable.

(3) Providing alternative sources of drinking water when water service is interrupted.

(4) Limiting refueling operations when shower and/or fire suppression is inoperable.

13.8. Extreme Temperature / Work Situations. The Employer and the Organization mutually recognize the hazards of working in extreme temperatures, while at the same time, acknowledge the necessity for accomplishing certain tasks to varying extent even in the most extreme temperatures. The Organization acknowledges that it is the responsibility of each employee to ensure the adequacy of personal clothing worn to make full and proper use of all such protective equipment prior to working in extreme temperatures.

a. The Employer acknowledges that there are certain extremes of temperature and weather beyond which employees are incapable of performing sustained work. Employees will not be required to work in extreme

temperature situations for extended periods of time without reasonable relief away from the extreme temperature situation. Follow guidance for work rest cycles found in FM 21-10.

b. The employee will communicate concerns to the supervisor in order for the supervisor to determine what these periods will be. Any dispute will utilize the hazardous work situation reporting procedure in Section 7.

c. The employer agrees to provide environmental control measures sufficient to mitigate extreme temperatures where central cooling or heating is not installed or insufficient to maintain a safe working environment. As a general guideline, one cooler or heater should be available for every two work bays.

13.9. Contaminated Clothing. When an employee's clothing has become impregnated with fuels, and or other contaminants, which may endanger the employee or create a hazard, the employee will be required to change into fresh clothing.

13.10. Health Examinations. Upon request, the Employer agrees to provide to the Organization a list of all required health examinations, hearing tests, pulmonary studies, or evaluations required by law, regulation or policy for all bargaining unit members. Upon request, the Employer also agrees to inform the organization with test schedule status of bargaining unit members. A written copy of the test results will be provided to each member.

13.11. Injuries to Employees. Employees shall immediately report job connected injuries or illness to their supervisor. It is the responsibility of the supervisor, along with the employee, to ensure that the proper procedures are followed and that all necessary forms and notices are completed. Employees with serious injuries will be treated first, followed by the necessary paperwork. Employees will be fully advised by the Employer as to his/her rights and obligations under the Employee Federal Compensation Act.

13.12. Light Duty.

a. Definition: Light duty is defined as medical restrictions due to non-job-related injury or illness. Assignment to light duty is considered temporary when the employee is in the recovery process from an injury or in the recuperating process from illness.

b. When an employee is released to return to work in a temporary light duty status by a medical professional, the employee will submit a completed Medical Evaluation / Light Duty request form, CA-17 Rev. Jan. 1997 (see Appendix 3), to the immediate supervisor for consideration of light duty assignment.

c. The Employer agrees to make every reasonable effort to provide suitable temporary light duty work, which the employee is qualified to perform, under the following circumstances:

(1) Work is available.

(2) The work provided will not present undue risk of liability to the Employer or hazard to other employees.

d. The employee will provide the supervisor with an updated medical evaluation / light duty request form not later than the next scheduled medical evaluation.

13.13. Smoking in the Workplace. Smoking and tobacco use is governed by Federal Law. The Organization and its members will comply with AR 600-63, and all Department of Defense Directives regarding smoking and tobacco use. Smoking cessation assistance information and training will be made available through the Employer to employee via Employee Assistance Program (EAP).

13.15. Personal Hygiene. The Employer agrees to provide and maintain adequate facilities and supplies for personnel to perform personal hygiene in accordance with OSHA regulations and accepted industry practice. At a minimum, this will include hot and cold running water, hand soap, and paper towels or other means for employees to dry their hands. Employees who perform maintenance or industrial duties will also have available to them waterless-type hand cleaner and be provided with securable lockers adequate to store PPE and uniforms required in the performance of their assigned duties.

13.16. Sanitation and Health Standards of Facilities.

a. In accordance with applicable health, safety and government regulations, the Employer agrees to maintain its facilities in a hygienic manner. At a minimum this includes:

- (1) Indoor work place temperatures will be maintained within the range specified by industry standards.
- (2) Lighting adequate to perform the work required of employees.
- (3) Adequate supplies of hot and cold running water, toilet paper, soap, and paper towels to perform personal hygiene required during the work day (i.e., hand washing after use of toilets and after exposure to harmful chemicals). Alternative technologies that substitute for paper towels are allowed.
- (4) Adequate ventilation of work, office, showers and rests rooms.
- (5) A supply of drinking water at the work facility or site for all personnel, adequate for the days-planned duration and activities.
- (6) Any building will comply with OSHA requirements for rest room facilities.

b. With the exception of emergencies, the Employer agrees to provide advance notice to the Organization and affected employees when construction or required repairs affect or impact the minimum hygiene standards agreed to in section 1, and / or disables required safety devices / measures or otherwise affects conditions of employment. The length of notice shall be adequate to allow for bargaining on the issue before the construction / repairs begin. When emergencies occur, the Employer agrees to notify the Organization and affected employees as soon as possible.

13.17. Hazardous Material and Emergency Responses.

a. Incidental Spill: Defined as a chemical or a substance that is either spilled punctured or released from its source container and the chemical release is not identified as dangerous or toxic. The amount of chemical released is no larger than one gallon and only requires minimal amount of Personal Protective Equipment (PPE) to be cleaned up.

Note: Minimal PPE is considered the following: chemical goggles and non-permeable gloves.

**ARTICLE 14
LEAVE**

14.1 Leave and Excused Absences. All leave is governed pursuant to TPR 630, dated August 27th, 2010

a. **Sick Leave.** An agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) for an absence in excess of 3 workdays, or for a lesser period when the agency determines it is necessary.

14.2. Compensatory Time. All Compensatory Time is governed by TPR 630 Chapter 11.

14.3. Furlough. All Furlough time is governed by TPR 715, Chapter 3-7 and TPR 300(351).

14.4. Standby / On-Call Status.

a. Definition: 5 CFR 551.431 distinguishes standby status (paid) from on-call status (non-paid) based on the extent to which an employee's freedom of movement and activity are restricted and not whether the employee is required or permitted to carry an electronic paging device or Cellular phone which is provided by the employer.

b. Employees may be assigned to an on-call status and will be allowed to provide the Employer a phone number where they can be contacted or employees may be provided use an electronic paging device or portable telephone for the duration of the duty placing them in that status.

c. It is understood that employees in an on-call status shall not have their travel nor their personal activities restricted so long as:

(1) They remain within the range of the electronic paging device.

(2) They remain in a state of readiness to perform work.

(3) They make arrangements such that any work, which may arise during the on-call period, can be directed by the appropriate person(s).

(4) Employees who are required to respond to a call and perform work shall receive compensatory time of at least two (2) hours.

ARTICLE 15 PERFORMANCE MANAGEMENT

15.1. Responsibilities. Management and the labor organization recognized the vital nature of the performance evaluation process to the entire bargaining unit work force. The performance evaluation system will be IAW TPR 430 and this Agreement. The effectiveness of the performance evaluation system is a combined responsibility of each employee and their supervisor. Performance standards shall be equitable, objective and reasonably related to the duties set forth in the position description. Supervisors will, to the greatest extent possible, establish identical critical elements (job objectives) for employees with the same PD and performing the same duties IAW 430 table 2-1, supervisors will define measurable requirements to achieve each level of critical element ratings (outstanding (5) through unacceptable (1)).

15.2 The times spent away from the assigned job by union representatives in the performance of their representation duties should not be taken into account when accomplishing a performance appraisal. The performance appraisal should be based only on the performance of their officially assigned work.

ARTICLE 16

GRIEVANCE PROCEDURES

16.1. Grievance Procedures. The Employer and the Organization agree that the negotiated procedure is the exclusive procedure available to the Organization and the employee(s) in the bargaining unit for processing of any grievance.

16.2. Grievance Definition.

- a. Any complaint by any bargaining unit member concerning any matter relating to the employment of the employee.
- b. Any complaint by the Organization concerning any matter relating to the employment of any bargaining unit member.
- c. Any complaint by any bargaining unit member, the Organization, or Employer concerning,
 - (1) The effect of interpretation or a claim of breach of collective bargaining agreement or;
 - (2) Any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.
- d. Technician grievance coverage, as outlined herein, does NOT apply to:
 - (1) Any claimed violation to subchapter III of Chapter 73 of Title 5, United States Code (relating to prohibited political activities);
 - (2) Retirement, life insurance or health insurance;
 - (3) A suspension or removal under Title 5 U.S.C. section 7532 of this title (in the interest of National Security)
 - (4) Any examination, certification or appointment;
 - (5) Action based on classification or job degrading determination that does not result in reduction in grade or pay of any employee. Statutory classification appeals' procedures will be the resolution method used for the classification action. For GS employees, TPR 500(511.6) for WG employees TPR 532-1 are the applicable references;
 - (6) Individual performance appraisals being appealed to the Adjutant General.
 - (7) A filed EEO complaint;
 - (8) A final decision made by the Adjutant General pursuant to the provisions of 32 USC 709(f).

16.3. Grievance Representation. The Organization is the exclusive representative for itself and any member(s) in the presentation and processing of any grievance.

16.4. Employees Right to Grieve Without Representation. Each employee is authorized to present a grievance without representative or through a non-organization representative, but in so doing an exclusive Organization representative, is ensured the right to be present during the grievance proceedings and processing. The employer and the organization encourage the resolution of problems, at the lowest level before becoming formal; The Organization representative may be present during such verbal meetings.

16.5. Procedure – Employee Grievance. If a settlement cannot verbally be agreed to, the following procedure will be used:

Step 1. The grievance will be prepared in writing or electronic format, using the agreed form, STARC AZ Form 690-1, dated 10 July 2011 (see Appendix 1), not later than thirty (30) calendar days after the grievance took place or thirty (30) days after oral discussion over the grievance with the supervisor is concluded, whichever is later. The grievance will be presented to the appropriate supervisor, through HRO. The grievance and the supporting information should be discussed with the supervisor. The supervisor will provide a determination of settlement to the individual and the Organization, in writing, within ten (10) working days from the date the grievance is received by HRO.

Step 2. If the grieved individual is still dissatisfied, the individual may appeal to the Chief of Staff, through HRO within ten (10) working days. The Chief of Staff will provide his decision, in writing, to the grieved individual and the Organization, within ten (10) working days from the date the grievance is received by HRO.

Step 3. If the aggrieved individual is still dissatisfied, the individual may appeal to the Adjutant General, through HRO, within ten (10) working days. The Adjutant General will provide his decision in writing to the grieved individual and the Organization, within ten (10) working days from the date the grievance is received by HRO.

16.6. Official Time. A reasonable amount of official time will be afforded in accordance with Article 8 for:

- a. To the employee to discuss, informally, with his/her first line supervisor and/or Organization representative, any dissatisfaction the employee might have.
- b. To an Organization representative to discuss informally or formally with the appropriate Employer official any complaint the Organization may have concerning matters under this agreement.
- c. To the employee and the designated Organization representative for preparing and presenting the grievance.

16.7. Right to Information. Upon written request and subject to law, rule or regulation, Employer will supply the Organization with all investigation reports, and/or documents used in the original action when denying a grievance. This is to ensure the Organization has all the necessary information for a determination to invoke or not invoke the provisions of the arbitration article.

16.8. Procedure – Organization Grievance.

- a. Organization initiated grievances will name the Chief of Staff as the respondent. The Organization agrees to consider an attempt to informally resolve the grievance at an appropriate level prior to formal presentation. Grievance will normally be filled within sixty (60) days after the facts leading up to the grievance become known to the Organization.
- b. The following procedures will be used for all Organization grievances:

Step 1: The grievance will be prepared in writing and submitted to the Chief of Staff through HRO. The event(s) leading to the grievance will be discussed with the Chief of Staff at a mutually acceptable time before the Chief of Staff provides a decision. The Chief of Staff will provide a decision, in writing, within ten (10) working days, to the Organization President or his designated representative.

Step 2: If the Organization is dissatisfied with the decision of the Chief of Staff, an appeal will be forwarded to the Adjutant General within ten (10) working days. The Organization will be provided a decision within ten (10) working days. If the Adjutant General does not sustain the grievance, a reason, in writing, will be forwarded to the Organization.

16.9. Extension of Time Limits. The above mentioned time limits can be extended by mutual agreement, in writing.

ARTICLE 17 GRIEVANCE ARBITRATION

17.1. Invoking Arbitration. Arbitration will only be used to settle unresolved grievances arising under the grievance procedure in Article 16. Only the Employer or the Organization may invoke arbitration. The decision to refer the grievance to arbitration must be submitted to the other party within fifteen (15) workdays from the date of final decision on the grievance. The Organization has the option to invoke arbitration on behalf of an employee, but will honor a written request for termination of the proceedings by the employee(s) concerned

17.2. Requesting Arbitration. The party requesting the services of an arbitrator will submit a request to the Federal Mediation and Conciliation Service (FMCS) for a listing of seven available arbitrators, preferably from within the State, and concurrently serve the other party with a copy of the request and all enclosures.

17.3. Selection of an Arbitrator. The parties shall meet within seven (7) workdays after receipt of the arbitrator list. If the parties cannot mutually agree upon one of the listed arbitrators, a toss of a coin will determine which party will be selected to strike a name from the list first, with each party alternately striking a name, until only one name remains. The remaining arbitrator will be contacted to hear the grievance.

17.4. Non-Participation by Either Party. If for any reason either party refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service (FMCS) shall be empowered to make a directed designation of an arbitrator to hear the case.

17.5. Cost of Arbitration. The total cost of arbitration, to include arbitration's fee, travel, per diem, to include recording and transcript services, and any cost's incidental thereto, shall be shared fifty-fifty (50-50) by both parties. Any expenses incurred in providing necessary or desired witnesses shall be borne solely by the requesting party. Attorney fees may only be granted under the provisions of Title VII of the Civil Service Reform Act.

17.6. Filing of Briefs. Either party may file pre- and post-hearing briefs under the time requirements set by the arbitrator. The arbitrator's decision is binding and will be implemented as soon as practicable, but not later than thirty (30) workdays after receipt, unless exceptions to the arbitrator's decision are filed with the FLRA (and/or the decision is contrary to law, regulation or appropriate authority of Public Law 95-454). Either party may request clarification of the award. A copy of such request will be served to the other party.

17.7. Arbitrator's Rendering of Decision. The arbitrator will be asked to render his/her decision as soon as possible.

17.8. Exceptions to Arbitrator's Decision. Either party may file exceptions to an arbitrator's award with the Federal Labor Relations Authority (FLRS), under regulations prescribed by the Authority.

17.9. Matter Appropriate for Arbitration. Only those matters, which are grievable under the grievance procedure Article 16, of this agreement, will be subject to arbitration.

17.10. Stipulation of Issue. Upon selection of an arbitrator, the Employer and the Organization will meet and attempt to stipulate as to the issue to be submitted to the arbitrator. The question may be no broader in scope than the issue to be submitted to the arbitrator. The question may be no broader in scope than the issue presented at the grievance state. If the parties cannot agree, they will each submit to the arbitrator the issue they feel should be decided by the arbitrator at least seven (7) workdays in advance of the hearing, furnishing a copy of the submission to the other party.

17.11. Scope of Arbitration. The scope of arbitration will be limited to the interpretation and application of the terms and provisions of the written Agreement (and application of agency or activity regulations).

a. An Arbitration award concerning a matter that under 32 USC 709(f) cannot be appealed beyond the Adjutant General will be advisory, not binding, and will be presented to the Adjutant General as a recommendation.

b. The jurisdiction and authority of the arbitrator is limited and confined exclusively to the interpretation of the process and application of the expressed provision(s) of this Agreement, laws, and the application of agency or activity regulations at issue between the parties. The arbitrator will have no authority to add to, subtract from, alter, amend or modify any provisions of this Agreement, or publish agency or activity policies and regulations. The interpretation placed on any agency regulation by the head of the agency or his designee will be binding on the arbitrator who may not impose his interpretation of the Office of Personnel Management or agency regulations, policies, or laws upon the parties, but will be limited to the application of such regulations, policies, or laws by the activity.

17.12. Arbitration Without a Hearing. Where the parties mutually agree to arbitration without a hearing, a written stipulation of facts to the arbitrator will be used. In this case, all facts, data, documentation, positions, etc., will be jointly submitted to the arbitrator with a request for a decision, based on the facts presented, within twenty (20) workdays after selection of the arbitrator. Costs of expedited arbitration will be shared equally by the parties. The arbitrator will render his/her award within thirty (30) calendar days following receipt of the written stipulations.

ARTICLE 18 DUES WITHHOLDING

18.1. General. Dues withholding will be extended to the Organization throughout the period that ACT, Inc., Arizona Chapter 61 remains the official representative of the bargaining unit.

18.2. Employee Eligible. Employees eligible for dues withholding are those members of the Organization in good standing who are employed in the bargaining unit and whose net salary, after legally required deductions, is regularly sufficient to cover the amount of the authorized allotment.

18.3. Definition. Dues are defined as the regular periodic amount required to maintain a member in good standing with the bargaining unit, but shall not include such items as initiation fees, special assessments, fines and similar items. Deduction(s) may be made to allow for an Organization-sponsored health program.

18.4. Organization Responsibilities. In application of the allotment arrangements, the Organization shall be responsible for:

a. Providing Standard Form 1187, "Request and Authorization for Voluntary Allotment of Compensation for payment of Employee Organization Dues."

- b. Educating eligible employees as to the program for allotment of dues, its voluntary nature, and the availability and uses of the required form, SF 1187.
- c. Informing employees, when requested, as to the procedure in revoking allotments, emphasizing that the effective date of the revocation is the standard annual anniversary date (See Section 7) provided the allotment has been in effect at least one year.
- d. Employee will fill out SF 1187, and turn it in to an Organization representative, i.e., Steward, for forwarding to labor Management Relations (LMR) Office.
- e. The Organization will review and certify Section A of SF 1187. The Organization will then forward the completed SF 1187 to the LMR Office. (Note: The SF 1187 may be submitted at any time.)

18.5. Employer Responsibilities. The Employer shall be responsible for informing employees that:

- a. Allotment deductions will take effect during the first pay period beginning after the allotment form, properly completed, signed, and certified, as been received in the payroll office.
- b. An employee may submit a Standard Form 1188, Dues Revocation, in accordance with AR 37-105, Sec 741. The form may be filed as follows:
 - (1) New member employees may submit a SF 1188 within two pay periods of the one year anniversary of their joining the Organization.
 - (2) Thereafter, employee must submit a SF 1188 in accordance with Section 7 of this Article.

18.6. Processing of Allotments. Processing of allotments will be accomplished in the following manner:

- a. The Organization shall submit a memorandum with signatures of each current official authorized to certify SF 1187 to the LM Office.
- b. The Organization will submit completed SF 1187's and other pertinent documents to the LMR Office.
- c. Allotments will take effect the first pay period beginning after receipt of the properly executed and correct SF 1187 in the payroll office.
- d. SF 1187's, and other material pertaining to allotments will be date-stamped upon receipt in the HRO and will be processed within seven (7) working days to the payroll office.
- e. The Organization will notify the LMR Office in writing, when an employee (i.e., a dues withholding member) ceases to be an Organization member in good standing. The allotment for such an employee will be terminated with the first complete pay period after receipt of the notice in the payroll office.
- f. An allotment shall be terminated;
 - (1) When the employee leaves the Bargaining Unit as a result of separation, transfer or other personnel actions. The Organization must be notified when these actions will occur. Termination in such cases will be effective as the end of the next pay period in which the LMR Office is notified of the action.

- (2) Upon loss of exclusive recognition by the Organization.
 - (3) When the agreement providing for dues withholding is suspended or terminated by an appropriate authority outside the Department of Defense.
 - (4) When the employee has been suspended or expelled from the Organization.
 - (5) When employee requests termination in accordance with the provisions of this article.
- g. When an employee is in a non-pay status for an entire pay period, no withholding will be made from future pay periods to recover the dues not withheld. In the case of an employee who is in a non-pay status for only part of such pay period and the salary is not sufficient to cover the full withholding, no deduction will be made. Under these conditions, all other legal and required deductions have priority over deductions for Organization dues.
- h. The payroll office will make the remittance for dues withheld bi-weekly.
- i. The remittance will be in a single check for the dues withheld. The check will be made payable to the National Organization. It will be accompanied by the "Union Dues Deduction Report" containing the following:
- (1) Identification of the employee's organization.
 - (2) Payroll period.
 - (3) Employer's name and/or number.
 - (4) Names of the employees and amount deducted. A second copy of the "Organization Dues Deduction Report" will be provided to the local chapter President.
- j. Adjustments to dues allotments will occur within two pay periods.
- k. Reinstatement of dues withholding will take place within the first pay period that employee returns to the bargaining unit.

18.7. Standard Anniversary Date. New members shall have the option of dues revocation on the first annual anniversary date after employee election to participate. Thereafter, the first day of September shall be the annual dues revocation date established by this agreement. SF 1188's will be received by HRO no earlier than 1 September or later than COB 15 September. Dues Revocation will not become effective until the first full pay period in October.

18.8. Process for Suspension of Organization Dues. The following procedure is established to notify the union when bargaining unit members are not eligible to participate in automatic payroll deduction for dues:

- a. The Labor Relations Specialist will be notified via a notice from the personnel data system when a bargaining unit member's status changes which makes him/her ineligible for payroll deduction of dues (movement into an established non-bargaining unit positions).
- b. Upon notification, The Labor Relations Specialist will send written notification of dues suspension or termination to the civilian payroll office and the Organization at the same time.
- c. If Employer determines that a current position should be removed from the bargaining unit, it must submit reasons in writing to the Labor Relations Specialist. The Labor Relations Specialist will then forward this information

to the Organization for it's their consideration. If management and the Organization disagree on whether or not the individual and/or position would belong to the bargaining unit, a unit determination will be requested from the FLRA. However until the determination is made, dues withholding will continue.

ARTICLE 19 DISCIPLINE

19.1. Administration. Administration of discipline is the responsibility of the Employer. Supervisors are obligated to act when disciplinary action is warranted. The Employer shall impose discipline pursuant to TPR 752.

19.2 APPEALS Any appeal from a disciplinary action taken pursuant to TPR 752 shall be governed by TPR 752-1.

19.3. General.

- a. This article applies to matters of CONDUCT. Actions that related to JOB PERFORMANCE will be accomplished in accordance with TPR 430 and this agreement, prior to discipline actions under this article. Parties to this Agreement understand that conduct may affect job performance.
- b. The parties recognize that discipline may be progressive in nature; however management retains the right to make the final decision on discipline. Disciplinary action will be taken for the purpose of correcting offending employees and problem situations and maintaining discipline and morale among other employees.
- c. In order to be effective, constructive discipline must be timely. Disciplinary action must be initiated within a reasonable period of time after the individual's supervisor knows the offense.

19.3 Disciplinary Actions: See TPR 752 Chapter 3

19.4 Adverse Actions: See TPR 752 Chapter 4

- a. An Adverse Action will be carried out and the action upheld in accordance with 32 USC 709(f). In the event of a successful appeal, back pay, if applicable, will be reimbursed in accordance with 5 USC Sec 702, Sec 5596b.

19.5. Records.

- a. In any disciplinary action, an employee will, upon written request, be furnished a copy of all written documents in the Employer's files which contain evidence used by the Employer to support the disciplinary action. Informal notes made by supervisors that allege infractions, lateness, and the like, cannot be used in proceedings against employees, unless timely disclosed beforehand.
- b. No written entry will be made in an employee's files concerning disciplinary matters without the knowledge of the employee. The employee may initial the entry if desired. The employee's initials acknowledge that the employee knows that an entry was made, but in no circumstance may initialing the entry be considered as an agreement with the entry or an admission of guilt.
- c. In order to protect the confidentiality of the records, supervisors brief, and to preserve the privacy of the employee, records will normally be maintained at the lowest level of supervision excluded from the bargaining unit and access will be limited to management/employee concerned and individuals to whom the employee has been given written permission.

ARTICLE 20 EXCHANGE OF INFORMATION

20.1. Employer Information. The Employer agrees to place the Organization on distribution for all pertinent changes to technician personnel regulations, policies and directives of NGB and OPM except where this information is restricted by law, rule or regulation.

20.2. Organization Information. The Organization agrees to provide the Employer with any pertinent labor/management relations publications and directives that they receive.

20.3. Bargaining Unit Member Information. The Employer agrees to supply the Organization with a current list of names, place of work, and work phone numbers for all Bargaining Unit members. Such lists will be updated on an annual basis.

ARTICLE 21 MISCELLANEOUS

21.1. Technology

- a. Cell phones - Cell phone use will be permitted in the workplace provided that it does not interfere with the Performance of duties or create a safety hazard. Management may identify areas where cell phone use is banned based on safety (fuel points, heavy traffic areas, etc.) Abuse of cell phones will be dealt with on an individual basis.
- b. Radios and Televisions - The employer agrees to allow the use of radios with discretion as long as they are used in a manner as to not disturb others, disrupt the workplace, or create a safety hazard. The use of televisions is allowed in authorized break areas only.
- c. iPods/ Ear buds/ Bluetooth - The use of earphones in military uniform is not authorized IAW AR670-1. The use of iPods/ ear buds will be allowed while conducting physical training indoors or outdoors on a closed course.
- d. Personal computers and other electronic media devices - Employees may bring personal computers into the workplace provided their use does not interfere with the performance of duties or create a safety hazard. No personal computers or data storage devices will be connected to the intranet.
- e. Government computers - Employees will be provided access to government computers during normal duty hours to access management resources. Employees must be allowed adequate time to remain current on events and notices posted on the AZ National guard home pages, professional email accounts, mybiz, DTS, AKO, GTC website, etc. Employee usage must be in compliance with the signed user agreement. Employees should be provided with a reasonable amount of privacy in order to access personal information (mybiz, iperms, GTC accounts, etc.)

21.2. Break Rooms. The Employer recognizes the benefits to employee's morale and productivity that break rooms provide. Within funding and space constraints, the Employer agrees to make reasonable efforts to provide clean and accessible break rooms to all employees on an equitable basis.

ARTICLE 22 IMPACT AND IMPLEMENTATION BARGAINING

22.1. Right to I&I Bargaining. Employer exercise of a management right that changes a condition of employment is subject to impact and implementation (I&I) bargaining to the extent requirement by 5 U.S.C. 7106(b)(2) and (b)(3) and any change thereto. To the extent consistent with those provisions any change thereto, the procedures in Section 22, 2 apply.

22.2. Scope. Matters appropriate for negotiations (Impact and Implementation) between the Employer and the Organization shall include, but are not limited to personnel policy practices as they apply to working conditions. This includes matters concerning safety, employee services, methods of grievances adjustment, appeals, leave policy, merit promotion and placement, reduction in force, hours of work, and TDY policies.

22.3. Procedures. The Employer will notify the Organization in writing of an exercise of a management right that changes a condition of employment. The Employer will hold implementation of the change in abeyance pending completion of I&I bargaining, including any resolution of an impasse by the Federal Service Impasses Panel, unless: (1) the Organization fails to inform the Employer within ten (10) working days of receipt of the notice that the Organization demands bargaining; or (2) the necessary functioning of the agency or need to correct a legal violation requires that implementation occur before completion of bargaining. The Employer will provide the Organization a written statement of the facts and reason upon which the Employer bases an assertion that the necessary functioning of the agency or need to correct a legal violation requires implementation before completion of bargaining.

ARTICLE 23 REDUCTION IN FORCE

23.1. General. The Adjutant General is responsible for implementing a reduction in force. Any reductions in force will be governed by TPR 300-351(22 November 1993) (the current technician Performance Appraisal guidance shall be used in computing evaluation ratings).

23.2. RIF Procedures. TPR 300-351, 5 U.S.C. Chapter 71 and this article will govern procedures relating to a reduction in force. The Employer agrees to negotiate Impact and Implementation (I & I) bargaining procedures and appropriate arrangements.

ARTICLE 24 CONTRACTING OUT WORK

24.1. Notification. Employer will notify local Organization officers of its intention to solicit bids for contracting out work, which could result in a reduction in force, transfer or abolition of function affecting employees in the bargaining unit. A full explanation of the reasons for such action will accompany the notice and the Organization will be given thirty (30) calendar days to respond in writing. During the thirty (30) day period, the Organization has the opportunity to provide any relevant information or data they feel will be pertinent to the contracting out proposal being considered. The organization may request a copy of the contract and any other information relating to the functions of contracting out to the organization through the FOIA.

24.2. Meetings. Employer will meet with Organization officials to discuss ways to minimize any effects on employees if reassignment or other acts may arise from contracting out function.

24.3. Contracts. Shall not be used for the performance of inherently governmental functions IAW Federal Acquisition Regulation 7.503 updated 04APR09. If updated, the most current FAR will supersede this agreement.

- a. The determination of agency policy, such as determining the content and application of regulations, among other things.
- b. The direction and control of Federal employees.

- c. The approval of position descriptions and performance standards for Federal employees.
- d. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.
- e. The approval of Federal licensing actions and inspections.
- f. Contractors may determine the content of applications of regulations as they pertain to other contractors.
- g. Contractors may inspect or certify another contractor's work.

24.4. Contracted Work Requiring a RIF When a contracting out action would cause the loss of a bargaining unit member position, the reduction in force procedures of the current Labor / Management agreement and TPR 300.351 shall be used to assist and/or retain said employee.

ARTICLE 25 DRESS CODE

25.1. Military Uniform. Excepted employees, as supplied by Employer and in accordance with TPR 300, Office of Personnel Management rules on appearance, and 32 USC 709(b)(4), will wear the military uniform.

a. The Employer will provide, at no cost to the employee, four complete sets of their duty uniform per year to include six additional tan or cotton green t-shirts and six additional tan or cotton green socks. Care and maintenance of the supplied uniforms and boots are the responsibility of the employee. Employees not wearing the prescribed uniform properly may be subject to disciplinary action.

b. All full time non-supervisory technicians (Bargaining Unit Members) are authorized four complete sets of their duty uniform per year (e.g., duty uniform may be Class B and ACU). Therefore, the bargaining unit member may request any combination of ACU's and Class Bs that add up to their four sets of duty uniforms) through the CCDF. This will be a one for one exchange of an unserviceable duty uniform turned-in to their M-Day unit supply sergeants. The uniform will be issued and/or exchanged with Velcro patches included at the time of issue and/or exchange (not to exceed six (6) insignia).

c. Bargaining Unit members (technicians) with work responsibilities that create excessive wear and tear of their ACU uniforms (wear and tear as described IAW AR 700-84) will have additional ACU uniforms provided when a sufficient quantity is retained by the DCSLOG warehouse. It is anticipated that these would be made available when there is sufficient stock to supply two sets of ACUs per eligible technician.

d. Bargaining Unit Members (technicians) that require steel toe boots for their full time duty position will have them provided by their shop, warehouse, WAATS or AASF. Temporary employees will utilize steel toe boots from their unit. These safety boots must be Tan, in a military style and cost no more than \$150.00. The shop, warehouse or AASF will use their funds and IMPAC credit card to purchase the boots. Immediate supervisors will ensure boots are annotated on technicians OCIE clothing record at their unit. Employees with special needs must request their Safety Boots through the Supply Management Officer (SMO)

25.2. Appropriate Professional Attire for Competitive Civilian Employees. Employees will dress in a professional manner, appropriate for the work setting in the performance of their normal civilian duties. The following attire is considered inappropriate: halter tops, tops where the midriff is exposed, T-shirts, swim wear, cut-offs or shorts, sweat pants or other athletic apparel, shower- type sandals or slippers (flip-flops), and ripped, torn or frayed clothing. This also includes casual day that the Employer may have in effect.

ARTICLE 26 WAGE BOARD REPRESENTATION

26.1. Organization Participation. When the wage survey lead agency requests the Employer to participate in a wage survey, the Employer will notify the Organization who will nominate bargaining unit members for appointment to the wage survey data collection team. The number of personnel to be appointed to the data collection team will be determined by the lead agency.

ARTICLE 27 MERIT PROMOTION AND INTERNAL PLACEMENT

27.1. Purpose. To provide procedures to ensure each employee receives full consideration for all position vacancies and to provide the opportunity for current fulltime employees of the AZNG to compete for advancement in a fair and equitable manner and the best-qualified applicants to be selected.

27.2. Employer Merit Placement Plan. The Employer Merit Placement Plan, DEMA Directive 25-6, dated 1 December 2014 will be used as it applies to employees covered by this contract, except as agreed to elsewhere in this article.

27.3. Position Announcements. All announcements for positions will remain open for a minimum of fifteen (15) calendar days, unless otherwise agreed by the Employer and the Organization. Each announcement will be posted by the agency to promote wide variety of applicants.

27.4. Interview Panels. Interview panels consisting of permanent or indefinite technicians will be used to conduct interviews for all positions open to Bargaining Unit members except for the following:

- a. Permanent or Indefinite Civilians and AGR may be on the panel if the technician will be supervised by the civilian or AGR employee.
- b. Permanent or indefinite Civilians and AGR may be on the panel if qualified technicians are not available due to lack of training, in suitable rank or civilian grade to form a panel or unavailability.
- c. Temporary employees may not sit on interview panels.

27.5 Interview Questions. Interview questions must be appropriate and relevant as they pertain to the position description, knowledge, skills & abilities (KSAs) and vacancy announcements. Interview questions will be designed to encourage an open-ended response. Questions will contain desired responses and will not resemble test questions (true false, yes-no etc.). The interview matrix may be submitted to the HRO Staffing Specialist for review prior to conducting interviews. Interviewees discussing the interview questions with other employees prior to completion of the interview process will be subject to appropriate disciplinary action under provisions of the merit placement plan.

27.6. Grievances of Restricted Practices. Restrictive practices are defined in paragraph 6-4 of the Employer's Merit Placement Plan. In addition to violations of this article, any restrictive practice that is demonstrated to have occurred is grievable and may result in the suspension of the placement action. If it is demonstrated within five (5) working days of notification to non-selected candidates, that a violation of the merit placement plan would have affected the standing of the candidates, the placement action will be temporarily suspended until HRO reviews the selection. HRO will review the placement folder in conjunction with the Organization. HRO will take appropriate action if deemed necessary. An employee grievance based solely on non-selection from a property developed roster of qualified candidates will not be accepted.

27.7. Changes in the Merit Placement Plan. The Employer agrees not to make changes in the Merit Placement Plan unless negotiated with the Organization. Nothing in this article should be considered to be a waiver of the Organization's right to bargain any change in merit promotion and internal placement proceedings.

ARTICLE 28 CONTRACT DISTRIBUTION

29.1. Employer Responsibility. The employer will post this agreement in its entirety on the AZNG HRO homepage. Upon request, a paper copy will be provided to the employee.

29.2. Cost Sharing. The Organization agrees to share in the cost of printing or copying requirements at charge of twenty-five (25%) of total cost, not to exceed \$500.00.

ARTICLE 29 EFFECTIVE DATE, DURATION AND MODIFICATIONS

29.1. Effective Date and Term. The effective date of this agreement shall be the date the agreement is approved by the Defense Civilian Personnel Management Service (DCPMS), or the beginning of the thirtieth (30th) day following the signing of the agreement by the Employer and the Organization (whichever is first). Should any portion of the agreement be determined to be contrary to law or regulation by DCPMS, all other portions of the agreement become binding on the parties on the effective date above. This agreement shall be in full force and effect for three (3) year period from the effective date hereof, and automatically be renewed for another (3) year period unless either party requests to renegotiate. Requests to re-negotiate this agreement will be in writing and served by e-mail on the other party's representative. Request to re-negotiate this Agreement will be made within ninety (90) days and thirty (30) days of the expiration of this Agreement (three (3) year anniversary).

29.2 Reopener Clause. Either party may open this agreement at any time after the first anniversary. Such reopener shall be limited to only once by each party during the life of the Agreement, and each party will be limited to no more than three new or amended articles each time it is opened. This may amount to modification of three (3) articles, additions of three (3) articles or any combination thereof. The reopener will be initiated in writing to the other party and will include the proposals. Negotiations for the reopener will commence at a mutually agreed time, not to exceed thirty (30) days from the date of the reopener request. This Agreement may be subject to amendments or supplements during the Agreement lifetime when Agreement provisions require amendment due to law, rules, or regulation changes that affect the provisions of this Agreement regardless of this reopener clause.

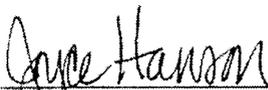
29.3 MOU for Contract Window Dates. Thirty (30) calendar days after NGB/DOD approves this contract, or thirty (30) calendar days after the contract goes into effect, whichever is first, the Chief Negotiators for both the Employer and the

Organization will meet to sign a memorandum of agreement as to the exact calendar to negotiate the Labor / Management agreement.

IN WITNESS WHEREOF, the parties have hereto entered into this agreement on this 7th day of August 2015.

FOR THE EMPLOYER

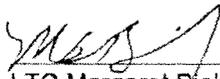
FOR THE ORGANIZATION



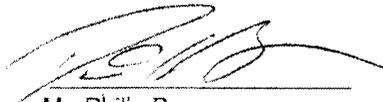
SMSgt Joyce Hanson
Acting LRS



Mr. Jed McGinnis
President, AZ Army ACT Chapter 61



LTC Margaret Bielenberg
Member



Mr. Philip Barnes
Member



LTC Thomas O'Sullivan
Member



Mr. Joshua Keefer
Member

Michael T. McGuire, MG, AZ ARNG
The Adjutant General

APPROVED:

This Agreement was approved by the Department of Defense on Chief, Field Advisory Services Division

Appendix 1

Appendix 1

INSTRUCTIONS FOR COMPLETING

STARC AZ Form 690-1 GRIEVANCE FORM

General. The grievant, and/or the union representative, should complete blocks 1 through 18. If there isn't enough room in any block, make a note in the block that there are additional pages attached. Ensure that any additional pages are titled appropriately. After completion, at least two copies of the grievance should be presented to the HRO POC designated by the employer to accept grievances (normally the Labor Relations Specialist).

Block 1. Today's date.

Block 2. Enter the grievant's first name, middle initial, and last name.

Block 3. Grievant's current job title, series, and grade (if known).

Block 4. Shop or office where grievant normally works.

Block 5. Grievant's normal work phone number and FAX number.

Block 6. Check the appropriate block as to whether or not grievant request union representation.

Block 7. If block 6 is checked "YES" (union representation is requested), enter the name of the representative requested (normally this will be the steward assigned to the grievant's work area). If "NO" is checked in block 6, leave this block blank.

Block 8. The phone and FAX numbers of the union representative named in the previous block.

Block 9. Enter the name of the grievant's immediate supervisor or the management official who is most familiar with the grievance.

Block 10. The phone and FAX numbers for the management official cited in block 9, if known.

Block 11. Enter the specific section, article, or part of the Law, Rule, Regulation or Labor/Management Agreement article (union contract) that was allegedly violated by the incident, event, or action detailed in block 12.

Block 12. State in detail the incident, event or action on which this grievance is based. Include names, dates, and locations as appropriate. If there are witnesses, name them and include their phone/FAX numbers if known. Attach copies of any documentation that is relevant (keep the originals).

Block 13. Enter what relief and/or corrective action the grievant feels will resolve the matter.

Block 14, 15, 16, 17 The grievant and union representative (if applicable) sign and date in the respective blocks.

Block 18. At each step of the grievance, two copies of the grievance will be presented to an employer designated POC in HRO (normally the Labor Relations Specialist). The designated POC will sign and date both copies acknowledging receipt. One copy will be retained by the designated POC for processing. One will be returned after signature to the grievant or the union representative.

Association of Civilian Technicians (ACT)
 Arizona Army Chapter 61
 Official Time Form

REPRESENTATIVE'S NAME: <small>(Type or print)</small>		ORGANIZATION / PHONE NO.	
DATE AND TIME OF BUSINESS:		DESTINATION:	ESTIMATED TIME:
REPRESENTATIVE'S SIGNATURE:		DATE:	TIME:
<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED <small>(See comments below)</small>			
COMMENTS:			
SUPERVISOR'S SIGNATURE:		DATE:	TIME:
SECTION II. PURPOSE FOR WHICH OFFICIAL TIME WAS USED <small>(Indicate hours or fraction thereof used by category)</small>			
HOURS USED		_____ BA: Term Negotiations _____ BB: Mid-Term Negotiations _____ BK: Dispute Resolution _____ BD: General Labor-Management Relations	
_____ ACTUAL TIME LEFT		_____ ACTUAL TIME RETURN	
REPRESENTATIVE'S SIGNATURE:		DATE:	TIME:
SUPERVISOR'S SIGNATURE:		DATE:	TIME:
DISTRIBUTION WHEN COMPLETED:		ORIGINAL TO SUPERVISOR FOR FILE COPY TO ACT CHAPTER #61 SECRETARY COPY TO ACT CHAPTER #61 PRESIDENT	

Duty Status Report

U.S. Department of Labor

Office of Workers' Compensation Programs



Reset Print

This form is provided for the purpose of obtaining a duty status report for the employee named below. This request does not constitute authorization for payment of medical expense by the Department of Labor, nor does it invalidate any previous authorization issued in this case. This request for information is authorized by law (5 USC 8101 et seq.) and is required to obtain or retain a benefit. Information collected will be handled and stored in compliance with the Freedom of Information Act, the Privacy Act of 1974 and the OMB Cir. A-108. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OMB No 1240-0046
Expires: 09-30-2011

OWCP File Number
(if known)

SIDE A - Supervisor: Complete this side and refer to physician

SIDE B - Physician: Complete this side

1 Employee's Name (Last, first, middle) _____

2 Date of Injury (Month, day, yr.) _____ 3 Social Security No. _____

4 Occupation _____

5 Describe How the Injury Occurred and State Parts of the Body Affected _____

6 The Employee Works _____
Hours Per Day _____ Days Per Week _____

7 Specify the Usual Work Requirements of the Employee. Check Whether Employee Performs These Tasks or is Exposed Continuously or Intermittently, and Give Number of Hours _____

8 Does the History of Injury Given to You by the Employee Correspond to that Shown in Item 5? Yes No (if not, describe) _____

9 Description of Clinical Findings _____

10 Diagnosis Due to Injury _____ 11 Other Disabling Conditions _____

12 Employee Advised to Resume Work?
 Yes, Date Advised _____ No

13 Employee Able to Perform Regular Work Described on Side A?
 Yes, If so Full-Time or Part-Time _____ Hrs Per Day
 No, If not, complete below.

Activity	Continuous		Intermittent		Continuous		Intermittent	
	#bs.							
a. Lifting/Carrying (State Max Wt.)	<input type="checkbox"/>							
b. Sitting	<input type="checkbox"/>							
c. Standing	<input type="checkbox"/>							
d. Walking	<input type="checkbox"/>							
e. Climbing	<input type="checkbox"/>							
f. Kneeling	<input type="checkbox"/>							
g. Bending/Stooping	<input type="checkbox"/>							
h. Twisting	<input type="checkbox"/>							
i. Pulling/Pushing	<input type="checkbox"/>							
j. Simple Grasping	<input type="checkbox"/>							
k. Fine Manipulation (includes keyboarding)	<input type="checkbox"/>							
l. Reaching above Shoulder	<input type="checkbox"/>							
m. Driving a Vehicle (Specify)	<input type="checkbox"/>							
n. Operating Machinery (Specify)	<input type="checkbox"/>							
o. Temp. Extremes	<input type="checkbox"/>							
p. High Humidity	<input type="checkbox"/>							
q. Chemicals, Solvents, etc. (Identify)	<input type="checkbox"/>							
r. Fumes/Dust (Identify)	<input type="checkbox"/>							
s. Noise (Give dBA)	<input type="checkbox"/>							

t Other (Describe) _____

14. Are Interpersonal Relations Affected Because of a Neuropsychiatric Condition? (e.g. Ability to Give or Take Supervision, Meet Deadlines, etc.) Yes No (Describe) _____

15 Date of Examination _____ 16 Date of Next Appointment _____

17 Specialty _____ 18 Tax Identification Number _____

19 Physician's Signature _____ 20 Date _____

INSTRUCTIONS FOR COMPLETING DUTY STATUS REPORT (CA-17)

- SUPERVISOR:** Complete Side A and refer the form to the physician to complete Side B. Fill in the address of the Employing Agency and the appropriate OWCP District Office in the spaces below. Enter the OWCP file number in the top right corner.
- PHYSICIAN:** Complete Side B, sign and return to the employing agency within 2 days to prevent interruption of the employee's income. Fill in your name and address.

Medical Facility Name and Address

Send Original Report to:

Employing Agency Address

Send a Copy of This Report to:

OFFICE OF WORKERS' COMPENSATION PROGRAMS

CERTIFICATION: BY SIGNING BLOCK 19 ON THE FRONT OF THIS FORM, THE PHYSICIAN CERTIFIES AS FOLLOWS:

I CERTIFY THAT ALL THE STATEMENTS IN RESPONSE TO THE QUESTIONS ASKED ON THIS FORM CA-17 ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE. FURTHER, I UNDERSTAND THAT ANY KNOWINGLY FALSE OR MISLEADING STATEMENT, OR MISREPRESENTATION OR CONCEALMENT OF MATERIAL FACT, MAY SUBJECT ME TO FELONY CRIMINAL PROSECUTION.

I FURTHER UNDERSTAND THAT THIS REQUEST DOES NOT CONSTITUTE AUTHORIZATION FOR PAYMENT OF MEDICAL EXPENSES BY THE DEPARTMENT OF LABOR, NOR DOES IT INVALIDATE ANY PREVIOUS AUTHORIZATION ISSUED IN THIS CASE.

Public Burden Statement

We estimate that it will take an average of 5 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the OWCP, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

G. P. O. - 2000 - 188-099

Employing Agency Address

Human Resources Office / ICPA
5636 E. McDowell Rd. Bldg 5710
Phoenix, Az. 85008

OFFICE OF WORKERS' COMPENSATION PROGRAMS

US Dept. of Labor DFEC Central Mailroom
P. O. Box 8300 District 13
London, KY. 40742

GLOSSARY OF TERMS

ABROGATION TEST. A test the **Federal Labor Relations Authority** applies in determining whether an arbitration award enforcing a contract provision affecting rights reserved to management is deficient. If the provision at issue is an "arrangement" for employees adversely affected by the exercise of those rights, an award enforcing such a provision will not be set aside unless it "abrogates" those rights – i.e., unless it leaves management no discretion at all.

ACCOUTERMENTS Accessory items on uniforms, i.e., patches, name tapes/tags, grade/rank insignia, etc.

ACCRETION. When some employees are transferred to another employing entity whose employees are already represented by a union, the FLRA will often find that those employees have "accreted" to (i.e., become part of) the existing **unit** of the new employer, with the result that the transferred employees have a new **exclusive representative** along with a new employer.

ACTIONS DURING EMERGENCIES. Management's right "to take whatever actions may be necessary to carry out the agency mission during emergencies" doesn't come up in negotiability disputes very often. In cases decided thus far, the FLRA has held that this right is interfered with by proposals attempting to define "emergency" because such definitions would be inconsistent with management's right to independently determine whether an emergency exists.

ADMINISTRATIVE LAW JUDGE (ALJ). An individual who conducts hearings and makes initial decisions on behalf of the Federal Labor Relations Authority (FLRA). Most of the hearings are for the purpose of adjudicating unfair labor practice complaints. The decision of an ALJ is final and non-precedent setting unless one of parties files an exception to the decision with the FLRA.

ADMONITION. To advise to do or against doing something; warn; caution to reprove firmly but not harshly

ADVERSE ACTION. An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal. For most Federal employees, an appeal system established by statute exists. The employee may choose to use the statutory or, if covered under the contract permits, the negotiated grievance procedure, but not both.

ADVERSE IMPACT. Change in working conditions that works to the disadvantage of employees. Depends on the occurrence of a chain of events and are not necessarily inevitable (reasonably foreseeable). Generally involves more than merely a hypothetical or speculative concern.

AGENCY HEAD REVIEW. A statutory requirement that negotiated agreements be reviewed for legal sufficiency by the head of the agency (or his/her designee). This must be accomplished within 30 days from the date the agreement is executed. If disapproved, the union can challenge those determinations by filing a **negotiability** petition or an **unfair labor practice** charge with the FLRA. If not approved or disapproved within that time, the agreement goes into effect and the legality and enforceability of its terms is decided in other forums (e.g., grievance or unfair labor practice proceedings).

AGENCY SHOP. A requirement that all employees in the **unit** pay dues or fees to the union to defray the costs of providing representation.

AGREEMENT, NEGOTIATED. A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure. Also defined as a written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. [Also known as Agreement, CBA, Contract, Labor-Management Agreement or Negotiated Agreement.]

AMENDMENT OF CERTIFICATION PETITION. That portion of the FLRA's multipurpose petition not involving a **question concerning representation** that may be filed at any time in which the petitioner asks the FLRA to amend the certification or recognition to, e.g., reflect changes in the names of the employer or the union.

AMERICAN ARBITRATION ASSOCIATION (AAA). A private nonprofit organization that, among other things, provides lists of qualified arbitrators to unions and employers.

Appendix 4

APPLICABLE LAWS. The Authority has said that "applicable laws" within the meaning of title 5, United States Code, section 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations "having the force and effect of law"--i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

APPRAISER. The individual most responsible for the technician's performance, for establishing performance standards, for counseling the technician on the critical and major job elements, and the appraising the technician based on pre-established mutually understood standards.

APPRAISAL PERIOD. The period of time, normally one year, but not less than 120 days, for which technician's performance will be appraised.

APPROPRIATE ARRANGEMENT. One of three exceptions to management's rights. Under title 5, United States Code, section 7106(b)(3), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an "**excessive interference**" balancing test). Also defined as arrangements for employees adversely (detrimentally) affected by the exercise of a management right or rights contained in 5 USC 71*(a) and (b)(1). The purposes of such are to address or compensate for the "actual or anticipated" adverse effects caused by the exercise of a management right or rights. To be appropriate, an arrangement proposed must concern affected conditions of employment resulting from the exercise of those rights, cannot conflict with law, government-wide rules or regulations, excessively interfere with the exercising of a management right or rights or concern matters within the employee(s) control.

APPROPRIATE UNIT (BARGAINING UNIT). A grouping of employees that a union represents or seeks to represent and that the FLRA finds appropriate for **collective bargaining** purposes.

APPROVING OFFICIAL. An Employer official in the supervisor chain at a level higher than the reviewing official.

ARBITRATION. See **ARBITRATOR.**

ARBITRATOR. An impartial third party to whom the parties to an agreement refer their disputes for resolution and decision (award). An *ad hoc arbitrator* is one selected to act in a specific case or a limited group of cases. A *permanent arbitrator* is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

Grievance arbitration. When the arbitrator interprets and applies the terms of the collective bargaining agreement--and/or, in the Federal sector, laws and regulations determining conditions of employment.

Interest arbitration. When the arbitrator resolves bargaining impasses by dictating some of the terms of the collective bargaining agreement.

ARBITRABILITY. Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.

ASSIGN EMPLOYEES. A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine "the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

ASSIGN WORK. A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind; the amount of work to be performed; the manner in which it is to be performed, as well as when it is to be performed. It also includes "the right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications."

Appendix 4

ATTORNEY FEES. In accordance with 5 U.S.C. 5596 (Back Pay Act), an award of counsel fees if there is a determination by an arbitrator or the Merit Systems Protection Board that an unjustified or unwarranted personnel action has resulted in the withdrawal of a grievant's pay, allowances or differentials. The award must be in conjunction with an award of back pay on correction of the personnel action, the award must be reasonable and related to the personnel action, and the award must be in accordance with standards established under 5 U.S.C. 7701(g). Under 5 U.S.C. 7701(g), the employee, to obtain fees, must be the prevailing party, the award must be in the interest of justice (other than in a case involving discrimination), the fee must be reasonable, and it must have been incurred by the employee.

AUTHORITY. See **FEDERAL LABOR RELATIONS AUTHORITY.**

AUTOMATIC RENEWAL CLAUSE. Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if neither party gives notice during the agreement's 105-60 day **open period** of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of x number of years.

AWARD. In labor-management arbitration, the final decision of an arbitrator, final and binding on both parties. In very limited circumstances, either party may appeal the arbitrator's decision to the Federal Labor Relations Authority (e.g. award is contrary to law).

BACK PAY. Pay awarded an employee for compensation lost due to an unjustified personnel action are governed by the requirements of the Back Pay Act, title 5, United States Code, section 5596.

BARGAINING (NEGOTIATING). A ubiquitous process--sometimes informal and spontaneous, sometimes formal and deliberate--of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context. Also defined as the performance of the mutual obligation of the representatives of the agency and union to meet at reasonable times, consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting bargaining unit employees and, upon request, to execute a written document. (Does not compel either party to agree to a proposal or make a concession)

BARGAINING AGENT. The union holding exclusive recognition for an **appropriate unit.**

BARGAINING IMPASSE (IMPASSE). When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by **Federal Mediation and Conciliation Service** mediators and the **Federal Service Impasses Panel** to help the parties settle impasses.

BARGAINING RIGHTS. Legally recognized right of the labor organization to represent employees in negotiations with employers.

BARGAINING UNIT. See **APPROPRIATE UNIT.**

BINDING ARBITRATION. The law requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

BROOKHAVEN WARNINGS. Even if the Union is notified that an Agency representative is going to interview a bargaining unit employee for an upcoming arbitration, and a Union representative attends this interview, this does NOT mean that "anything goes" as far as the manner of questioning. What the Agency may consider an "interview" from the Union perspective may be considered an "interrogation." The interview of the bargaining unit member should be voluntary and non-coercive. Brookhaven warnings are designed to minimize the potentially coercive impact of an Agency interview with an employee

BUDGET. A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

Appendix 4

BYPASS. Dealing directly with employees rather than with the **exclusive representative** regarding negotiable **conditions of employment** of bargaining unit employees. A bypass is a violation of the **Federal Service Labor-Management Relations Statute**. **CARVEOUT.** An attempt, usually unsuccessful under the **Federal Service Labor-Management Relations Statute** because it fosters unit fragmentation, to carve out (or sever)--usually along occupational lines (firefighters, nurses)--a subgroup of employees in an existing bargaining unit in order to establish a separate, more homogenous unit with a different union as **exclusive representative**.

CERTIFICATION. The FLRA's determination of the results of an election or the status of a union as the **exclusive representative** of all the employees in an appropriate unit.

CERTIFICATION BAR. One-year period after a union is certified as the **exclusive representative** for a unit during which petitions by rival unions or employees seeking to replace or remove the incumbent union will be considered untimely. The bar is designed to give the certified union an opportunity to negotiate a substantive agreement, after which the contract can become a bar, except during the contract's 105-60 day **open period**, to a representation petition. Also see **CONTRACT BAR** and **ELECTION BAR**.

CHALLENGED BALLOTS. Ballots that are challenged by election observers on the ground that the person casting the ballot isn't eligible to vote because, e.g., he or she is a **management official**, **supervisor**, **confidential employee** or engaged in **personnel work**. Challenged ballots usually are kept separate and if, after tallying the uncontested ballots, it is determined that there are enough challenged ballots to affect the outcome of the election, the Authority's agents will rule on each challenged ballot to see whether it should be counted.

CHECKOFF. See **DUES ALLOTMENT**.

CHIEF STEWARD. A union official who assists and guides shop stewards. The roles he or she plays within the union are determined by the union. The roles he or she plays in administering the contract are determined by the contract. For example, the **negotiated grievance procedure** may provide that the chief steward becomes the union representative if the grievance reaches a certain step in the grievance procedure.

CLARIFICATION OF UNIT PETITION. That portion of the FLRA's multipurpose petition *not* involving a **question concerning representation** that may be filed at any time in which the petitioner (union or management) asks the FLRA to determine the bargaining unit status of various employees--i.e., to determine whether they are management officials, supervisors, employees engaged in non-clerical personnel work, or confidential employees, and therefore excluded from the unit (and from the coverage of the collective bargaining agreement applicable to the unit and its negotiated grievance procedure).

COLLECTIVE BARGAINING. Literally, bargaining between and/or among representatives of collectivities (thus involving internal as well as external bargaining); but by custom the expression refers to bargaining between labor organizations and employers. **CIVIL SERVICE REFORM ACT OF 1978 (CSRA).** Legislation enacted in October 1978 for the purpose of improving the civil service. It includes the **Federal Service Labor-Management Relations Statute (FSLMRS)**, Chapter 71 of title 5 of the United States Code. Also known as Public Law 95-454 passed by the 95th Congress on October 13,

1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively, and participate through labor unions in decisions, which affect their working conditions. Title VII is codified at 5 U.S.C. Chapter 71.

CLASSIFICATION ACT EMPLOYEES. Federal employees--typically professional, administrative, technical, and clerical employees (i.e., "white collar" employees)--sometimes referred to a "General Schedule" employees, to distinguish them from Federal Wage System (blue collar, Wage Grade) employees.

COLLECTIVE BARGAINING OR NEGOTIATIONS. The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

COLLECTIVE BARGAINING AGREEMENT (CBA). See **AGREEMENT, NEGOTIATED.**

Appendix 4

COMPELLING NEED. Test used to determine whether a discretionary agency regulation that doesn't involve the exercise of management's is a valid limitation on the **scope of bargaining**. There are three "illustrative criteria" of compelling need: (1) the regulation is essential to the effective and efficient accomplishment of the mission of the agency, (2) the regulation is necessary to ensure the maintenance of basic merit principles, and (3) the regulation implements a mandate of law or other authority (e.g., a regulation) in an essentially non-discretionary manner.

CONCILIATION. See **MEDIATION.**

CONDITIONS OF EMPLOYMENT (COE). Under title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters -- (A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are *specifically provided for by Federal statute.*" (Emphasis added). It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute.

CONFIDENTIAL EMPLOYEE. An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations. Confidential employees must be excluded from bargaining units.

CONSULTATION. To be distinguished from **negotiation**. The FSLMRS provides for two types of consultation: between qualifying unions and agencies concerning agency-wide regulations and qualifying unions and those agencies issuing Government-wide regulations.

CONTRACT BAR. The incumbent union is protected from challenge by a rival union if there is an agreement in effect having a term of not more than three years, except during the agreement's **open period**--i.e., 105 to 60 days prior to the expiration of the agreement. See **ELECTION BAR** and **CERTIFICATION BAR.**

CONTRACTING OUT. A right reserved to management that includes the right to determine what criteria management will use to determine whether or not to contract out agency work.

"COVERED BY" DOCTRINE. A doctrine under which an agency does not have to engage in **midterm bargaining** on particular matters because those matters are already "covered by" the existing agreement. A defense to an allegation of a refusal to bargain, resulting agency initiated changes or union-initiated mid-term bargaining request. It applies when an agency proposes to take a specific action, or the union initiates a proposal, concerning a "condition of employment" but the agency refuses to negotiate with the union over the matter based on its belief that the matter has already been the subject of negotiations and is therefore covered by the parties' agreement. The Authority has defined "matter" as the general topic of dispute, rather than the more limited topic which may be the subject of the union's concerns over an agency action or the unions particular mid-contract proposal.

DECERTIFICATION. The FLRA's withdrawal of a union's **exclusive recognition** because the union no longer qualifies for such recognition, usually because it has lost a representational election.

DECERTIFICATION PETITION. A petition filed by employees in an existing unit (or an individual acting on their behalf) asking that an election be held to give unit employees an opportunity to end the incumbent union's exclusive recognition. Such a petition must be accompanied by a 30 per cent showing of interest and be timely filed (i.e., not barred by election, certification or contract bars).

DE MINIMIS. According to Black's Law is, of a fact or thing so insignificant that a court may overlook it in deciding an issue or case. The FLRA position of de minimis has long recognized that requiring agencies to bargain over every single management action, no matter how slight, would be impractical. Consequently, it has held that agencies are obligated to bargain over the impact and implementation of a management action only if the changes effected by that action will have more than a de minimis -- that is, more than a minimal -- effect on conditions of employment. SSA and AFGE, Local 1760, 24 FLRA 403. In determining whether a change is de minimis, the FLRA will consider the nature of the change and the extent to which it will impact bargaining unit employees. In applying this standard, keep the following FLRA pronouncements in mind:

1. The overall size of the bargaining unit is irrelevant.
2. The FLRA will consider the number of employees affected by the change, but this factor is not controlling.

Appendix 4

3. A change that has a major impact on just one employee will not automatically be considered de minimis.
4. The FLRA will take "equitable" considerations into account, such as the underlying reasons
5. for the change.
6. The duration of a change can be an important factor.
7. The point at which a change becomes more than de minimis can be difficult to ascertain, but, as the term implies, it doesn't take much. In short, it's unwise to assume that a change is de minimis without carefully considering exactly what's involved in it. And if there are any doubts whatsoever, case law demonstrates that agencies are better served by erring on the side of caution. When in doubt, assume a change is not de minimis.

DIRECT EMPLOYEES. The Authority has defined this right to include discretion "to supervise and guide [employees] . . . in the performance of their duties on the job." The right to direct, *by itself*, rarely is used as the basis for finding a proposal nonnegotiable. However, when combined with the right to assign work, it is the basis for finding proposals establishing performance standards nonnegotiable.

DISCIPLINE. A right reserved to management that the FLRA has said includes the right "to investigate to determine whether discipline is justified." It also "encompasses the use of the evidence obtained during the investigation."

DOCTRINE. A rule, principle, theory or tenet (fundamental principle) of the law; as e.g. Covered by Doctrine; Waiver Doctrine, Etc.

DUES ALLOTMENT (WITHHOLDING, CHECKOFF). Dues withholding services provided by the agency to unions that win exclusive recognition or dues withholding recognition. If the former, the services must be provided without charge to the union. Employee dues assignments must be voluntary (no union or agency shop arrangements permitted under the **Federal Service Labor-Management Relations Statute**) and may not be revoked except at yearly intervals or if a member becomes ineligible (i.e. promotion to supervisor, etc.), but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union.

DUES WITHHOLDING RECOGNITION. A very limited form of recognition, under which a union that can show that it has 10 per cent of employees in an appropriate unit as members can qualify for the right only to negotiate a dues deduction arrangement. Such recognition becomes null and void as soon as a union is certified as the **exclusive representative** of the unit.

DURATION CLAUSE (TERM OF AGREEMENT). Clause in a collective bargaining agreement that specifies the time period during which the agreement is in effect (normally three years). Where an agreement has a term greater than three years, the agreement serves as a contract bar only during the first three years.

DUTY OF FAIR REPRESENTATION. "An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

DUTY TO BARGAIN. Broadly conceived, it refers to both (1) the *circumstances* under which there is a duty to give notice and, upon request, engage in bargaining (see **MIDTERM BARGAINING**) and (2) the *negotiability* of specific proposals. Disputes over the former usually are processed through the Authority's **unfair labor practice procedure** and frequently involve make-whole and *status quo ante* remedies. Disputes over the latter usually are processed through the Authority's no-fault **negotiability procedure** in which the Authority determines whether or not there is a duty to bargain on the proposal at issue. Encompasses bargaining to the point of obtaining a CBA over on-going changes in working conditions (midterm) that are not clearly covered-by the collective bargaining agreement or previously waived by the union; and bargaining over matters initiated by a union before, during (midterm covered-by and waiver tests apply) or after the term of a CBA.

ELECTION AGREEMENT. Agreement entered into by the agency and the union(s) competing for exclusive recognition dealing with campaign procedures, election observers, date and hours of election, challenge ballot procedures, mail balloting (if used), position on the ballot, payroll period for voter eligibility, and the like. Such an agreement is subject to approval by the appropriate FLRA Regional Director.

Appendix 4

ELECTION BAR. One-year period after the FLRA has conducted a secret-ballot election for a unit of employees, where the election did not lead to the certification of a union as exclusive representative. During this one-year period the FLRA will not consider any representation petitions for that unit or any subdivisions thereof. See **CERTIFICATION BAR** and **CONTRACT BAR**.

EMPLOYEE. The term "employee" includes an individual "employed in an agency" or "whose employment in an agency has ceased because of any unfair labor practice," but does not include supervisors and management officials or anyone who participates in a strike or members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the United States.

EQUIVALENT STATUS. Status given a union challenging the incumbent union that entitles it to roughly equivalent access during the period preceding an election to facilities and services (bulletin boards, internal mail services, etc.) as that enjoyed by the incumbent union.

EXCEPTIONS TO ARBITRATION AWARDS. A claim that an arbitration award is deficient "on... grounds similar to those applied by Federal courts in private sector labor-management relations," or because it violates law, rule or regulation. Some of the "grounds similar to those applied by Federal courts" are: the award doesn't draw its essence from the agreement, the award is based on a non-fact, the arbitrator didn't conduct a fair hearing, or the arbitrator exceeded his/her authority. Under 5 U.S.C. 7122, either party to arbitration may file with the Federal Labor Relations Authority an exception (appeal) to an arbitrator's award because the award is 1) contrary to any law, rule or regulation; or 2) on other grounds similar to those applied by Federal courts in private sector labor-management relations (e.g., award does not draw its essence from the agreement; resolving issues not submitted to arbitration; granting remedy that exceeds claimed violation). The Authority will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C. 4303 and 5 U.S.C. 7512. See also 5 CFR Part 2425.

EXCESSIVE INTERFERENCE. A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable **appropriate arrangements**. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

EXCLUSIVE RECOGNITION. Under the **Federal Service Labor-Management Relations Statute**, exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a

union is accorded as a result of being certified as the **exclusive representative** of the employees in a bargaining unit include, among other things, the right to *negotiate* bargainable aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at *formal discussions*, to free *check-off* arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

EXCLUSIVE REPRESENTATIVE. The union that is certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the CSRA. See **EXCLUSIVE RECOGNITION**. A union holding exclusive recognition is sometimes referred to as the exclusive bargaining agent of the unit.

EXTERNAL LIMITATIONS ON THE EXERCISE OF MANAGEMENT'S RIGHTS. Discretion reserved to management isn't unfettered. Quite apart from any limitations that may be found in the collective bargaining agreement (such as an **appropriate arrangement** provision), its discretion must also be exercised in accordance with the laws and regulations that set limitations on management discretion. Only those external limitations on the exercise of certain rights can be enforced by the union under the **negotiated grievance procedure**. See **APPLICABLE LAWS**.

FAIR REPRESENTATION, DUTY OF. The union's duty to represent the interests of all unit employees without regard to union membership.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY). The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute (FSLMRS)**. As such, it decides, among other things, representation issues (e.g., the bargaining unit status of certain employees), **unfair labor practices** (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining** issues), **exceptions to arbitration awards**, as well as resolve disputes over consultation rights regarding agency-wide and Government-wide regulations. The FLRA maintains nine regional offices. Also see the FLRA web page at <http://www.flra.gov/>

Appendix 4

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS). An independent agency that provides mediators to assist the parties in negotiations. Although the bulk of its work is in the private sector, it also provides its services to the Federal sector. FMCS also maintains a roster of qualified private arbitrators, panels of which are referred to the parties upon joint request. See **MEDIATION**. Also see the FMCS webpage at <http://www.flra.gov/>

FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel). An entity within the FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. The Panel uses many procedures for resolving impasses, including fact-finding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. The Panel is empowered to "take whatever action is necessary and not inconsistent with [the Federal Service Labor-Management Relations Statute] to resolve the impasse." For more information on FSIP, see <http://www.flra.gov/>

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS). Title 5, United States Code, sections 7101 - 7135.

FINAL-OFFER INTEREST ARBITRATION. A technique for resolving bargaining impasses in which the arbitrator is forced to choose among the final positions of the parties--rather than order adoption of some intermediate position (i.e., "split the difference"). It can apply to individual items or "packages" of items. The theory is that each party, expecting that the interest arbitrator will pick the most reasonable of the two final offers, will have an incentive to move closer to the position of the other party in order to increase the odds that the arbitrator will select its final offer as the more reasonable of the two. This in turn narrows the gap between the parties. If the gap is narrow enough, it can be bridged by the parties themselves (by, e.g., splitting the difference).

FORMAL DISCUSSION. Under title 5, United States Code, section 7114(a)(2)(A), the **exclusive representative** must be given an 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*." (Italics added.) Under 5 U.S.C. 7114(a)(2)(A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.

FREE SPEECH. Under title 5, United States Code, section 7116(e), the expression of personal views or opinions, even if critical of the union, is not an **unfair labor practice** if such expression is not made in the context of a representational election and if it "contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions." During the conduct of an election, however, management officials must be neutral. This limited right of free speech applies to agency representatives.

FROLIC. employee was engaged in activities clearly unrelated to work. Factors to be considered include the purpose of the detour, whether it had a single or dual purpose; the relationship of the Government employee's activities during the frolic or detour to the official duties; how much time elapsed during the frolic or detour; and whether the Government employee was returning to the authorized route at the time of the incident

GENERAL COUNSEL. The General Counsel of the **Federal Labor Relations Authority** investigates **unfair labor practice** (ULP) charges and files and prosecutes ULP complaints. He/she also supervises the Authority's Regional Directors who, in turn, have been delegated authority by the FLRA to process representation petitioners.

GOOD FAITH BARGAINING. A statutory duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any **condition of employment**, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation. Also defined as: The overall behavior and effort on the part of an agency and union during the negotiations process. This includes the obligation on the part of an agency and union to: approach negotiations with a sincere resolve to reach agreement; send duly authorized representatives prepared to discuss and negotiated on any condition of employment; meet at reasonable times and convenient places as frequently as necessary and to avoid unnecessary delays; execute, upon request, a written document incorporating the agreed terms, and to take such steps as are necessary to implement the agreement. And in the case of an agency, to furnish to the union upon request and, to the extent not prohibited by law, data ---

1. Which is normally maintained in the regular course of business;

Appendix 4

2. Which is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; and,
3. Which does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

GOVERNMENTWIDE REGULATIONS. Regulations issued by an agency bearing on conditions of employment that must be complied with by other agencies. Such regulations are a major limitation on agency discretion and therefore on the **scope of bargaining**, which presupposes agency discretion. Agencies chiefly involved in issuing such regulations are the **Office of Personnel Management** (on personnel management) and the General Services Administration (on property management). See, also, **CONSULTATION**.

GRIEVANCE. Under title 5, United States Code, section 7103(a)(9), a grievance "means any complaint -- (A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning -- (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment."
GRIEVANCE ARBITRATION. See **ARBITRATOR**.

GRIEVANCE BAR. A claim by either party to a collective bargaining relationship that a statutory appeal was previously filed involving the same facts and theories alleged in a subsequently filed grievance.

GRIEVANCE PROCEDURE. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under title 5, United States Code, section 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration. Apart from matters that must by statute be excluded (such as grievances relating to retirement, health and life insurance and the classification of positions), the scope of the grievance procedure is to be negotiated by deciding what matters are to be excluded from an otherwise "full scope" procedure--i.e., a procedure that

covers all the matters mentioned in the statutory definition of "grievance." See **NEGOTIATED GRIEVANCE PROCEDURE**.

HIRE EMPLOYEES. A right reserved to management. The Authority has said that "the probationary period, including summary termination, constitutes an essential element of an agency's right to hire under [title 5, United States Code,] section 7106(a)(2)(A)."

See **SELECT** for a discussion of the much more frequently utilized right of management, in filling positions, to make selections for appointments from any appropriate source. The relationship between the right to hire and the right to select is still unclear.

IMPASSE. See **BARGAINING IMPASSE**.

I&I (IMPACT AND IMPLEMENTATION) BARGAINING. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on **procedures** that management will follow in implementing its protected decision as well as on **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining**.

INFORMATION. The union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see **PARTICULARIZED NEED**, below), to data "for full and proper discussion, understanding, and negotiation of subjects within the **scope of bargaining**." The agency must provide that information free of charge.

INTEREST. In **interest-based bargaining**, the concerns, needs, or desires behind an issue: *why* the issue is being raised.

INTEREST ARBITRATION. The arbitrator, instead of interpreting and applying the terms of an agreement to decide a grievance, determines what provisions the parties are to have in their collective bargaining agreement. Also see **ARBITRATION**.

INTEREST-BASED BARGAINING (IBB). A bargaining technique in which the parties start with (or at least focus on) interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate several alternatives that are consistent with their interests, and apply the agreed-upon acceptability criteria to the Appendix 4

alternatives so generated in order to arrive at mutually acceptable contract provisions. The success of the technique depends, in large measure, on mutual trust and a willingness to share information. But even where this is lacking, the technique, with its focus on interests and on developing alternatives, tends to make the parties more flexible and open to alternative solutions and thus increases the likelihood of agreement.

INTERNAL SECURITY PRACTICES. A right reserved to management by title 5, United States Code, section 7106(a)(1). The right to determine the internal security practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the agency's personnel.

INTERVENTION/INTERVENOR. The action taken by a competing labor organization (intervenor) to place itself as a contender on the ballot for a recognition election originally initiated by another union (petitioner). Non-incumbent intervenors need only produce a 10 per cent showing of interest to be included on the ballot.

INVESTIGATORY EXAMINATION. See **WEINGARTEN RIGHT**.

JENKS RULE. Even if it overcomes privileges, the rule is discretionary as to pre-testimony documents. You can always ask the witness if their testimony is based on any document. Likewise, at deposition you can ask about documents that might be relevant to the case generally. But asking, "describe for me each document that you reviewed in preparation for today's deposition" would be an objectionable question. *In short, the "JENKS RULE" is a rule permitting the production of a protected affidavit for purposes of cross examination.*

LABOR MANAGEMENT AGREEMENT (Collective bargaining agreement, Contract, Agreement) A written agreement between the Employer and the organization, usually for a definite term, defining conditions of employment,

rights of Employees and labor organizations, procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

LABOR ORGANIZATION. A union—i.e., an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment.

LAYOFF EMPLOYEES. Right reserved to management by title 5, United States Code, section 7106(a)(2)(A).

LUNCH PERIODS (Duty Free) Uninterrupted lunch period, where no work of any kind may be scheduled, unless mission requirements make an early recall to work necessary.

MANAGEMENT OFFICIAL. An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from **appropriate units**.

MANAGEMENT RIGHTS. Refers to types of discretion reserved to management officials by statute.

- **Core rights.** Consists of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency."

- **Operational rights.** Consists of the rights 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; to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; with respect to filling positions, to make selections for appointments from— among properly ranked and certified candidates for promotion; or any other appropriate source; and to take whatever actions may be necessary to carry out the agency mission during emergencies.

Appendix 4

- **Three exceptions.** The three title 5, United States Code, section 7106(b) exceptions to the above involve (1) **title 5, United States Code, section 7106(b)(1) permissive subjects** of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) **procedures** management will follow in exercising its reserved rights, and (C) **appropriate arrangements** for employees adversely affected by the exercise of management rights.

1. **"Permissive" subjects exception.** This exemption to management's rights "staffing patterns" — i.e., with "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" and with "the technology, methods, and means of performing work." Under the statute such matters are, moreover, negotiable "at the election of the agency" even if the proposal also directly interferes with the exercise of a title 5, United States Code, section 7106(a) right.

2. **Procedural "exception."** Title 5, United States Code, section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed "procedure" that "directly interferes" with a management right is not a procedure within the meaning of title 5, United States Code, section 7106(b)(2).

3. **Appropriate arrangement exception.** Title 5, United States Code, section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with management rights. If the interference is "excessive," the proposal isn't an "appropriate arrangement" and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights. To qualify as an "arrangement" to which it would be proper to apply the excessive interference balancing test, the proposal has to be "tailored" so that it applies only to those employees who would be adversely affected by the proposed management decision.

MANDATORY SUBJECTS OF BARGAINING. Those matters that the agency must bargain over upon receipt of a union's request, such as conditions of employment not otherwise waived by the union or covered by the parties' agreement.

MEDIATION. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet with them separately and, in effect, engage in interest-based bargaining with them. Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations.

MED-ARB (mediation followed by interest arbitration). A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails. The theory behind it is that the parties will be more receptive to the med-arb's suggestions for settlement if they know that the med-arb has authority to impose a settlement.

MERIT PRINCIPLES. Prohibited personnel practices and Merit Principles

Prohibited personnel practices means actions that are taken for reasons forbidden under law. They include unlawful discrimination; improper personnel solicitations and recommendations; coercing political activity; improperly influencing employment decisions; granting improper preferences in personnel decisions; appointing relatives improperly; retaliation against whistleblowers; retaliation for the exercise of appeal or grievance rights; discrimination on the basis of conduct which is not job-related; and violations of the merit system principles.

According to the nine merit systems principles outlined in 5 USC 2301(b), agencies must:

1. Recruit qualified individuals from all segments of society and select and advance employees on the basis of merit after fair and open competition.
2. Treat employees and applicants fairly and equitably, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age or disability.
3. Provide equal pay for equal work and reward excellent performance.
4. Maintain high standards of integrity, conduct and concern for the public interest.
5. Manage employees efficiently and effectively.

Appendix 4

6. Retain or separate employees on the basis of performance.
7. Educate and train employees when it will result in better organizational or individual performance.
8. Protect employees from improper political influence.
9. Protect employees against reprisal for the lawful disclosure of information in "whistleblower" situations when they disclose waste, fraud, abuse or illegal activities.

MIDTERM BARGAINING / NEGOTIATIONS. Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining – i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes **I&I bargaining**, **union-initiated midterm bargaining on new matters**; and bargaining pursuant to a **reopener** clause. It excludes matters that are already "**covered by**" the term agreement.

MISSION OF THE AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

NATIONAL CONSULTATION RIGHTS (NCR). A union accorded national consultation rights is entitled to be consulted on *agency-wide* regulations before they are promulgated. NCR is to be distinguished from consultation rights with respect to

Government-wide regulations, under which a union accorded such recognition must be consulted on proposed Government-wide regulations before they are promulgated.

NATIONAL UNION. Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of employees.

NEGOTIABILITY. Refers to whether a given topic is subject to bargaining between an agency and the union. The Federal Labor Relations Authority makes the final decision whether a subject is negotiable or nonnegotiable.

NEGOTIABILITY APPEAL (PETITION FOR REVIEW). If an agency believes that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may inform the union of its refusal to negotiate. 5 U.S.C. 7117 provides a right to appeal the agency's determination of non-negotiability to the FLRA.

NEGOTIABILITY DETERMINATION. A decision reached by the Federal Labor Relations Authority on a request for expedited review of negotiability issues. Unions in disputes with agencies concerning what matters may be collectively bargained may file negotiability appeals, technically called petitions for review. A negotiability determination may be rendered when an agency claims a matter is non-negotiable or there is no duty to bargain. Matters that involve such allegations that do not involve the actual or contemplated changes in working conditions can only be filed under the negotiability appeal procedure.

NEGOTIABILITY DISPUTES. Disputes over whether a proposal is nonnegotiable because (a) it is inconsistent with laws, rules, and regulations establishing conditions of employment and/or (b) it interferes with the exercise of rights reserved to management. Negotiability disputes normally are processed under the FLRA's "no fault" negotiability procedures

NEGOTIATED GRIEVANCE PROCEDURE (NGP). A collective bargaining agreement (CBA) must contain a grievance procedure terminating in final and binding arbitration. The NGP, with a few exceptions involving statutory alternatives (e.g., adverse and performance-based actions), is the exclusive administrative procedure for grievances falling within its coverage. Apart from the matters excluded from the coverage of the NGP by statute – e.g., retirement, life and health insurance, classification of positions – the NGP covers those matters specified in the definition of grievance in title 5, United States Code, section 7103(a)(9) (see **GRIEVANCE**, above), minus any of those matters that the parties agree to exclude from the NGP. That is, under the FSLMRS program, the parties negotiate to determine what matters to *exclude* from the procedure rather than what matters it is to *include*--just the opposite from pre-FSLMRS and private sector practices. A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The negotiated grievance procedure is applicable only to employees in the bargaining unit. The scope of the negotiated grievance procedure is negotiated by the parties and may include certain matters for which a statutory appeal procedure exists, unless the parties negotiate their exclusion. Several matters **cannot** be included under its scope: 1) actions taken for violations of the Hatch Act; 2) retirement, life insurance or health insurance; 3) a suspension or removal taken in the interest of national security; 4) any examination, certification, or appointment; or 5) the classification of any position which does not result in the reduction in grade or pay of an employee. 5 U.S.C. 7121 requires the inclusion of a negotiated

Appendix 4

grievance procedure in all agreements and requires binding arbitration as the final step of the negotiated grievance procedure.

NEGOTIATION IMPASSE. If there are no disputes over the essential obligations of bargaining, assuming the parties' have bargaining in good faith but unsuccessfully over a negotiable proposal, it is point where the parties are unable to reach an agreement.

NON-NEGOTIABLE. A term used to indicate the subject matter of a management change does not concern a condition of employment for affected employees, is a reserved management right or because the matter is permissively negotiable and the agency has elected not to bargain. Additionally, the term applies to a union proposal that does not concern a condition of employment for affected employees, is in conflict with law, Government-wide rule or regulation or excessively interferes with a reserved management right.

NO-DUTY TO BARGAIN. A term used to indicate the subject matter of a management change or union initiated proposal involves a condition of employment for affected employees that has been previously waived by the union or is covered by the parties' collective bargaining agreement.

NUMBER OF EMPLOYEES OF AN AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). There have been no FLRA decisions in which a proposal has been found nonnegotiable because it interfered with this right.

OBJECTIONS TO ELECTION. Charges filed with the FLRA contesting election results because of alleged irregularities in the conduct of a representational election. If the objections are sustained, the FLRA could set aside the election results and order that the election be rerun.

OBLIGATION TO BARGAIN. The right to bargain is affirmative; if management does nothing, the union may require negotiations over working conditions. The right to bargain is also responsive; when management changes working conditions, the changes may lead to negotiations. That obligation is fulfilled through negotiations leading to a basic agreement, mid-term bargaining, and bargaining over impact and implementation decisions made within the ambit of management rights. In order to meet this obligation, management has the duty to give the exclusive bargaining representative advance notice of the proposed implementation of decisions and provide the union with an opportunity to participate in impact and implementation bargaining. The union must then act if it is to act at all.

OFFICE OF PERSONNEL MANAGEMENT (OPM). Issues **Government-wide regulations** on personnel matters that may have a substantial impact on the **scope of bargaining**; consults with labor organizations on those regulations; provides technical advice and assistance on labor-management relations matters to Federal agencies; also provides information on personnel matters to Federal agencies and the general public (e.g., this annotated glossary); exercises oversight with regard to statutory and regulatory requirements relating to personnel matters; and provides support services for the National Partnership Council.

OFFICIAL TIME. At one time treated as a term of art created by title 5, United States Code, section 7131, involving paid time for employees serving as union representatives. However, the Authority has said that section 7131(d) does not preclude parties to a collective bargaining agreement from agreeing to provide official time for other matters; that is, matters other than those relating to labor-management relations activities.

Union negotiators (no more than the number of management negotiators) who also are unit employees are statutorily entitled to official time to negotiate agreements. Official time may not, however, be used to perform internal union business. Title 5, United States Code, section 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

OPEN PERIOD. The 45-day period (105 - 60 days prior to expiration of agreement) when the union holding exclusive recognition is subject to challenge by a rival union or by unit employees who no longer want to be represented by the union. The open period is an exception to the **contract bar** rule.

OPM. Refers to the Office of Personnel Management (OPM). OPM supports Government program managers in their personnel management responsibilities through a range of programs. This includes administering or requiring a merit system for Federal employment; providing services related to retirement, health benefits and life insurance benefits for federal employees.

ORGANIZATION. A right reserved to management. According to the FLRA, this right encompasses an agency's authority to determine its administrative and functional structure, including the relationship of personnel through lines of control and Appendix 4

the distribution of responsibilities for delegated and assigned duties. That is, the right includes the authority to determine how the agency will structure itself to accomplish its mission and functions.

ORGANIZATION (Union) – Refers to Labor organization i.e., Association of Civilian Technicians, Inc., (ACT Arizona Army Chapter #61)

OPPOSITION TO EXCEPTION TO ARBITRATION AWARD. If a party files an exception (appeal) to an arbitrator's award, the other party may oppose the exception to the Authority in accordance with 5 CFR 2425.1. Oppositions to exceptions must be filed within thirty (30) days after the date of service of the exception.

PACKAGE BARGAINING. A negotiating technique whereby contract proposals are grouped into a "package" usually offering substantial concessions by one party, in exchange for substantial gains. Frequently, the package proposal will be advanced with the condition that it must either be accepted as presented or rejected entirely.

PANEL. See **FEDERAL SERVICE IMPASSES PANEL.**

PARTICULARIZED NEED. The Authority's analytical approach in dealing with union requests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is an **unfair labor practice**.

PARTNERSHIP. A form of employee participation established pursuant to Executive Order 12871 in which the parties are expected to deal with matters relating to improving *the performance of the agency* in a non-adversarial, non-litigious manner. The scope of partnership deliberations are broader than those of collective bargaining in that they usually include, e.g., deliberations over the conditions of employment of non-bargaining unit employees. Partnership deliberations also include deliberations over staffing patterns, technology, methods and means--matters integral to improving agency performance, which is the overriding purpose of the Order.

When President Bush signed Executive Order 13203 rescinding 12871, there was speculation that it meant the end of labor-management cooperation and communication in the Federal Government. The President was motivated by his conviction that partnership is not something that should be mandated for every agency in every situation. But while agencies are no longer required to form partnerships with their unions, they are strongly encouraged to establish cooperative labor-management relations. Cooperation between labor and management can enhance effectiveness and efficiency, cut down the number of employment-related disputes, and improve working conditions, all of which contribute to the kind of performance and results sought by the President. This will demand management and union leaders who trust each other, who are open and honest with each other, who respect the different interests that each party brings to the table and build on the interests they share.

PAST PRACTICE (ESTABLISHED PRACTICE). Existing practices sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the **negotiated grievance procedure** because they are considered part of the agreement. To qualify as an enforceable established practice, the practice has to be legal, in effect for a certain period, and known and sanctioned by management. Existing practices sanctioned by use and acceptance, which amount to terms and conditions of employment even though not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it must be established that (1) the practice must involve a condition of employment; and (2) the practice must be consistently exercised for an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration. It should be noted that if a matter is not a condition of employment, it does not become a condition of employment either through practice or agreement.

PERFORMANCE STANDARDS A description of the level of performance/achievement to achieve a fully acceptable performance of the duties and responsibilities of the position.

PERMISSIVE SUBJECTS OF BARGAINING. There are two types of proposals dealing with so-called "permissive subjects of bargaining": proposals dealing with (1) matters covered by title 5, United States Code, section 7106(b)(1) -- i.e., with staffing patterns, technology, and methods and means of performing the agency's work, and (2) matters that are not conditions of employment of bargaining unit employees. Regarding the former, it should be noted that although an agency can "elect" not to bargain on a (b)(1) matter, the President has directed heads of agencies to instruct agency management to bargain on such matters in section 2(d) of Executive Order 12871 -- This directive was rescinded by Executive Order 13203. Regarding the latter, it should be kept in mind that, apart from the statutory exclusions from the definition of **condition of employment** found in title 5, United States Code, section 7103(a)(14), a matter may be found Appendix 4

not be a condition of employment because (1) it deals with the conditions of employment of *non-unit employees* (e.g., a proposed procedure for filling supervisory vacancies) or (2) there is no direct connection between the matter dealt with by the proposal and the work situation or employment relationship of bargaining unit employees (e.g., a proposal authorizing unit employees to hunt on a military base when off duty). Regardless of type, once agreement is reached on a permissive subject of bargaining, that agreement cannot be disapproved by the agency head, and is enforceable under the negotiated grievance procedure.

PERSONNEL BY WHICH AGENCY OPERATIONS ARE CONDUCTED. A right reserved to management by title 5, United States Code, section 7106(a)(2)(B).

PICKETING. Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. This is commonly called **Informational Picketing** and is directed toward advising the public about the issue in dispute. This is specifically protected by 5 U.S.C. 7116(b) so long as the picketing does not interfere with agency

operations. This is not to be confused with a "strike" as Federal employees are not permitted to strike under Federal law. Informational picketing may only be conducted outside an employee's established duty hours or the employee must be in an approved leave status.

PROCEDURES. Under title 5, United States Code, section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable.

To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

PROHIBITED PERSONNEL PRACTICES (SEE MERIT PRINCIPLES)

PROHIBITED SUBJECTS OF BARGAINING. Includes those matters reserved as management rights pursuant to 5 USC 7106(a).

QUALIFIED APPLICANT An applicant for a vacant/advertised position who, using established staffing procedures, is able to meet minimum qualification of the position.

QUESTION CONCERNING REPRESENTATION (QCR). Refers to a petition in which a union seeks to be the **exclusive representative** of an **appropriate unit** of employees, or in which employees in an existing unit want to decertify the incumbent union. The filing of such a petition is said to raise a question concerning representation--i.e., whether, and by whom, unit employees are to be represented. Such petitions are distinguished from petitions seeking to clarify the composition of existing units (e.g., whether certain individuals are in or out of the unit) or to amend the names of the parties to the exclusive bargaining relationship.

RATIFICATION. Formal approval of a newly negotiated agreement by vote of the labor organization members affected.

REOPENER CLAUSE. Provisions in the CBA specifying the conditions under which one or either party can reopen for renegotiation the agreement or designated parts of the agreement. Although some agreements provide for mutual consent reopeners, such reopeners are unnecessary as the parties can of course agree to reopen and renegotiate their agreement at any time, notwithstanding the contents of the agreement. The purpose of a reopener is to enable one party to *compel* the other party to renegotiate the provisions covered by the reopener.

REPRESENTATION ELECTION. Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their **EXCLUSIVE REPRESENTATIVE**.

REPRESENTATIONAL FUNCTIONS. Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership council meetings, being present at **formal discussions** and, upon employee request, *Weingarten* examinations.

REPRESENTATION ISSUES. Issues related to how a union gains or loses **exclusive recognition** for a bargaining unit, determining whether a proposed unit of employees is appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

REPUDIATION OF AGREEMENT. Framework developed by the FLRA to determine whether (1) the breach of the agreement was clear and patent and (2) the provision breached went to the heart of the agreement.

Appendix 4

RETAIN EMPLOYEES. A right reserved to management. Although the rights to layoff and retain appear to be opposite sides of the same coin, the FLRA rarely mentions the right to retain when invoking the right to layoff to find nonnegotiable proposals dealing with RIF's and furloughs.

REVIEWER (Performance Appraisals) Normally the technician's second level supervisor in the (supervisory) chain of command. The appraiser will consult with the reviewer prior to discussing the rating with the technician and obtain the reviewer's concurrence and signature, and then present the rating to the technician for signature.

SCOPE OF BARGAINING. Matters about which the parties can negotiate. See **NEGOTIABILITY DISPUTES**.

SELECT (WITH RESPECT TO FILLING POSITIONS). The statute reserves to management the right to make selections for appointments from any appropriate source. The right to select includes discretion to determine what knowledge, skills and abilities are necessary for successful performance in the position to be filled, as well as to determine which candidates possess these qualifications.

SENIORITY. Term used to designate an employee's status relative to other employees for determining order of overtime assignments (n/a to National Guard Technicians), compensatory time assignments, vacations, etc. Straight seniority is seniority acquired solely through length of service. Departmental or shop seniority considers status factors in a particular department or shop, rather than the entire agency. A seniority list is a ranking of individual workers in order of seniority.

SHOWING OF INTEREST (SOI). The required evidence of employee interest supporting a representation petition. The SOI is 30 per cent for a petition seeking exclusive recognition; 10 per cent to intervene in the election; and 10 per cent when petitioning for dues allotment recognition. Evidence of such a showing can consist of, e.g., signed and dated authorization cards or petitions.

STAFFING PATTERNS. A short-hand expression used to refer to title 5, United States Code, section 7106(b)(1)'s long-winded reference to "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty." Under the statute, agencies can elect not to bargain on such matters.

STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS. Standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union must adhere to qualify for recognition. The Department of Labor has responsibility for making known and enforcing standards of conduct for unions in the Federal and private sectors.

STEWARD (SHOP, UNION, AREA). Union representative in an organization to whom the union assigns various representational functions, such as investigating and processing grievances, representing employees, collecting dues, soliciting new members, etc. Stewards are usually fellow employees who are trained by the union to carry out these duties.

STRIKE (PROHIBITED BY STATUTE). A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are specifically prohibited by Federal law and constitute an unfair labor practice under Section 7116(b)(7) of the Federal Service Labor-Management Relations Statute. Slowdowns, sickouts and related tactics are also prohibited by the Statute.

SUBSTANCE BARGAINING. This concerns bargaining over whether an action by the agency to change to conditions of employment affecting employee working conditions will or will not be made. Substance bargaining rather than impact and implementation bargaining is required anytime the subject matter involves a condition of employment. When an agency has discretion under the law to change or not change employee working conditions, any bargaining concerning whether the change will be made requires substance bargaining (e.g. over the decision itself or over the procedures or appropriate arrangements concerning a decision already made if the matter concerns a management rights or is not a condition of employment).

SUCCESSORSHIP. Where, as the result of a reorganization, a portion of an existing unit is transferred to a gaining employer, the latter will be found to be the successor employer (thus inheriting, along with the employees, the **exclusive representative** of those employees and the collective bargaining agreement that applied to those employees) if: (a) the post-transfer unit is appropriate, (b) the transferred bargaining unit employees are a majority in the post-transfer unit, (c) the gaining employer has "substantially" the same mission as the losing employer, (d) the transferred employees perform "substantially" the same duties under "substantially" similar working conditions in the gaining entity, and (e) it is not demonstrated that an election is necessary to determine representation.

Appendix 4

SUPERVISOR. Under title 5, United States Code, section 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]" The individual need exercise only one of the indicia of supervisory authority, not a majority of them, to qualify as a supervisor for the purposes of the statute, provided it involves the consistent exercise of independent judgment.

UNFAIR LABOR PRACTICE (ULP). A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. It is a term of art that is narrower in scope than the misleading adjective "unfair" suggests. ULP charges are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP *complaint* if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a fact-finding hearing and before the Authority, which decides the matter. The most common agency ULPs are **duty-to-bargain** ULPs (usually a failure to give the union notice of proposed changes in conditions of employment and/or engage in impact and implementation bargaining), **formal discussion** ULPs, **Weingarten** ULPs, and **failure-to-provide-information** ULPs. The most common ULP committed by a union is a failure to fairly represent (see **fair representation**) all unit members without regard to union membership.

ULP BAR. A claim by either party to a collective bargaining relationship that a grievance was previously filed involving the same facts and theories alleged in a subsequently filed ULP.

UNILATERAL ACTION. Implementation of management decisions concerning personnel policies and matters affecting working conditions without providing the union advance notice of such changes in working conditions and an opportunity to negotiate to the extent permitted by law.

UNION. A labor organization "composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment..." Association of Civilian Technicians, Inc., ACT Arizona Army Chapter #61

UNION-INITIATED MIDTERM BARGAINING ON NEW MATTERS. Absent a bargaining waiver, the union has the right to initiate, during the life of the existing agreement, bargaining on matters not "**covered by**" the agreement. There is a split in the circuits, which the Supreme Court has agreed to resolve, regarding this statutory right, with the D.C. Circuit holding that the union has such a right (see *NTEU v. FLRA*, 810 F.2d 295 (D.C. Cir. 1987), and the Fourth Circuit holding that it does not (see *SSA v. FLRA*, 956 F.2d 1280 (4th Cir. 1992). Also see *Dept. of Energy v. FLRA*, Nos. 95-2949 and -3113 (4th Cir. Feb. 13, 1997), where the 4th Circuit went further and held that the FSLMRS *prohibits* such bargaining; consequently, such a right could not be established by collective bargaining agreement.

UNIT. See **APPROPRIATE UNIT.**

UNIT CONSOLIDATION. A no-risk procedure for combining existing units into one or more larger appropriate units.

UNIT DETERMINATION ELECTION. When (a) several petitioners seek to represent different parts of an agency, (b) the proposed units overlap, and (c) the FLRA finds that more than one of the proposed units are appropriate, it lets the employees vote for units as well as unions.

WAIVER. An agreement reached between union and management whereby one party voluntarily gives up rights afforded to it. For waivers to be enforceable, they must be "clear and unmistakable." It should be noted that management cannot waive rights afforded to management under 5 U.S.C. 7106(a).

WAIVER DOCTRINE. A waiver of bargaining rights may be established by an expressed agreement or bargaining history. Further, any such waiver must be clear and unmistakable.

- **Expressed Agreement** - A union may contractually agree to waive its right to initiate bargaining in general by a "zipper clause," that is, a clause intended to waive the obligation to bargain during the term of the agreement on matters not contained in the agreement or by specifying a particular subject matter that is precluded from further bargaining during the term of the agreement.

- **Clear and Unmistakable** - A waiver may also be evidenced by bargaining history when the subject of mid-term bargaining concerns matters which were discussed in contract negotiations but which were not specifically covered in the resulting contract. In this category, waiver may be found where the subject matter of the proposal offered by the union Appendix 4

during mid-term negotiations was fully discussed and explored by the parties at the bargaining table. For example, where a union sought to bargain over a subject matter but later withdrew its proposal in exchange for another provision, a waiver of the union's right to bargain over the subject matter that was withdrawn would be found. The particular words of proposals offered during contract and mid-term negotiations need not be identical for a waiver to exist. In determining whether a contract provision constitutes a clear and unmistakable waiver, the Authority examines the wording of the provision at issue as well as other relevant provisions of the contract, bargaining history, and past practice.

WEINGARTEN RIGHT / EXAMINATIONS. Under title 5, United States Code, section 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to union representation if:

- (1) the examination is conducted by a representative of the agency,
- (2) the employee reasonably believes that the examination may result in disciplinary action, and
- (3) the employees asks for representation.

Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right. Each agency has the obligation to post Weingarten rights annually either through common bulletin boards or web posting through a commonly accessed employee web page. Also defined as a *Weingarten Meeting* whereby an exclusive representative "shall be given the opportunity to be represented at any examination" of a unit employee by an agency representative in connection with an investigation if the employee reasonably believes that discipline may result from the examination and requests representation. An employee who is questioned during an investigatory examination that may result in discipline "may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. Thus, the union representative must be free to help clarify the issues or facts, or to suggest other employees who may have knowledge of them.

WORK STOPPAGE CONTINGENCY PLAN. IAW 5 USC 7116(b)(7), it shall be an unfair labor practice for a labor organization to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or to condone any activity by failing to take action to prevent or stop such activity. This statute prohibits Federal employees from striking against the Government of the United States. Employees can be disciplined for engaging in such action. Informational picketing, which does not disrupt Agency operations or prevent public access to a facility, is not prohibited. The agency headquarters shall be immediately notified when prohibited acts take place. All states should have a Work Stoppage Contingency Plan. This plan is for official use only and is available on a need-to-know basis to those individuals directly involved in developing or implementing it. Review and update the plan biennially and, following any concerted activity, revise as needed.

WORKING CONDITIONS. The existing environment in which employees perform their duties. This includes such things as access to and from the facility, beginning at the entrance to the grounds, the type of equipment used and surroundings they are accustomed to (e.g. ceilings, walls, paint, carpet, temperature, lighting, services such as coffee, popcorn, and snacks, rules, relations and procedures relating to any employee activity, rights or benefit (e.g. schedules, breaks, training, discipline, conduct and performance standard, attire, parking, entertainment), etc. Any action taken which changes a right, benefit, privilege, etc. currently enjoyed by employees is a change in working conditions. However, changes in working conditions may or may not be subject to negotiation. See Conditions or Employment.

ZIPPER CLAUSE. An agreement provision specifically barring any attempt to reopen negotiations during the terms of the agreement. [For a related term, see **Reopening Clause**.

Appendix 5

CURRENT LISTING OF REGULATIONS, DEMA DIRECTIVES & RESOURCES

Technician Personnel Regulation (TPR) applies to all Army and Air National Guard Technicians, Managers and Supervisors (military or civilian). These regulations meet Federal and Department of Defense (DoD) requirements as cited in Title 5, United States Code. Current versions of the TPRs can be found at

<http://www.ngbpd.c.ngb.army.mil/pubs/TPR/tpprpage.htm>

<u>TPR 100</u>	<u>Dec 97</u>	<u>The Technician Personnel Publications System</u>
<u>TPR 200</u>	<u>Feb 83</u>	<u>Technician Personnel Regulation 200 Incl Changes 1-4</u>
<u>TPR 300</u>	<u>Nov 79</u>	<u>Merit Placement for National Guard Technician - Incl Changes 1-10 (1 July 1991)</u>
<u>TPR 300 (351)</u>	<u>Nov 93</u>	<u>Reorganizations, Realignment, and Reduction in Force</u>
<u>TPR 303</u>	<u>Aug 05</u>	<u>Military Technician Compatibility</u>
<u>TPR 400</u>	<u>Sep 07</u>	<u>The Technician Human Resources Development Program</u>
<u>TPR 430</u>	<u>Nov 09</u>	<u>Appraisal Program</u>
<u>TPR 451</u>	<u>Dec 98</u>	<u>Awards Program</u>
<u>TPR 511</u>	<u>Jun 07</u>	<u>Classification and Workforce Management</u>
<u>TPR 630</u>	<u>Aug 10</u>	<u>Absence and Leave Program</u>
<u>TPR 700</u>	<u>Aug 82</u>	<u>Technician Personnel Regulation 700 - Incl Changes 1-4</u>
<u>TPR 715</u>	<u>Jul 07</u>	<u>Voluntary and Non-Disciplinary Actions</u>
<u>TPR 752</u>	<u>Aug 10</u>	<u>Discipline and Adverse Action</u>
<u>TPR 752-1</u>	<u>Aug 10</u>	<u>Adverse Action Appeals and the National Guard Hearing Examiner Program</u>
<u>TPR 792</u>	<u>Feb 11</u>	<u>Alcoholism and Drug Abuse Program</u>
<u>TPR 800</u>	<u>Jun 85</u>	<u>Federal Employee's Compensation Act (FECA)</u>
<u>TPR 990-2</u>	<u>Jul 84</u>	<u>Hours of Duty, Pay, and Leave - Incl Changes 1-2</u>

Appendix 5

CURRENT LISTING OF REGULATIONS, DEMA DIRECTIVES & RESOURCES

AZNG Reg. 20-3	Retention & Separation for Army & Air NG	19 Jan 2000
www.azdema.gov/sa/publications/regulations/azng_regulations.html		
DEMA Directive 25.1	Technician Incentive Awards Plan	1 Feb 1998
www.azdema.gov/sa/publications/directives/index.html		
DEMA Directive 25.2	Technician Assistance Program	10 Dec 1996
www.azdema.gov/sa/publications/directives/index.html		
DEMA Directive 25.3	Technician Performance Appraisal Plan	1 Feb 1998
www.azdema.gov/sa/publications/directives/index.html		
DEMA Directive 25.4	Alternative Dispute Resolution Program	15 May 1998
www.azdema.gov/sa/publications/directives/index.html		
DEMA Directive 25.5	Environmental Differential & Hazard Pay	July 01
www.azdema.gov/sa/publications/directives/index.html		
DEMA Directive 25.6	Merit Placement Plan	15 May 2009
www.azdema.gov/sa/publications/directives/index.html		
Federal Wage Supervisors (FWS) Job Grading for Supervisors (OPM)		
www.opm.gov/fedclass/fwssupv.pdf		
General Schedule (GS) Supervisory Guide (OPM)		
www.opm.gov/fedclass/gssg.pdf		
Annual NGB Human Resources Manpower Voucher		HRO Office
Guide to Recruitment & Retention Tools for NG Technicians (Oct 2000)		HRO Office
A Handbook for Measuring Employee Performance: Aligning Employee		HRO Office
HRO Office		
NGB Blue Book for Unit Manning		HRO Office
HRO Office		
Position Management Handbook for Supervisors		HRO Office
HRO Office		