

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

ARMY CORP OF ENGINEERS, GALVESTON
DISTRICT

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 0033

Case No. 20 FSIP 019

DECISION AND ORDER

This case concerns a request for Panel assistance in resolving a bargaining impasse between the United States Army Corps of Engineers, Galveston (Agency) and the American Federation of Government Employees, Local 0033 (Union) over the successor Collective Bargaining Agreement (CBA). This dispute was filed by the Agency pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). The Federal Service Impasses Panel (Panel or FSIP) determined, under 5 C.F.R. §2471.6 (a) of its regulations, to assert jurisdiction over all of the provisions except those provisions that may be permissive and ordered the parties to resolve the impasse through Written Submissions.

BARGAINING AND PROCEDURAL HISTORY

The United States Army Corps of Engineers (USACE) is a major command center under the Department of the Army, responsible for managing and performing various engineering and construction contracts. It has four Engineer Centers and nine Engineer Divisions, with each Division having four to seven subordinate Districts. The Galveston District falls under USACE's Southwestern Division, which is located in Dallas, Texas. Galveston's mission is to provide contracting support to USACE Galveston District's main projects, which are mostly related to navigation and include such projects as dredging, constructing flood control works, and responding to natural

disasters along the arc of the Texas Gulf coast. The parties were covered by a collective bargaining agreement (CBA), executed on June 14, 1993 and expired on May 1, 2019. There was no agreement or understanding between the parties about roll over, but the terms continued to rollover by past practice.

The Agency filed their original request for FSIP assistance in June 2019 (FSIP Case No. 19051). That filing occurred after the parties negotiated for 31 days (155 hours in total) with the assistance of the Federal Mediation and Conciliation Services (FMCS). The parties remained at impasse over some 20 articles. During the initial engagement with the Panel in Case No. 19051, the parties agreed to return to the bargaining table, with the assistance of FMCS for additional bargaining over articles that were barely discussed during the initial bargaining. Pursuant to a July 2019-settlement agreement, the parties agreed to return to mediation for a period of 45-days. Under the terms of the settlement, the parties would bargain between August 2019 and October 2019. If progress was being made, the parties would extend the mediation up to 30 additional days by mutual agreement. If not, either party or both parties could file a new request for Panel assistance.

The Agency filed this request for assistance in December 2019. In its filing, the Agency indicated that the parties remain in dispute over 12 articles. The Panel declined to assert jurisdiction over those Agency proposals that may force the Union to waive its statutory rights. The Panel asserted jurisdiction over the negotiation impasse of the remaining 12 matters within the Successor CBA (except those Agency provisions that may force the Union to waive its statutory rights):

1. Employee Rights
2. Grievances
3. Purpose
4. Merit Systems
5. Arbitration
6. Negotiations
7. Contracting Out
8. Taxpayer Funded Union Time / Official Time
9. Duration
10. Overtime
11. Furloughs
12. VERA/VSIP

The Panel ordered the parties to resolve the impasse over the 12 matters through Written Submissions. Both parties met the requirements of the order.

PARTIES ARGUMENTS AND PANEL DECISIONS

The referenced Parties' proposals and Panel ordered language are attached in the side-by-side spreadsheet.

1. Employee Rights

Section 1 – Right to engage with the Union

The Statute provides rights to federal employees to engage with their Union, as well as serve as a representative of the Union. Both Parties offered incomplete language from the Statute. An employee's right under the Statute is not waived by the Parties' incomplete contract language. The incomplete language will only serve to confuse or misinform employees of what their full rights would be under the Statute. The Panel orders the Parties to adopt the actual Statutory language, without modification.

Section 2 - Right to Union Representation

Much of the Parties' language in section A is the same, except the closing. Parties may define in their contract how they will exercise and implement their statutory rights to representation. The Union proposed that the Official time procedure be exercised consistent with the Official time article (also an article before the Panel). Additionally, the Union provided that if the Official time is reasonable and there are no "work situations" that prohibit the employees release, the employee will be released as requested. The Agency simply proposed that the supervisors are encourage to respond to the request timely (with no commitment to actual release).

The Panel has determined that the procedure for requesting official time will be addressed in the language ordered in the Official Time Article. The Panel also orders that the Agency be required to provide a timely, written response to the Union's request, including an offer on the earliest time that the employee will be permitted release to contact their Union representative. Otherwise, the Panel orders that the agreeable language be adopted by the Parties.

In 1975, the United States Supreme Court, in the case of NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), upheld a National Labor Relations Board decision that employees have a right to union representation at investigatory interviews. The Federal Service Labor-Management Relations Statute codified these *Weingarten Rights* in 5 USC Chapter 71 at 7114(a)(2)(B), including the requirement that the Agency annually notify employees of these rights at 7114(a)(3). Under Section 7114(a)(2)(B) of the Statute, a Union representative must be given the opportunity to be represented at any examination of a bargaining unit employee. In order for the section 7114(a)(2)(B) investigatory examination right to exist, the Supreme Court ruled that the following rules apply:

Rule 1 - The employee must make a clear request for union representation before

or during the interview. The employee cannot be punished for making this request.

Rule 2 - After the employee makes the request, the employer must choose from among three options:

- Grant the request and delay questioning until the union representative arrives and (prior to the interview continuing) the representative has a chance to consult privately with the employee;
- Deny the request and end the interview immediately; or
- Give the employee a clear choice between having the interview without representation, or ending the interview.

Rule 3 - If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

Section D of the Union's proposal deals with investigatory interviews. In addition to codifying the employees' *Weingarten Rights* in the CBA, the Union goes further by requiring that the Agency end the questioning of the employee until the Union representative is present and requiring that the Agency inform the Union representative of the subject matter of the questioning. The Panel orders the Parties to adopt language that codifies the *Weingarten Rights*, without additional requirements.

Section 3 - Personal Rights

In Section 3, the Union identified a number of personal rights that they would like employees to be aware of. Most of the rights listed are otherwise covered by various statutes that the Agency is obligated to adhere to in the workplace. For example, Section 3.1 prohibits discrimination based upon race, color, religion, sex (including gender identity or pregnancy), national origin, sexual orientation, disability, political affiliation, marital status, membership in an employee organization, age, or other non-merit factors. These matters are addressed in various EEO laws. Some of the provisions address workplace dignity issues (e.g., privacy in performance discussions, serving subpoenas), which are more often addressed in Codes of Conduct and Ethics regulations. By making these rights not only legal rights, but also contract rights, the Union is attempting to use this venue (i.e. the CBA) as a means of enforcing conduct, including violations by supervisors. Other provisions address constitutional rights of employees (e.g., the Right to Free Speech) and rights with regard to denying unlawful orders (i.e., Oath of Office and 5 USC 2302(b) (9)(D))¹. Some of the Union's proposals go beyond that which is required by law. For example, Section 3.5. proposes that an employee has the right to respectively state the employee's belief, without reprisal. While some speech is legally protected, others is not. This provision provides cover that may go beyond that which is provided by law.

¹ 5 USC 2302(b) (9)(D) gives employees the right to refuse unlawful orders.

Section 3.8 protects the employee's private life, protecting the employee from disciplinary action unless that off-duty conduct impairs the efficiency of the service.

Where the rights the Union is seeking to include in the CBA are rights that are the result of law, rule, or government-wide regulation, the BU employees are protected by those rights. The employees can pursue enforcement of those rights through, among other venues, the grievance procedure, without regard to their inclusion in the CBA. Where the Union is attempting to create new or expanded rights, they have provided no compelling arguments to do so in this case. The Panel has determined that the Parties will not adopt the Union's proposals in its Section 3, except as addressed below.

The Agency has offered counter proposals for some provisions. Under the Union's proposal, Section 3.3 - Avoid Embarrassment, the Union proposed that discussions regarding performance or conduct be held in private. The Agency proposed similar language. The Union's proposal, however, expands to other discussions between supervisors and employees. The Union offered no explanation or example where the extra measure to ensure privacy may be necessary or appropriate. The Panel orders the Parties to adopt language that reflects what the Parties do agree upon.

Under the Union's Section 3.10 - Retirement Seminars, the Union seeks the Agency's commitment to conduct an annual retirement seminar. The Agency's proposal only offers to consider conducting a retirement seminar. Neither Party provided data or support to their argument (e.g., number of eligible employees, cost of providing the seminar). Without supporting evidence, the Panel cannot evaluate the need for or impact of this benefit. The Panel declines to order this provision.

Under the Union's Section 3.11 - Non-Work Space and the Agency proposal 5.0, the Parties are very close in concept but are in disagreement over the commitment. Both agree that any commitment should be subject to available space and funding. The Agency goes on to limit their commitment, using "may" and "will consider". The Agency offered no explanation or support for their qualifiers. With the qualifier of availability, the Panel orders the Parties to adopt language that provides for the non-work space or a commitment to have further discussions if the Parties need to secure off-site space.

Under the Unions Section 3.12 - Space for Employee Fitness Activities and the Agency's proposal 5.2, the Parties are considering making agency space available to employees to engage in fitness activities (e.g., exercise classes, aerobics) on non-work time. The Parties agree with much of the provision, the Agency's language makes it clear that the final decision is at the discretion of the Agency. They provided no explanation why the Union's proposal (which only provides the benefit of the space when it is otherwise available, does not cost the Agency and does not disrupt the workplace) is unacceptable. Given these conditions to the availability of the benefit, the Panel orders the Parties to adopt a modified version of the Union's proposal.

Under the Union's Section 3.13 Employee Vending Machines and the Agency's Section 5.3, the Agency would be obligated to provide, or consider providing under the

Agency's proposal, space for the placement of vending machines. The Agency's proposal identified a location for vending machines, the Union's proposal provides for a future discussion. Neither party offered enough detail to identify the reasonableness or limitations of the proposals, or the wisdom of their proposed location. The Panel declines to order either proposal regarding space for vending machines because the Panel cannot evaluate the merit of the proposals with no evidence or data offered by either side.

Section 4 – Personnel Files

The Privacy Act covers information that individuals request about themselves that is Government-held information contained in a system of records. A system of records is defined by law as "...a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual" (5 U.S.C. 552a(a)(5)).

Personnel and performance information are kept in the Official Personnel Folder² (OPF), the electronic OPF³ (eOPF), or the Employee Performance Folder (EPF). Personnel recordkeeping regulations are found in part 293 of Title 5, Code of Federal Regulations. OPM's regulation on privacy procedures for personnel records are in Title 5, Code of Federal Regulations (CFR) Part 297. The OPM regulations establish policies and minimum requirements governing the creation, development, maintenance, processing, use, viewing, copying, and disposition of files. The OPF and the EPF are a Governmentwide system of personnel records. Consequently, if an employee wants to see his/her personnel information, the agency must provide that information because it is maintained in a system of records and is retrievable by the individual under the Privacy Act.

Under the Union's Section 4, the Union is seeking to ensure that personnel records are maintained by the Agency in accordance with law, government-wide regulations, or this CBA. The Agency provided no counter proposal to that language. The other right that the Union is attempting to establish in the CBA is the right to be advised of the records that are being maintained on an employee. Then, in Section 5, the Union is seeking to ensure that employees can view or retrieve the information in those files. In the Agency Section 6, the Agency acknowledges that an employee has the right to view their personnel records. It is not clear if the Union is seeking access to other records on an employee, such as an investigative file, and under what authority the employee would have access to other records. With no explanation and justification, the Panel orders that the contract address entitlements based upon law, governmentwide regulation, and agreement of the Parties. The Panel orders the Parties to adopt language committing the Agency to notify the employee of the types of records, but with no obligation to disclose the content of the records, unless and until it is used to support a personnel action.

² The Official Personnel Folder (Standard Form 66) is a file containing records for an individual's federal employment career. Employees with OPFs are those in the Executive Branch service, as listed in Title V of the United States Code and some federal employees not under Title V. The OPF is part of the government-wide system of records.

³ The eOPF is an electronic version of the paper OPF and a system for accessing the electronic folder online.

Under the Union's Section 5 and the Agency's Section 6, both Parties are addressing the right to review a personnel record. Both parties recognize that an employee and/or their authorized representative have the right to review the personnel file. Under OPM guidance, an employee's OPF must be made available to the employee for review upon request. Employees are required to present proper identification before the personnel folder is provided to them. Employees reviewing their own folders must be accompanied by a record custodian at all times. Employees may bring a personal representative with them when they review their records. Employees may obtain copies of records in their personnel folders. The Agency must follow that OPM guidance. The Panel directs the parties to follow the OPM requirements.

Under the Union's Section 8, the Union is seeking to ensure that employees receive timely and accurate compensation. The Agency provided no counter. Government-wide regulations set the policies on pay authorities and the administration of pay laws and regulations. The Agency is ultimately responsible for complying with the law and regulations and following OPM's policies and guidance to administer pay policies and programs for its employees. If an employee has a pay-related concern, OPM directs the employee to address that concern with their agency, at least initially, with an opportunity to appeal through the grievance procedure or to OPM (if the matter is excluded from the grievance procedure). Each Agency is responsible for the relationship between it and its servicing payroll agency (e.g., Dept of Interior) that they have contracted with to provide its payroll services.

The Union is seeking the Agency's support in ensuring that the payroll relationship between the Agency and its servicing payroll agency is working effectively, and where there are errors, the Agency is available to assist the resolution of that error. The Panel directs the Agency to adopt the Union's proposals as modified.

Under the Union's Section 9, the Union is attempting to add whistleblower protection that is available to employees under the Whistleblower Protection Act (the Act); providing protection against reprisal for the lawful disclosure of information, which the employee reasonably believes evidences a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health and safety. The Act prohibits retaliation such as demotions, pay cuts, or dismissals for blowing the whistle and provides legal remedies to whistleblowers who experience such retaliation. It also allows whistleblowers to make their disclosures confidentially. The Act was originally passed as part of the Civil Service Reform Act of 1978 and has been amended three times since – in 1989, 1994, and 2012. The most recent update was the Whistleblower Protection Enhancement Act (WPEA), passed in November 2012. There are several other laws that federal employees can utilize to report concerns. For example, for violations of environmental laws, federal employees can file cases under the Clean Air Act, Safe Drinking Water Act, and Solid Waste Disposal Act. The Panel orders the Parties to adopt the Unions' proposal, as amended, to remind employees that venues for reporting concerns are available to them.

The Civil Service Reform Act of 1978, which incorporated nine (9) merit system principles into the law at Section 2301 of Title 5, United States Code. Congress intended those 9 principles to guide Federal agencies in carrying out their responsibilities to administer the public business. Additionally, there are twelve Prohibited Personnel Practices that can be found in Section 2302 (b) of Title 5, U.S.C. Under the Union's Section 10, the Union is seeking to reflect those commitments in the CBA. The Panel orders the Parties to adopt the Union's proposal as written.

2. Grievances

The Grievance procedure is probably the most frequently referenced article in the CBA, as it is the exclusive procedure available to bargaining unit employees to grieve matters that are covered by the procedure. The Union's proposal closely aligns with the grievance procedure that has been in the contract for many years (at least since the 1993-CBA), with a few notable additions, some of which would improve communications. The Agency offered no argument regarding why the tried and tested procedure in the 1993-CBA needed to be changed. The Agency claims that it doesn't always understand what the Union is challenging, however, it is the Union that proposed that the grievance filing include detailed information about the complaint. The Panel orders the Parties to reinstate the language from the 1993-CBA, with a few additions.

Under the Statute, employees can choose to be represented by the exclusive representative – the Union, or they can represent themselves. Both parties offered language to address representation. With regard to the Union's Section 5 and the Agency's Section 2, Representation, the Panel orders the Parties to adopt modified language to address some issues that are not already included in the 1993-CBA language.

With regard to where or to whom the grievance must be filed, both Parties propose that the grievance normally be filed with the first-line supervisor or the lowest-level management official with the authority to resolve the grievance. The current CBA only states that the grievance will be filed with the appropriate supervisor. For clarity, the Parties should adopt this modification in the CBA under Step 1 of the Grievance Steps. The Agency goes on to propose that a copy of every step of the grievance will also be served on the SWG Office of Counsel via email as a Word or PDF document, and official acknowledgement of receipt shall come only from SWG Office of Counsel. That is an internal management matter. Once the employee, or the Union on their behalf, serves the Agency representative (i.e., the first-line supervisor), that Agency representative should be responsible with conferring with their internal Agency resources as directed. The Panel will not impose that responsibility on the BU employee. However, the Panel will order that the Parties' correspondence will occur via email.

3. Purpose

The Panel declined to assert jurisdiction over the Agency's proposals that may force the Union to waive its statutory rights; the Union also filed a ULP. In this section, the Agency also proposed a number of provisions that the Panel determined it would not assert jurisdiction over. The Union's proposal also offered language to address MOUs which were in effect on the effective date of this Agreement. Under the Union's proposal, those MOUs remain in effect unless superseded by the new Agreement; they carry over into the new CBA. The Agency did not agree to that.

The Panel orders the Parties to maintain their language from the 1993-CBA, with a few modifications that captures what the Parties were able to agree upon: the effect of government-wide laws, rules, or regulations; the impact on other provisions in the CBA where some provisions may be invalidated by government-wide laws, rules, or regulations.

4. Merit Systems

Under regulations (5 U.S.C. § 335.103 - Agency promotion programs), Agencies are to adopt a promotion plan that is consistent with the Statute and the OPM regulations (5 CF.R. 335). Under the Army Personnel regulations (690-300), each local entity is to create a local plan consistent with the OPM and DOD regulations. These Parties had an article in the 1993-CBA, with a few MOUs to bring the article up to date. The Agency proposed that there be no article on this topic in the successor CBA; arguing that this is consistent with the Trump Executive Order, "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles." The Union seeks to have an article as there was under the former CBA, with additions. The Union argued that their proposed article is standard (not novel) in federal contracts, protects managements right to select from any appropriate source (internal or external candidates), and provides transparency to the local plan (referencing compliance with the local plan).

The Panel has determined that it will order a Merit Promotion article that reflects the standards approved in the local plan, adding transparency to the Agency's plan. The Panel orders the Parties to adopt the Union's proposal with modification, adopting the current policies and management rights to select qualified candidates from among appropriate sources, but also eliminating the contentious language that is the subject of extensive litigation government-wide (e.g., rights accrued with a priority consideration remedy). Neither party provided the local plan, so it is difficult to ensure that no provisions in the CBA exceed the requirements of the local plan. The Panel will order the Parties to adopt the Union's proposal that commits to compliance with the local plan in existence at the time of execution of the CBA. If any conflict is created by the Panel ordered language, the Parties would adhere to the local plan. Additionally, the Panel orders the Parties to continue existing commitments in the 1993-CBA that continue to apply (as long as those provisions do not conflict with the current local plan).

5. Arbitration

The disputes in this article center around deadlines, arbitrator selection, payment of arbitration costs, and arbitration location. The Agency explained that their proposed changes are meant to prevent delays and allow for timely and efficient resolution. The Agency offered no evidence that there have been delays between these Parties. The Union offered that there have only been two arbitration invocations, one which was withdrawn at no cost to the Parties. The Agency's proposed changes simply shift the time frames around and empowers one party (generally the Agency) to unilaterally make decisions throughout the process. With no evidence to support the need for a change to a long-standing process, the Panel orders the Parties to adopt proposals that maintain the longstanding procedures.

6. Negotiations

This article establishes the process for engaging in bargain over changes in conditions of employment through the life of the CBA. The first issue in dispute involves the establishment of and the change to past practice (Union Section 2 and Agency Section 2). "Past practice" is a common term used to describe work site behavior that is consistent and of significant duration such that it takes the form of an unwritten but enforceable policy. Once established, past practices are considered incorporated into the collective bargaining agreement and enforceable through the grievance-arbitration process. It is an unfair labor practice for an agency to unilaterally change an established lawful practice. There have been numerous cases before the FLRA and Arbitrators that have challenged the existence of a past practice and the unilateral change to a past practice. In the instant case, both Parties are seeking to codify their understanding of the case law, to their favor. In the Panel investigation, it was determined that there were a number of pending ULP charges, where the Union challenges its obligation to bargain over a permissive subject. Waiver of past practice is covered by one of those ULP charges.

The Panel determined that it would decline to assert jurisdiction over two sentences in the Agency proposal that address that waiver. The first sentence, however, was unaffected by that decision to decline. In that first sentence of Section 2, the Agency is seeking to implement a similar provision that was ordered by the Panel in 2019 FSIP 068. In that case, the Panel determined that all past practices, MOU and MOAs would terminate upon the execution of the new CBA; a clean slate provision. The Panel orders the Parties to adopt the first sentence in the Agency's Section 2, which provides that past practices in effect under the prior CBA will terminate upon the execution of the new CBA. The Panel will not impose language regarding MOA and MOUs, but instead orders the Parties to adopt language that already existed in the prior CBA; language that addresses the impact of laws, rules, and government-wide regulations.

In terms of a bargaining procedure, the Agency proposes that bargaining will generally occur via email. The Panel declined to assert jurisdiction over that proposal because it is the subject of a ULP filed by the Union; permissive subject of bargaining. This would be a significant change in this unit, where bargaining occurred in person (although both parties paid their own travel and per diem for their team members under the prior contract). Under the remaining sentences of the Agency's proposed Section 5, either Party can request to negotiate in person or over the phone, rather than via email. The Parties must mutually agree to negotiate in-person or telephonically. Because the outcome of the ULP⁴ regarding the method of bargaining (via email, in person, or telephonic) will impact the alternatives to the bargaining procedure, the Panel declines to address the entire Section 5 of the Agency proposal regarding the method of bargaining.

The Agency also proposes that the bargaining sessions will not be recorded unless there is mutual consent by the Parties. The Union has the same proposal. The Panel orders the Parties to adopt that provision.

Otherwise, it is the Union who proposes procedures (e.g., timeframes) for conducting midterm negotiations. There were no specific time frames in the former CBA. The Parties should have a clear and efficient process that supports good faith bargaining. The Agency didn't propose a process, they also did not provide argument as to why the Union's proposed process is not reasonable or acceptable.

7. Contracting Out

Contracting out of government services is referred to as "competitive sourcing". Competitive sourcing helps to improve the performance and efficiency of "commercial activities" performed for the federal government. Commercial activities are any activity or function that the private sector could do; things that are not "inherently governmental"⁵. Competitions are conducted under OMB guidance (i.e., Circular A-76) that allows for the comparison of costs and overall service among private sector and federal government providers. Currently, there is essentially a Congressional moratorium on conducting A-76 studies. That moratorium can be lifted at any time by Congress, as the OMB policy remains in place.

The former CBA contains a brief article that provides for Union involvement should the Agency determine they will conduct an A-76 competition. The Agency's proposal on contracting out is very short, and essentially commits to following any Statutory requirements they may have should a contracting out activity occur. The Union proposed lengthy provisions that includes notification and engagement with the Union at the earliest possible time, including when work is being reviewed for consideration for contracting out.

⁴ The Union raises a colorable argument that requiring that bargaining occur via email is contrary to 5 USC 7114(b)(3) duty to bargain in good faith ("to meet at convenient times and convenient places, as frequently as may be necessary").

⁵ Inherently governmental means the function must be done by a federal employee. Commercial activity means it could potentially be done by the private sector.

Because the Parties were not able to reach agreement on this topic that is seldom used or is reasonably expected to be used, the Panel orders the Parties to adopt a modified version of the Agency's proposal, which simply acknowledges that the Agency will meet its statutory obligations.

8. Taxpayer Funded Official Time

The Official Time provisions in the prior CBA required limited steps for approval of Official time and identified a list of activities that could be approved for use of Official Time. The Agency asserts that there is a problem in this unit with Union officials taking Official Time on their own initiative (prior approval not required under the CBA), or when they choose to ask for permission, only verbal permission is required. The Agency's proposals are offered to correct those concerns by requiring written approval procedures, as well as to comply with the Trump Executive Order regarding Union Time⁶.

The Union's proposal is similar to the prior CBA, but adds examples of the types of activities where official time is appropriate. While a list of typical activities can be helpful guidance, because it is not exhaustive, it is not agreed to by the parties, and it could change over time, at least in part, the Panel determines that the list will not be included in this CBA. Additionally, the Union provided for an expedited, consolidated grievance/arbitration process (where the loser pays all of the arbitration fees) should the Agency deny an Official Time request. The Agency rejects that procedure because the Agency's proposal would make the Official Time decision a unilateral, final and binding decision of the Agency. As the Statute⁷ provides that the Union representative or the employee represented by the Union shall be granted official time, the Union, or a bargaining unit employee being represented by the Union under 7131 (d), can challenge the Agency's denial through a ULP filing with the FLRA. However, the Panel will not order language in this case providing for these challenges through the grievance procedure. The Panel orders the Parties to adopt the Agency proposal.

9. Duration

The Agency proposes the duration of the CBA to be ten (10) years. The Agency argues that its proposal will help to reduce resource expenditures, as required by the Trump Executive Order, "Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining". The Agency argued that it cost the Agency roughly \$312,000 to bargain this CBA. The Agency also proposed that the contract, even though it expires, will not be reopened unless the Parties mutually agree to reopen. While the Union originally proposed a 3-year term, consistent with a number of the Panel's

⁶ "Ensuring Transparency, Accountability and Efficiency in Taxpayer Funded Union Time Use"

⁷ The Union representative or the employee represented by the union shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest. Parties may negotiate an amount of official time that is reasonable, necessary, and in the public interest for any employee representing a union, or any employee in an appropriate unit represented by the union. 5 USC 7131(d).

recent orders (i.e., FSIP Case No. 19031 and FSIP Case No. 19019), where the cost of bargaining and the concern over perpetually negotiations of a CBA were considered by the Panel, the Union revised its proposal to make the CBA duration seven (7) years; aligning its cost to that of other agencies. Given the cost for these parties to bargain a CBA, the Panel orders the Parties to adopt a 7-year term, with roll over unless either provides notice of reopener. The Panel also orders the Parties to adopt procedures to provide notification of reopening and commitment to get to the bargaining table to address ground rules.

10. Overtime

Under the prior CBA, the Parties have a short article on Overtime, that essentially addresses procedural matters beyond entitlements under statutes and regulations. The Agency rejects the Union's proposed language because it codifies into the contract many of the rights and entitles that currently exist through case law, but it also commits the Agency to timeframes for communicating with employees regarding orders to work overtime, approval of overtime, and cancellation of overtime. The Agency doesn't want to commit to timeframes that they wouldn't be able to meet during emergencies. The Panel orders provisions of the prior CBA to carry over into the new CBA, with a few modifications (e.g., notification of overtime assignment within 24 hours (proposed by the Union), instead of 2 days under the prior CBA).

11. Furloughs

There doesn't appear to be a Furlough article under the prior CBA. The Agency's proposal was for no article on furloughs. They do not want to commit themselves in advance to procedures for multiple reasons. First, because shutdown furlough instructions from Headquarters USACE and from the Department of Defense are mandatory, often received with only a few hours' notice, and must be followed immediately; the Union's proposals would interfere with the Agency's ability to follow these instructions expeditiously. Second, the Agency proposed no article because administrative furloughs are extremely rare (historically has only occurred during a government shut down due to budget shortfalls), and should be negotiated, if at all, when they occur. The Union has proposed requirements such as notice and a reasonable call back notification should the Agency need to conduct a furlough. While much of the Agency's guidance will likely come from higher levels within the Department of Defense, that does not preclude the Agency from its obligation to bargain with the Union over the execution of a furlough (either before a planned furlough or after an emergency shutdown occurs). The extent of the bargaining will be based upon any number of unforeseen impacts. Because the parties cannot reach agreement on the procedures and requirements (either negotiated or mandated by a government-wide source), the Panel orders that the Union withdraw its proposal, obligating the Agency to bargain a planned or emergency shutdown when required by the Statute.

12. VERA/VISIP

There doesn't appear to be a VERA/VISIP article under the prior CBA. The Agency's proposal was for no article on VERA/VISIP, primarily because any negotiation on a VERA/VISIP should occur in the context of an actual VERA/VISIP offering and guidance that would come from higher authorities within the Department of Defense, when both Parties would know specific facts. The Union has proposed requirements such as notice and a process for backfilling a position that is vacated by a VERA/VISIP. While much of the Agency's guidance will likely come from higher levels within the Department of Defense, that does not preclude the Agency from its obligation to bargain with the Union over the impact of the decision to restructure and offer a VERA/VISIP. The extent of the bargaining will be based upon any number of unforeseen impacts. Because the parties cannot reach agreement on the procedures and requirements (either negotiated or mandated by a government-wide source), the Panel orders that the Union withdraw its proposal, obligating the Agency to bargain the offering of VERA/VISIP when required by the Statute.

ORDER

Pursuant to the authority vested in the Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above and included in the attached spreadsheet.



Mark A. Carter
FSIP Chairman

May 22, 2020

Attachment: Side-by-Side of Proposals and Panel Ordered Language

PANEL ORDERED LANGUAGE

1. EMPLOYEE RIGHTS

Section 1. Union Activity - 5 U.S. Code § 7102. Employees' rights - Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

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

Section 2. Right to Representation - Employees have a right to representation and assistance of the Union and may contact and meet privately with a Union representative during duty hours for representational matters. Employee will submit a written (email is acceptable) request to their immediate supervisor in advance to meet with the Union. The Agency will provide a timely, written response to the Employee's request, including an offer on the earliest time that employee will be permitted release to meet with their Union representative.

Weingarten Rights: Employees have the right (i.e., Weingarten Right) to union representation at any examination (i.e., questioning) of an employee by a representative of the Agency in connection with an investigation if the employee reasonably believes that the questioning may result in disciplinary action against the employee and the employee requests representation. The Agency will annually inform employees, supervisors and managers of this right to Union representation under 5 USC 7114.

Section 3 - Personal Rights

Privacy: The Agency will make every reasonable effort to conduct discussions between employees and their supervisors related to conduct or performance matters in private.

Non-work Space: Subject to availability of space and funding, the Agency will provide employees with access to clean and comfortable meal and break areas in close proximity to their work areas. The meal areas should include kitchen facilities, including sinks, refrigerators, and appliances for heating, toasting, making coffee and tea, and a television with cable access. These areas should be away from customers, clients, and other non-employees whenever possible.

When it is impossible to provide onsite space for meals or break periods, the Agency will work with the Union to identify locations where employees can spend these non-work periods.

Space for Fitness Activities: Upon written request, the Agency may approve the use of available space, such as conference rooms, for employees for use for exercise classes, aerobics, and other physical fitness activities. This space may be made available during normal operating hours for use by employees during their lunch hours or non-working hours, to the extent that these activities do not cause a disruption to the workplace.

Maintenance of Employee Records

Personnel records will generally be collected, maintained, viewed, or retained in accordance with law, OPM regulation and the parties agreement. This includes the Official Personnel Folder (OPF and eOPF) and a supervisory employee work folder. The employee will be notified of other personnel records or notes that are being maintained outside of the coverage of the OPM regulations. The Agency will provide a copy of those other personnel records or notes if and when they are used to support a personnel action.

Official Records and Files

In accordance with law and OPM Regulations, employees and their authorized representatives may request to examine and have copied any of their personnel records, including supervisor's employee work folders, whether paper or electronic, on duty time or official time in the presence of a management official. Employees and their authorized representatives may request duty time or official time to prepare and submit any response or statements they wish to make about information contained in their personnel records or to add additional information or documents that are appropriate, relevant, work related and that are not in violation of law or government-wide rules or regulations.

Access to personnel records, including supervisor's employee work folders, by the employee or his or her authorized representative will be granted when requested if the records are maintained on the premises in which the employee is located. If the records are not so maintained, the Agency will initiate action to obtain the records from their location and may make them available to the employee as soon as possible, as required by law. If records are requested related to a grievance, the Agency will give an extension for the grievance until the records are provided.

Timely and Accurate Compensation

Employees are entitled to timely receipt of all compensation earned by them for the applicable pay period. In the event an employee fails to receive his/her pay on the established payday, the Agency will work with the servicing payroll agency, as necessary, to ensure that employee(s) receive their pay as soon as possible and in accordance with regulations.

If a bargaining unit employee fails to receive his or her pay on the established payday due to error by the Agency, the Agency will work with the Servicing Payroll Agency to expedite the payment.

The Agency agrees to assist affected employees in any way practicable, including providing written notification of the error and the correction efforts being pursued.

Whistleblower Protection: Employees are protected by the Whistleblower Protection Act and other laws against reprisal for the lawful disclosure of information, which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety.

Statutory Requirements: Personnel management will be conducted in accordance with 5 U.S.C. 2301, Merit System Principles, and 5 U.S.C. 2302, Prohibited Personnel Practices.

2. NEGOTIATED GRIEVANCE PROCEDURE

Keep Article XIII of 1993-CBA ; with modifications as follows:

Representation

Grievances may be filed by:

1. An employee or two or more employees covered by this Agreement;
2. By the Union on behalf of an employee or two or more employees covered by this Agreement;
3. By the Union on behalf of the Union; and
4. By the Agency.

No outside individual (such as a private lawyer, friend, relative or coworker), may serve as a representative under this grievance procedure. However, an employee can represent themselves.

If an employee elects to be represented by the Union, the Agency will deal only with the Union in any matters relating to the grievance, its processing, and settlement.

If an employee elects to file and process a grievance on the employee's own behalf without Union representation, the following will apply:

1. The Union maintains the right: a) to be present during any grievance proceeding and settlement discussions; and b) to receive a copy of all correspondence between the employee/grievant and the Agency at the same time that the employee receives the correspondence (which may include being cc'd on all electronic communications).
2. The Agency will provide the Union with a copy of any individual employee-filed grievance, including all attachments, within five (5) business days after it is filed.

The grievance normally be field with the first-line supervisor or the lowest-level management official with the authority to resolve the grievance

Grievance correspondence (e.g., filings and decisions) will occur via email.

Union Institutional and Agency Grievances:

A. Union institutional grievances that impact across organizational lines and involve more than one employee may be submitted in writing by the Local President (or designee) directly to the District Commander or designee at Step 3.

B. Agency institutional grievances that involve the bargaining unit as whole or the interpretation and application of this Agreement may be submitted by the Commander or designee, in writing to the Local President his/her designee.

3. PURPOSE AND GOVERNING LAWS

This Agreement is based on the desire of the Union and the Employer to work toward the common goal of accomplishing the mission and bettering the working environment of the activity. The purpose of this Agreement is to establish policies, procedures and methods that will hereafter govern the working relationships between the parties.

The provisions of this Agreement shall govern where there is a conflict with policies and regulations originated and established by the Employer. However, where provisions governed by government-wide laws, rules, or regulations conflict with this Agreement, those government wide laws, rules or regulations will be controlling.

Should any part of this Agreement be rendered invalid due to conflict with of a government-wide law, rule, or regulation, the invalidation of such provision of this Agreement shall not invalidate unaffected parts of this Agreement; the remainder of this Agreement shall remain in full force and effect.

4. MERIT PROMOTION AND INTERNAL PLACEMENT

A. The Agency will follow the Merit Placement and Promotion Plan in effect in the SWD (written in accordance with 5 C.F.R. Part 335) and higher authority regulations (USACE, Army, DoD, 5 U.S.C. § 335.102) in effect at the time this article was negotiated. Where a conflict is created by terms of this article, the terms of the local plan above applies.

B. The Agency will fulfill its statutory bargaining obligations if any changes in the regulations or policies in Section 1.A. trigger a statutory duty to bargain. The Parties will follow the Negotiation article.

Purpose:

A. The purpose and intent of this Article are to ensure that:

1. Merit promotion principles are applied in a consistent and equitable manner;
2. Merit promotion decisions are based solely on job-related criteria; and

3. Actions under this article - whether identification, qualification, evaluation, or selection of candidates - must be made without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and must be based solely on job-related criteria.

B. Placement and promotion in the bargaining unit shall be made in accordance with this Article.

Actions Covered By Competitive Procedures:

Competitive procedures will apply to all personnel actions listed in 5 CFR 335.103 (c) (1).

Actions not Covered by Competitive Procedures:

In accordance with 5 CFR 335.103, competitive procedures will not apply to the items listed in the SWD policy effective at the time this Agreement was effectuated.

Publicizing Temporary Assignments:

A. When considering a directed noncompetitive assignment, the Agency will afford interested and qualified employees the opportunity to request consideration for career development opportunities. These career development opportunities include:

1. Temporary management-initiated reassignments of thirty (30) days or more;
2. Temporary promotions in duration of thirty (30) days to one hundred and twenty (120) days;
3. Details to higher-graded positions in duration of thirty (30) days to one hundred and twenty (120) days; and
4. Details to same or lower-graded positions in duration of thirty (30) days to one (1) year.

B. Whenever a career development opportunity work assignment arises, the Agency will conduct a "Survey of Interest" to inform unit employees to request consideration for the assignment.

1. The "Survey of Interest" will identify the nature of the work assignment and specific requirements, to the extent they are known, such as location, work characteristics, duration of assignment, temporary-duty requirements, and any other pertinent information.
2. The "Survey of Interest" will be distributed to all unit employees through E-Mail, unless another distribution is determined to be more appropriate.

3. Unit employees will be encouraged to review the assignment and requirements and respond to the survey for consideration.
4. Unit employees showing interest will be considered along with employees from all other appropriate sources.
5. The Agency has the 5 USC 7106 right to make selections for appointments.
6. Emergency situations are excluded from this Section 5.

Temporary Promotions.

- A. Temporary promotions for qualified and eligible bargaining unit employees will take effect on the 31st day that an employee is assigned to perform the duties of a higher graded job.
- B. The Agency will consider not interrupting details to higher grades for the purpose of avoiding temporary promotions on the 31st day.

Who May Apply for a Vacancy – The Area of Consideration:

- A. Consistent with the statutory requirement that areas of consideration be sufficiently broad to ensure the availability of high quality candidates, the Agency may consider using an area of consideration that is limited to the local commuting area prior to opening competition to all sources for all vacancies.
- B. The minimum area of consideration for unit positions shall be bargaining unit employees assigned to the Agency. When the Agency determines to broaden the search for applicants beyond the minimum area of consideration, concurrent recruitment of candidates from outside the minimum area of consideration may be initiated by the Agency. Candidates outside the minimum area of consideration may be interviewed simultaneous with candidates from the minimum area of consideration.

Vacancy Announcements

Open and Closing Dates (Posting). All vacancies and training announcements within the bargaining unit, which require competitive procedures in accordance with this Article, will be open for at least fifteen (15) calendar days before the closing date.

Distribution. The Agency shall distribute public notices (e.g., announcements, amendments, and cancellations) of all vacancies, via email to all Agency employees in the area of consideration of the vacancy within five (5) days of the date the announcement was opened, amended, or cancelled.

1. All vacancy announcements will also be posted on the Agency's electronic bulletin boards, on the Agency's Intranet website, and provided in hard copy per section D below.

2. The notices shall contain as a minimum the job announcement number, the opening and closing dates, a web link to the announcement, and the position/job title, series, pay plan, grade(s) and duty location. The email will also include the name, email address, and phone number of the Agency point of contact.

Direct Hire Authority Procedures - Internal USACE Candidates – If USAJOBS is not used, direct hiring officials will communicate to current USACE employees (via email, intranet homepage, etc.) the existence of open job opportunities for merit promotion purposes in accordance with USACE directive dated May 13, 2019.

Access to a Computer: For employees who do not use a computer to perform their regularly scheduled duties, upon request, the Agency will be provided a hard copy of the notice.

Employee Applications:

Electronic Application. The Agency will give unit employees access to Agency computers to complete automated applications under this Article. Access includes a reasonable amount of time during an employee's working hours to prepare or modify an application, provided the employee's performance is not diminished.

Absence During the Posting Period.

1. Employees within the area of consideration, who are absent during the posting period because of a legitimate reason, will be considered for vacancies during the employee's absence. Legitimate reasons include such things as: approved leave; details; at training; Military service; serving in public international organizations; intergovernmental personnel act assignments; or a similar legitimate reason.

5. ARBITRATION

Invocation of Arbitration. If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance, upon written request by either the Employer or the Union within thirty (30) calendar days after issuance of the final decision, may be submitted for arbitration.

Selecting the Arbitrator

A. Within 10 calendar days after invoking arbitration, either party shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS).

B. Within fifteen (15) calendar days from receiving the list of arbitrators from the FMCS, the Parties shall meet to select an arbitrator. If the Parties cannot agree upon an arbitrator, the Parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one name remains. The person whose name remains shall be selected as the arbitrator. The Party striking the first name shall be chosen by a coin toss. The cost of obtaining a list of arbitrators from the FMCS shall be shared equally by the Parties. At any time, the Parties may obtain a new list of arbitrators from the FMCS by mutual consent.

C. If a Party does not timely participate in the Section 3.B. selection of the arbitrator, upon request of the grieving Party (i.e., the Agency or the Union), the FMCS shall be empowered to make a direct designation of an arbitrator to hear and decide the grievance.

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

Hearings over employee-grievances shall take place at the site where the employee works, unless otherwise mutually agreed to. The Parties may agree that an arbitration will be conducted as an oral procedure with no verbatim transcript and no filing of briefs, or solely via briefings to the Arbitrator via email, or the hearing may be held telephonically. In the absence of agreement as to procedures over a Union-grievance or Agency-grievance, the arbitrator will decide the arbitration process.

Sexual Harrassment Arbitrations: When a grievance concerns a complaint of sexual harassment, the grievant may request a closed forum hearing. The Agency will make a reasonable to accommodate the request.

Identification of the Issue: If the Parties are unable to agree on a joint submission of the issue(s) for arbitration, each Party shall submit a separate submission and the arbitrator shall determine the issue(s) to be heard.

Grievability/Arbitrability: If a grievability or arbitrability defense has been raised, the arbitrator will decide how to proceed.

Witnesses and Parties:

A. Employee grievant(s), employee witnesses, and Union officials serving as the Union representative will be on official time for the hearing and any related travel time, if otherwise in a duty status. Official time will be requested and granted under the Official Time article.

B. The Agency shall ensure that all witnesses who are employed by the Agency are available for the hearing.

Authority of Arbitrator. The arbitrator shall have the authority to resolve questions of grievability/arbitrability, to resolve issues as agreed to by the parties or determined by the Arbitrator if the parties cannot mutually agree, and to interpret and define the explicit terms of this Agreement. The arbitrator shall have no authority to add to, amend, or modify any terms of this Agreement .

Arbitrator's Award. The arbitrator shall render a written decision not later than 30 calendar days after the conclusion of the hearing, unless the Parties mutually agree to extend this time limit. The filing of an exception is just basis for delaying implementation of the award until the exception is acted upon by the Authority. If no exception or other appropriate legal action is filed within the time limit established by statute and/or FLRA regulation, the award is final and binding.

The arbitrator will retain jurisdiction over a case: 1) when necessary to administer the remedy; 2) to clarify the award upon the request of a Party; and 3) where the FLRA, upon exceptions, remands the award.

Cost of Arbitration: The arbitrator's fee shall be borne by the losing party, or as directed by the Arbitrator.

The hearing will be held, if possible, on the employer's premises during regular day shift hours of the work week. All participants shall be on duty status or official time if otherwise in a duty status.

If, prior to the arbitration hearing, the Parties reach a settlement of the grievance, any cancellation fees shall be split. If either Party withdraws or requests postponement, that Party shall bear the full cost of any cancellation fees or postponement fees. Any postponement must be by mutual agreement.

Cost of Transcript: If the Parties agree to have a transcript, the cost shall be equally shared by the Parties. Absent agreement, either Party may unilaterally request that a transcript be prepared but must bear all costs incurred in its preparation.

Arbitrator Ordered Attorney's Fees

A. An arbitrator may order attorney fees when authorized by statute.

6. NEGOTIATIONS

Purpose. The purpose of this Article is to prescribe the criteria and procedures by which the Parties shall engage in negotiations under the Statute.

Past Practice: No past practice from prior to the effective date of this Agreement shall be binding after the effective date of this agreement.

Any telephonic or in-person negotiations or discussions between the Agency and the Union shall not be recorded by either Party except by prior mutual agreement

Ground rule for Midterm Bargaining

Notice of Proposed Changes: Where there is a statutory obligation to bargain, the Agency will provide written notice of proposed changes, at least 15 calendar days prior to the proposed effective date (except in emergencies) which contains information about the change and the impact of the change of the bargaining unit.

Briefings: If requested by the Union within 3 calendar days of the delivery of the notice of change, within 7 calendar days of the Union's request for a briefing, the Agency will provide a briefing for the Union before the Union's proposals are due to further explain the proposed change.

Request to Bargain: The Union will request to bargain within ten (10) calendar days of receipt of the Agency's notice of the change or within 3 calendar days of receiving the briefing.

Proposals: Union proposals will be provided to the Agency within fifteen (15) calendar days of the Union's request to bargain.

7. CONTRACTING OUT

Prior to implementation of any contracting out/privatization initiatives, the Union will be afforded the opportunity to bargain to the extent required by the FSLMRS.

8. TAXPAYER FUNDED OFFICIAL TIME

Section 1. Union officials and bargaining unit employees may request taxpayer funded Union time from the Agency. No taxpayer funded Union time may be taken without express prior written permission from the Agency. Requests for taxpayer funded Union time shall be addressed to such individuals as shall be designated by the District Commander. In the absence of a designation from the District Commander, taxpayer funded Union time requests shall be emailed to the Office of Counsel.

Section 2. The Agency will provide a reasonable amount of taxpayer funded Union time in response to requests. The Agency's decision as to how much (if any) taxpayer funded Union time is reasonable shall be final: when there is disagreement as to how much taxpayer funded Union time is reasonable, the Agency's position shall control.

9. DURATION OF AGREEMENT

Term of the Agreement: This Agreement will remain in full force and effect for seven (7) years from the formal approval by the head of the Agency as provided by 5 USC 7114(c). Thereafter this Agreement shall automatically renew from year to year unless either Party gives notice not more than one hundred and twenty (120) calendar days and not less than ninety (90) calendar before the end of the initial the seven (7) year term and before the end of a yearly renewal.

Full Force and Effect: This Agreement will remain in full force and effect until a new agreement is effective.

Successor CBA Ground Rules: In the event a Party gives a timely notice to renegotiate this Agreement, the Parties will begin negotiating ground rules for the successor CBA negotiations within sixty (60) days from the date of receipt of notice of the proposed changes.

10. OVERTIME

Overtime hours are premium pay hours worked in excess of the normal daily or biweekly work requirement.

Overtime will not be granted or withheld as a reward or penalty.

Employees will be compensated for overtime hours in accordance with the provisions of the Fair Labor Standards Act (FLSA) for non-exempt employees, 5 U.S.C.5542 for exempt employees, or other applicable statutes, Government-wide rules or regulations. GS employees, including employees on flexible work schedules, may request whether to earn overtime pay or compensatory time. Employees

will be notified in advance when a decision has been made that only compensation time will be offered. WG employees are limited to overtime pay.

The opportunity to work overtime will be equitably distributed among qualified employees (including employees that are on training or on detail) in accordance with their particular skill or specialized training, in the most cost efficient manner possible.

When the Agency determines that overtime work is necessary to accomplish the mission, the Agency will normally solicit volunteers from the work unit who normally perform the work before requesting assistance from qualified employees outside the work unit. When more qualified employees volunteer than are needed, qualified volunteers will be selected based on the most years of service, as shown by the service computation date, on a rotating basis, unless special skills are needed. In the absence of sufficient qualified volunteers for overtime work, the Agency will select qualified employees starting with the fewest years of service, as shown by the service computation date, on a rotating basis, unless special skills are needed.

Employees required to be on overtime, standby, or on call duty will be notified of expectations normally at least twenty-four (24) hours in advance. When overtime is canceled, employees will be notified as soon as practicable.

Employees who are called back to work shall be paid only for the time they work, but will in no case be paid for less than two (2) hours.

Employees will receive compensation for time spent in a travel status outside of their regular tour of duty, in accordance with applicable Government-wide law, rule or regulations.

11. FURLOUGHS

There are two basic categories of furloughs: 30 continuous calendar day (up to 22 work days) or less furloughs covered under adverse action procedures in 5 CFR Part 752; and, more than 30 calendar day or 23 or more discontinuous workday furloughs which require the application of reduction-in-force procedures covered under 5 CFR Part 351.

The Agency will bargain a planned or emergency shutdown, as required by the Statute.

12. VOLUNTARY EARLY RETIREMENT AUTHORITY (VERA)/VOLUNTARY SEPARATION INCENTIVE PAYMENT AUTHORITY (VSIP)

The Agency will bargain a decision to offer a VERA or a VISIP as required by the Statute.