

In the Matter of

DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
EMERGENCY RESPONSE DIVISION
SEATTLE, WASHINGTON

and

LOCAL 8A, EMERGENCY RESPONSE DIVISION
CHAPTER
INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TRADE ENGINEERS
AFL-CIO

Case No. 16 FSIP 56

ARBITRATOR'S OPINION AND DECISION

Local 8A, Emergency Response Division Chapter, International Federation of Professional and Trade Engineers, AFL-CIO (Union) and the Department of Commerce, National Oceanic and Atmospheric Administration, Emergency Response Division, Seattle, Washington (Employer or ERD) filed a joint-request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between the parties.

After an investigation of the request for assistance, which arises out negotiations over the parties' successor collective bargaining agreement (CBA), the Panel directed the parties to mediation-arbitration (med-arb) with the undersigned. Accordingly, on July 25, 2016, and July 26, 2016, the undersigned convened a med-arb proceeding at the Employer's facilities. During the proceeding, the parties' counsel requested that Panel Member Hartfield devote all of his time in Seattle to helping the parties settle their negotiations as a mediator. The parties, therefore, executed a joint waiver of their right to an arbitration hearing in exchange for additional mediation assistance. They further agreed that any remaining issues would be resolved in arbitration through the consideration of post-hearing written submissions. During mediation, the parties were able to resolve two issues in full and executed agreements as to those

issues.^{1/} However, they were unable to reach agreement on two other issues. Consequently, the unresolved issues have been submitted for a final decision. In reaching my decision, I have considered the entire record, including the parties' final offers, documentary evidence, and post-hearing briefs.

BACKGROUND

The Employer's mission is to monitor weather situations in the Pacific Northwest region of the United States. The Union represents 26 GS-11 through -14 employees who mostly encumber scientific professional and technical assistant positions. Eighteen of these employees are located in the National Oceanic and Atmospheric Administration's (NOAA) Western Regional Center (Regional Center) in Seattle, Washington, and the rest are spread out in various facilities operated by the United States Coast Guard. The parties are covered by a CBA that expired in 2011 but continues to roll over on an annual basis until agreement on a new contract is reached.

The parties began negotiations over a new CBA around 2012 and were able to reach agreement on numerous articles/issues. The Union filed a request for assistance with the Panel in January 2015 but withdrew it after the Employer challenged the negotiability of several proposals.^{2/} After receiving assistance from the Federal Labor Relations Authority, the Union returned to the Panel in August 2015 with another request for assistance.^{3/} The Panel subsequently dismissed this request after concluding that the parties had yet to exhaust bargaining efforts because the Employer modified significantly one of its proposals during the pendency of the request. After this dismissal, the parties resumed negotiations and also received third-party mediation assistance. Despite these efforts, the parties were unable to resolve all of their disputed issues and, as such, jointly agreed to return to the Panel for assistance in the current case.

ISSUES AT IMPASSE

The parties disagree over articles that govern: (1) telework; and (2) office assignments for bargaining-unit employees.

1/ The agreed-upon articles were Article 11, "Grievances," and Article 35, "Performance Evaluation."

2/ See 15 FSIP 42 (2015).

3/ See 15 FSIP 113 (2015).

ISSUE ONE: TELEWORK

a. The Union's Position

The parties' current telework arrangement is governed by a succinct MOU that they executed several years ago which continues to serve them well. The Union understands that the landscape for telework has changed since the document's execution, including the enactment of the Telework Enhancement Act of 2010 (the Act), new guidance from the Office of Personnel Management (OPM), and telework policies issued by the Department of Commerce and NOAA for non-bargaining unit employees. Taking the foregoing universe into consideration, the Union believes that it has crafted a proposal that is fair to bargaining unit employees but also takes the Employer's interests into consideration.

Of significant concern to the Union is the manner in which the Employer has conducted bargaining over telework as a part of the parties' successor CBA negotiations. Although the parties began negotiations over the CBA several years ago, the Employer revised its telework proposal to closely match a telework policy issued by NOAA in May 2015 for non-bargaining unit employees which the Union finds lengthy, confusing and haphazard. The Union was given an opportunity to comment on the policy in a pre-decisional capacity in August of 2015, but it never received any feedback on its comments before the Employer offered most of the policy as its proposal. Consequently, the Union feels that the Employer's last-best offer suffers from numerous deficiencies that could have been addressed had the parties properly engaged each other in the spirit of pre-decisional involvement. For example, the Employer's reliance on the NOAA policy has filled their proposal with terms that are not applicable to the parties' relationship and also contains some contradictory sections.

An additional key deficiency from the Union's viewpoint is the treatment of employees who might be required to work as a part of a continuity of operations plan (COOP). COOPs are plans created by federal agencies to ensure that they can continue to operate during emergencies or crisis situations. The Act states that COOP plans shall incorporate telework.^{4/} The Employer's Emergency Response Group (ERG) non-bargaining unit employees have traditionally been used as part of COOP operations. Because both the Act and OPM guidance state that telework is voluntary in nature, the Union has not included any language in its proposal that requires employees to sign a telework agreement so that they may be available during COOP situations.

^{4/} See 5 U.S.C. § 6502(b)(5).

The Union believes that in addition to being potentially illegal, the foregoing situation is inherently unfair to bargaining-unit employees.

Another issue raising potential fairness concerns for the Union is the treatment of employees who telework "occasionally." Both parties' proposals create two types of teleworking plans: Plan A and Plan B. Plan A is meant to address occasional teleworkers and generally relieves them from the obligation to telework during emergency closures of the Employer's facility (or "mandatory" telework). While the parties agree over this framework, they dispute the amount of hours an employee should work during a calendar year to fall into the category of occasional telework. The Union proposes that an employee can stay on Plan A if they telework no more than 208 hours in a year. Prior to mediation, the Union noted that the Employer's proposal encouraged a telework rate of at least 2 days per pay period. The Union's proposal takes this "encouragement" as the norm. As such, 208 hours per year is half of the normal "encouraged" hours. The Union believes that employees who telework 208 hours or less per year would not be properly acclimated to telework such that they should be expected to engage in mandatory telework.

In addition to the foregoing, the concept of mandatory telework raises **issues of general fairness** for the Union. As alluded to above, employees on Plan B must participate in mandatory telework. But the Union views telework as something that should be "strictly limited" to addressing emergency situations rather than acting as a substitute for "free office space." Accordingly, the Union proposes that Plan B employees will not be required to work more than 5 days during a single closure incident; they will also not telework more than 10 days in a fiscal year unless they are an ERG employee operating in a COOP event. Additionally, although employees will be required to telework if they receive "advance notice" (or 2 hours' notice before the end of a work day) about the need to telework on a subsequent day, the Union's proposal provides a non-exhaustive list of several circumstances in which an employee could be excused from teleworking for the day, *i.e.*, receive administrative leave. An employee would be required to notify their supervisor if they are not "telework ready," but the Union does not believe that employees should have to "convince" their supervisor about their inability to telework because that scenario puts the employee on unequal footing with non-teleworking employees.^{5/} The

5/ See 5 U.S.C. § 6503(a)(3) (stating that agencies shall ensure that teleworking employees shall be treated "the same" as non-teleworking employees for various matters

Act mandates that supervisors shall treat teleworkers the same as non-teleworking employees, and the portions of the Union's last-best offer concerning mandatory telework reflect this concept.

Another concern for the Union is the intersection of telework and information technology (IT) security/policies. Under its proposal, bargaining-unit employees must follow all applicable government-wide security policies and Employer policies that have been negotiated with the Union. But the proposal permits bargaining over future Employer security policies. The Union understands the importance of protecting the Employer's systems, but it is not willing to surrender its statutory right to negotiate over properly negotiable matters.

In summary, the Union believes that its last best offer serves the needs of its employees but also assists the Employer's mission. The offer meets these mutual interests: (1) establishing a clear and comprehensive policy; (2) allowing employees the opportunity to make an informed decision about whether to telework; (3) customizing a telework policy for ERD; (4) ensuring that ERD can fulfill its mission during a crisis; (5) promoting telework; and (6) promoting productivity.

b. The Employer's Position

The Employer's last best offer adopts and modifies NOAA's 2015 policy for non-bargaining unit employees. It provides a "clear, comprehensive, and self-contained policy" that also incorporates "legal requirements and OPM guidance." The proposal is intended to serve as a "one-stop shop" for teleworkers because it permits them to make an informed decision over whether to telework.

The Employer also believes that its proposed approach provides clarity. It is more logically organized by subject matter and contains numerous headings and sub-headings in order to guide an employee unfamiliar with telework. Moreover, the proposal specifies the type of training an employee must receive before they are eligible to telework and it also includes an example of a telework agreement that an employee is expected to sign in order to telework. The proposal further identifies relevant Commerce and NOAA security policies and provides links to electronic versions of those policies. Moreover, the Employer believes that by applying significant portions of the NOAA 2015 policy, ERD managers and employees can discuss telework issues

including those matters that involve "managerial discretion").

with other divisions in the Regional Center that have similar telework plans in place. Such discussion can facilitate possible resolution of problems arising under the parties' telework arrangement. All of the foregoing will assist management and employees in the administration of telework.

The Employer acknowledges that a remaining key area of disagreement between the parties is the subject of mandatory telework. The Employer maintains that teleworking during facility closures should be the norm rather than the exception. In December 2015, OPM issued guidance concerning telework during weather closures in the Washington, D.C. area.^{6/} The guidance "encourages" agencies to incorporate provisions "requiring" employees to telework during weather closures. It also states that employees who can work safely from their home should do so and that "excused absences" should no longer be the *status quo* in the face of expanding telework.

The Employer used the foregoing guidance to craft its approach to mandatory telework. Thus, while it agrees to the Plan A/Plan B structure of the Union's proposal, it counter-proposes that employees on Plan A will only be permitted to work 80 hours per calendar year before becoming subject to mandatory telework. In the Employer's view, working over 80 hours within 1 year provides employees with enough familiarity to telework during closures. In 2014 Commerce convened a work group over telework. Admittedly, the Union did not have a representative on this group, but the group did include other labor representatives and opportunities for all stakeholders to comment. They originally concluded that the threshold between Plan A and Plan B should be 40 hours. The Employer therefore feels that it is being very generous in its proposal.

To address some of the Union's concerns about mandatory telework, the Employer's proposal adopts the Union's proposed language (with some modification) that teleworking employees may be excused from work in situations that might prevent them from teleworking. Additionally, mandatory telework would not be required if the Employer's facility is closed for "non-emergenc[ies]." Employees would also not have to telework if an emergency situation impacts their alternative work site. The Employer feels that its concessions are fair to the Union and also permit its mission to continue during emergency closures. Allowing employees to telework 208 hours per year - or once a pay

6/ See Washington D.C., Area Dismissal and Closure Procedures, (December 2015) (available at <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/dcdismisal.pdf>)

period - without the requirement for mandatory telework as the Union proposes essentially "guts" the Employer's ability to continue its mission during emergency closures. Nor can the Employer place an artificial cap on the amount of days an employee must telework. Such an approach is flatly inconsistent with the above-referenced OPM guidance. Moreover, as a practical matter, since 2008 the Regional Center has closed no more than 3 days a calendar year for weather situations. Indeed, there have been no such closures since 2014.

The Employer's modified last best offer also addresses other concerns that the Union identified during the med-arb process. The Employer has removed certain inapplicable definitions (such as "hoteling" and "mobile workers") to curb confusion and to address the Union's argument that some of the Employer's policy did not apply to the ERD bargaining unit employees. The Employer's prior proposal noted that an alternative worksite could be considered an "official Government worksite;" the Employer has taken this reference out of its current proposal. The Employer has also removed language stating that telework could be a mandatory condition of employment or could be required in COOP events. Instead, the proposal now states that telework is voluntary except that, when the Employer is operating pursuant to a COOP plan, that plan shall supersede any telework policy. The Employer's original last best offer also included language stating that employees should be expected to telework during COOP events. During the med-arb, the Union cited a 2006 General Services Administration (GSA) bulletin that allegedly questioned whether such an arrangement would be permitted.^{7/} Consequently, the Employer has modified its proposal to simply state that management will "comply with applicable laws and regulations regarding the designation of an alternative worksite during a COOP event." Finally, to address the Union's concern about its ability to negotiate over new IT policies, the Employer adds language that will permit negotiations over such policies that are properly "subject to collective bargaining agreement."

One area where the Employer cannot make a concession concerns establishing fixed times for teleworking-employees and managers to engage in telephone conversations. The Union claimed that such a requirement treats teleworking employees different from non-teleworking employees in potential violation of the Act's requirement that both groups of employees should be treated equally. However, the Employer asserts that, by their nature, teleworking employees are in a different situation than non-

^{7/} See Federal Management Regulation Bulletin 2006-B3 (Mar. 7, 2006).

teleworkers. As such, it is appropriate to place different reporting requirements on the former group of employees. Indeed, OPM encourages agencies to "maintain and specify expectations for communication between managers and teleworkers."^{8/}

In summary, the Employer's last best offer on telework serves the "principle of exchange." The Employer gladly offers telework as a valuable work-life balance tool, but in exchange, the Employer expects that its mission will be able to continue during emergency closures through the use of telework. Moreover, unlike the Union's proposal, the Employer's last best offer provides employees with a clear and comprehensive policy, and that remaining largely consistent with NOAA's 2015 policy serves both parties' interests.

ANALYSIS and CONCLUSION

The proposed language by the parties, drawing, as both proposals do, on some of the same sources, often contains similar language. Where it is different, however, the differences would appear to stem from underlying, but also unspoken, philosophical differences.

Perhaps the place to start is with the very concept of telework itself. Traditionally, telework has been regarded as a benefit to employees. At a minimum, it reduces the need to spend time and money commuting, it reinforces the employee's autonomy and independence, adds to morale for those who have earned the privilege of not requiring "line of sight" supervision, and maximizes employee time to concentrate on productivity and quality.

It is true that in recent years, the increased interest in teleworking has also been associated with reducing the size of agency real estate and office space, in conformance with the federal government effort as described in Presidential Memorandum "Disposing of Unneeded Federal Real Estate - Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency," dated June 10, 2010, and Office of Management and Budget (OMB) Memorandum M-12-12 "Promoting Efficient Spending to Support Agency Operations," dated May 11, 2012. Employers realize an improvement in employee morale and loyalty, along with possible improvements in productivity and quality from employees.

8/ Citing OPM Guide to Telework in the Federal Government, at 12-13 (April 2011).

In the current situation, this arbitrator is hard pressed to find any indication, however, that the Union views telework as a benefit and a privilege that they should be seeking to protect and appreciate. They focus instead, on the Agency's ability to save on office space and facility costs and do not seem to recognize or wish to give credit to the benefits that their members enjoy through teleworking.

A second area of philosophical disconnect for this writer has to do with the very mission of the Agency. As I understand it, the ERD is dedicated to responding to oil spills and other environmental disasters. A significant part of the Agency rationale for promoting telework is to ensure its ability to respond to its customer agencies during such disasters, as well as to continue to operate during natural emergencies such as snow and ice storms, earthquakes, etc. What do we mean by the word "emergency"? Is it not true that emergency is contained in the very title of the division? If employees are not available to work throughout an emerging crisis, why have they accepted employment within this division? Why have they freely chosen to remain employed by a division with this mission? How does the Union effort to seek to limit the number of consecutive days of mandatory telework or the number of days per year that employees can be required to telework reflect a recognition of the Agency's crisis mission?

Clearly, the federal government is fortunate to have gathered this talented collection of scientists and engineers who specialize in responding to serious spills and environmental events. In return, however, for the benefit of allowing employees the flexibility of teleworking, why should the Agency not expect that its employees will be available to continue operations in the midst of a crisis? Is it unreasonable to expect that this employment relationship would not be based on an exchange of promises that would guarantee the availability of the group of employees who have benefitted the most from teleworking?

The third philosophical disconnect that I believe hampered much of the parties' negotiations on this subject over a several year period has to do with the conflict between the Agency's desire to have a policy that comports with the NOAA's National Telework Policy and the rather unique nature of the mission of the ERD. In the view of this writer, the Agency's interest in having a telework policy that closely resembles policies throughout NOAA or the DOC does not square with the somewhat unique focus of the ERD.

Probably the most controversial aspect of the Telework language dividing the parties has to do with the subject of

mandatory teleworking. Both parties did propose a 2 plan approach, one for the more casual teleworker and one (Plan B) for the employee who is teleworking on a more regular basis. These employees would be considered more "telework ready", and would therefore be expected to be mandated to telework in the event of an emergency.

The Union proposes that employees who telework less than 208 hours per year would not be required to telework in an emergency. The Agency has proposed a limit of 80 hours of telework in a year, above which any employees working more telework hours would be eligible to be mandated. The Union argues that the employees who work less telework hours per year would not be ready to be mandated to work, but it is difficult for this arbitrator to understand the rationale for this position. If an employee teleworks 80 hours per year, why is he or she "less ready" than an employee who works 150 or 208 hours per year? The parties agree that all employees have to take telework training, have the appropriate equipment available and be in compliance with Agency technology and security policies. Where does the lack of readiness occur? I am hard pressed to appreciate the Union argument here.

I also note, with respect to weather situations, as a practical matter, the Regional Center in Seattle has closed no more than 3 days a calendar year for weather situations. Indeed, there have been no such closures since 2014. Understanding the underlying rationale or business case for the Union's position on this provision of telework is challenging.

Finally, while I note the Union's attempt to persuade the arbitrator of their concern with the difficulty of their members to persuade their supervisors of their ability to maintain a state of telework readiness and the unfair bargaining position that they would be in, they offer no examples and no compelling position to justify their argument.

On the other hand, the Employer's proposal also contains a number of provisions which are difficult to include because the Agency has not provided a compelling rationale or business case for doing so. For example, on the issue of IT Security, the Agency does not provide much explanation of why they require such elaborate procedures in the contract for IT Security. While the arbitrator appreciates the important nature of the issue, it is nowhere evident why such language is required other than a general desire to comply with the DOC/NOAA policy.

Similarly, the Agency's proposal incorporates by reference Department of Commerce and NOAA IT Security Policies, but it is

unclear what has and what has not been negotiated with the Union. My concern is heightened when I read the Agency language stating, "we will bargain these policies *moving forward*." I have therefore, chosen not to include policies that the Agency has not provided a compelling reason to include and that the parties may not have negotiated.

While I have chosen not to include the reference to these policies in the language that I am ordering, I note that there are adequate safeguards in place to address Management's interests. For example, in Appendix A, all employees must complete an online OPM telework training that presumably covers some security issues. In Appendix B, an employee has to rate themselves as to their knowledge of IT Security Policies. These items serve the practical effect of putting employees on notice.

Not surprisingly, I have chosen not to include the language proposed by the Agency in their Article XIX, "Privacy Act and PII/BII in the language that I am ordering on Telework. To begin with, Appendix A already requires employees to abide by the Privacy Act in a general statement. In my view, that should more than suffice to address the Agency's interests on this subject. I am equally convinced that it is not necessary or helpful to include the PII/BII language in the language that I am ordering. The requirement that employees sign in Appendix A not to disclose government records meets this function without overwhelming either the employee or the clarity of the contract.

The Agency's proposed language on "Sensitive Information" seems to provide management with the unilateral discretion to define certain items as different types of information without discussing them with the Union. I am here, hard pressed to find the Agency's justification for including it.

Finally, the Agency's language in Article XXI references DOC policies and incorporates them whole sale without providing much of a business case or any basis for distinguishing which items have been negotiated with the Union. Therefore, I have decided not to include this language.

My purpose in going into this level of detail in this section is to provide the parties with a clear picture of why I have decided to synthesize their proposals on Telework into a third version, rather than adopting the proposals of either party as submitted.

Therefore, in view of my comprehensive review of the submissions of both parties and a review of the joint discussion

and evidence from the med arb, I am ordering the adopting of my language referenced here as Appendix 1, the Arbitrator Article on Telework.

ISSUE TWO: OFFICE SPACE

a. The Union's Position

The Union proposes the following language:

1. *General Principles and Shared Offices*

(A) To the extent practical, each member of the bargaining unit shall be furnished with office space that facilitates productivity and employee satisfaction.

(B) Management will usually attempt to assign individual offices to staff but may require shared offices in certain circumstances. In the case of a shared office, the employees in the office to be shared may be consulted by Management. Employees in a shared office should be reasonable and flexible regarding their concerns about potential office mates. At an employee's request, the Union may represent either or both employees during this consultation.

2. *Individual assignments at Western Regional Center (WRC)*

(A) Possible bargaining unit employee office space at WRC shall consist of non-temporary (available for more than 90 days) office space that is designated or allocated to the Office of Response and Restoration (OR&R) and not assigned to federal employees who are not in the bargaining unit.

(B) Management may independently assign or not assign a specific Section 2 (A) office space if (1) doing so is directly and integrally related to the exercise of Management's right to determine the technology, method and means to accomplish work necessary to fulfill its mission; and (2) office assignment using the method in Section 3 would directly interfere with the mission-related purpose for which the technology, method, or means were adopted.

C. Available office space, as defined in Section 2(A), that becomes vacant will normally be assigned using the

formula in Section 3 if either, (1) Management has determined that the vacant space is available to a bargaining unit member; or (2) the space is adjacent to or very near office space currently occupied by bargaining unit personnel and is not assigned for a mission-related purpose as defined in Section 2(B)

3. *Formula*: Barring unusual extenuating factors, Section 2(C) vacant office space will be assigned as follows:

(A). Management will notify the Union and all bargaining unit employees within that commuting area about the availability of office space and request notification from all employees who are interested in occupying the office.

(B) If no bargaining unit employee applies for the space, then the method of this Section does not apply. If only one bargaining unit employee applies, he/she will be assigned the office space. If more than one bargaining unit member applies, Management will select the bargaining unit member to be assigned to the vacant office space based on the highest applicant score given by the following formula:

Score = 5 times GS level + years of service as determined by the Service Computation Date in WebTA.

(C) The Union will be notified in writing of the selection; this notification will include a list of staff who expressed interest in the vacant office and a brief rationale of the assignment based on the process and the criteria used. The Union reserves the right to grieve the selection with Management if factors other than the formula in Section 3 (B) were used to make the assignment.

Section 4 *Union records* -Management shall provide the Union Chief Steward a secure storage location for Union documents in an office space dedicated to a Union officer chosen by or designated by the Union.

Section 5- *Preservation of rights*- Nothing in this Article should be interpreted as abridging the rights of Management or the Union under 5 U.S.C. §7106 or under existing agreements, provided such agreements do not contradict this Article.

The Union proposes changing the *status quo* in order to provide bargaining-unit employees with a greater opportunity at obtaining higher-quality vacant office spaces as they become available within the Regional Center. Specifically, employees would stand a better chance of receiving offices that have views of a lake that is adjacent to the facility ("lake-view" offices), or just window-space offices in general.

Under the current *status quo*, divisions that are above the ERD allocate office space to it without any Union involvement. The ERD is a sub-division of NOAA's Office of Response and Restoration (ORR), and ORR manages all office space within the Regional Center. The Business Services Group (BSG), a sister division of ERD, coordinates the procurement of additional office space, and the ORR Management Team (OMT) handles the actual allocation of this space. The OMT consists of managers from the ORR divisions stationed at the Regional Center, including the ERD. OMT does not solicit or receive feedback from the Union when it assigns office space to ERD, but ERD management can raise concerns from the Union. Although the Union and the Employer executed an MOU in 2007 over office space, the Union maintains that the MOU continues to leave ERD and bargaining-unit employees as after thoughts in the aforementioned space-allocation process. So the key disputed provision of the Union's proposal "fixes" the foregoing situation by defining vacant offices as offices that are assigned to ORR rather than ERD. This proposed arrangement grants employees potential greater access to lake-view and window offices, thereby increasing employee morale and honoring employees for their tenure with the Employer. Moreover, under the Union's proposal, a formula is in place that permits management to unilaterally assign vacant offices that become available when such assignments coincide with mission-related purposes.

The Union argues that the *status quo* unfairly favors other groups of employees at the expense of bargaining-unit employees. Indeed, a contractor received a lake-view office as a result of favoritism (or so the Union contends). Moreover, all ERD managers have window offices. Of the 18 bargaining-unit employees located at the Regional Center, only 4 have lake-view offices. And although the "remainder" of bargaining-unit employees have window offices, "most work in virtually or actual windowless offices or cubicles." The Union does not believe it is relevant that most contractors have cubicles; those employees are not "comparable" for collective-bargaining purposes. Moreover, employees do not always sit by functions or grouping as the Employer suggests, so permitting bargaining unit employees to sit outside of their division will not be as disruptive as the Employer maintains.

In summary, the Union's proposal creates a fair system for office-space distribution that balances the needs of bargaining-unit employees and ERD management. Those interests include: (1) engaging employees in the office-selection process; (2) increasing favorable work conditions; (3) improving employee morale; (4) providing parity for bargaining-unit and non-bargaining unit employees favorably; and (5) respecting management's rights.

b. The Employer's Position

The Employer's proposal on this issue is as follows:

Article 39. Office Space

Section 1. General Principles and Shared Offices

- A. To the extent practical, each member of the bargaining unit shall be furnished with office space that facilitates productivity and employee satisfaction.
- B. Management will usually attempt to assign individual offices to staff but may require shared offices in certain circumstances. In the case of a shared office, the employees in the office to be shared may be consulted by Management. Employees in a shared office should be reasonable and flexible regarding their concerns about potential office mates. At an employee's request, the Union may represent either or both employees during this consultation.

Section 2. Individual assignments at Western Regional Center (WRC)

- A. For the purpose of this Article, Vacant Staff Office Space is defined as non-temporary NOAA Western Regional Center office space that is to be allocated to or is presently used by ERD and is vacant (not used as primary office by any employee for greater than 90 days) or soon to be vacant and either:
 - 1. Management has determined qualifies as vacant ERD staff office space, i.e., space available for occupancy by bargaining unit employees; or
 - 2. Meets all of the following criteria:

- a. is adjacent to or very near existing office space occupied by bargaining unit personnel; and
- b. could be available to bargaining unit employees without interfering with Management's exercise of its right to determine the methods and/or means of performing work; and
- c. is not intended to be occupied by managers or other federal employees who are not part of the bargaining unit.

Section 3. Formula

Unless there is a clear and justifiable reason for locating specific staff close to a common area or resource needed by Management to achieve its mission, Vacant Staff Office Space will be assigned as follows:

- A. Management will notify the Union and all bargaining unit employees within that commuting area about the availability of office space and request notification from all employees who are interested in occupying the office.
- B. If no bargaining unit employee applies for the space, then the method of this Section does not apply. If only one bargaining unit employee applies, he/she will be assigned the office space. If more than one bargaining unit member applies, Management will select the bargaining unit member to be assigned to the vacant office space based on the highest applicant score given by the following formula:

Score = 5 times GS level + years of service as determined by the Service Computation Date in WebTA.

- C. The Union will be notified in writing of the selection; this notification will include a list of staff who expressed interest in the vacant office and a brief rationale of the assignment based on the process and the criteria used. The Union reserves the right to grieve the selection with Management if factors other than the formula in Section 3(B) were used to make the assignment.

Section 4. Vacant office space outside of ERD's allotted space

In some instances, office space in the Western Regional Center allocated to the Office of Response and

Restoration, that is neither to be allocated to nor in use by ERD, may become vacant. Where such office space meets all of the criteria in Section 1 (other than the requirement that the office space "is to be allocated to or is presently used by ERD") and the Union would like for the space to be assigned to a bargaining unit member, the Union may, in writing, notify Management of the specific office space it seeks. Management will thereafter raise the request with the division manager responsible for the office space at issue. Management will then provide an answer to the Union and the reason for its answer. Should ERD be able to secure the office space the Union requests, Management will assign the relevant office space in accordance with Section 3. When vacant space is available, Management recognizes that it is generally in the interest of both Management and the Union to secure office space that the Union finds desirable.

Section 5. Union records

Management shall provide the Union Chief Steward a secure storage location for Union documents in an office space dedicated to a Union officer chosen by or designated by the Union.

Section 6. Preservation of rights

Nothing in this Article should be interpreted as abridging the rights of Management or the Union under 5 U.S.C. §7106.

ANALYSIS and CONCLUSION

This Arbitrator would join the parties in their mutual appreciation of the Western Regional Center and its view of the Cascade Mountains and Lake Washington. The Arbitrator would also join the parties in affirming that from my viewpoint, the Memorandum of Understanding that the parties executed in 2007 appears to continue to work well. The key difference in the parties' proposal in arbitration would appear to be how they view office space. Management appears to utilize a long standing concept of office space as it exists within the parties' agreed upon MOU involving the "footprint" in the Western Regional Center, whereas the Union proposes to include all office space available to OR & R. I would note here, that the Agency's assertion that "Each division's footprint has remained relatively unchanged for

at least 14 years" (Agency Exhibit 21) is not disputed by the Union.

The Employer is willing to agree to some revisions to the *status quo*, including the newly proposed Section 4 of its proposal. Under this section, bargaining-unit employees may request vacant office spaces that become available in areas that are under the control of other divisions within the Regional Center. ERD management would then pass along such requests to the appropriate division for their consideration. However, the Employer is unwilling to adopt language that defines vacant offices as offices that are made available to ORR or otherwise commits other divisions to providing vacant office space to ERD employees.

The Employer's unwillingness stems from concerns that this arbitrator sees as both legal and practical. From a legal standpoint, the Employer maintains that it has no authority to bind ORR or other divisions to a process in which they lose discretion over how to govern their office spaces.^{9/} The Employer's practical concern is that adopting the Union's proposal could create disharmony between ERD and its sister divisions - the Business Services Group (BSG) and the Marine Debris Division (MDD) - with which it frequently collaborates. In this regard, each division receives space allotments from ORR/OMT and no division may encroach upon another division's space. Implementing a system in which ERD could disturb another division's area could lead to discord between ERD and the BSG or the MDD. Nevertheless, the Employer raised the Union's suggested proposal with OMT and it was rejected.

Most significantly, the Union has not demonstrated a need to deviate from the *status quo*. As the Union noted, 4 out of 18 bargaining-unit employees in the Regional Center currently have lake-view offices. Additionally, including those 4 employees, many bargaining-unit employees have offices with some sort of window access. So, even under the *status quo*, bargaining-unit employees routinely receive "choice" office space. Moreover, the Union appears to base its case for the need to improve the policy of assigning office space on the idea that two contractors have lake-view offices out of *all* ORR divisions. Thus, the Union's concern about contractors receiving an abundance of high-quality offices is overstated. Further, adopting the Union's proposal would result in ERD receiving a disproportionate amount of office space in comparison to other divisions within the Regional Center.

^{9/} The Employer clarifies, however, that it is not alleging that the Union's proposal is non-negotiable.

In summary, the Union has not identified any significant harms that warrant a departure from the *status quo*. To the contrary, adopting the Union's proposal could create harm. The Employer, however, has made an effort to address the Union's concerns by creating a procedure in which ERD management must at least inquire and request spaces that become available in other divisions. Thus, for the foregoing reasons, I am ordering the adoption of its proposal as cited above and in Appendix Two of this decision.

DECISION

Having carefully considered all of the arguments and the evidence presented, I conclude that the impasse shall be resolved on the basis of the following solution:^{10/}

On the unresolved issue of Telework, Article 36, the Arbitrator orders the adoption of the Arbitrator's Telework Proposal, attached here as Appendix 1.

On the unresolved issue of Office Space, Article 39, the Arbitrator orders the adoption of the Agency's Proposal, attached here as Appendix 2.



Edward F. Hartfield
Arbitrator

September 23, 2016
St. Clair Shores, Michigan

^{10/} The MOU incorporates those provisions which the parties voluntarily agreed to during the mediation-arbitration proceeding.

APPENDIX ONE: ARBITRATOR'S TELEWORK LANGUAGE

Article 36 - Telework

I. INTRODUCTION

Consistent with OPM guidance, it is the intent of Management and the Union that the telework instructions in this article serve as a useful and practical resource for employee and manager. Telework is a flexible work arrangement under which an employee performs the duties and responsibilities of his/her position and other authorized activities from an approved alternate worksite other than the employee's designated traditional Federal workplace.

An employee's decision to elect to telework is entirely voluntary (unless the employee is designated an "emergency" employee or is designated as a member of the Continuation of Operations Plan, COOP).

Although participation in the Telework Program is voluntary and subject to the discretion of the supervisor, participation is encouraged at a rate of at least 2 days per pay period for employees that choose and are approved to telework.

Both parties recognize the positive impact that an effective telework program can have on our ability to contribute to the OR&R mission. Management is committed to the use of the telework program to the maximum extent possible without diminishing employee or organizational performance.

This Article supersedes any previous CBA or MOU/MOAs between the Agency and the union regarding the matter of telework.

Telework procedures will be governed by this Agreement, applicable law, government-wide regulations at the time of this agreement, and to the extent that it does not conflict with applicable law, government-wide regulations, and this Agreement, or involve conditions of employment that have not yet undergone required collective bargaining.

The law and policies are intended to promote:

- recruiting and retaining the best possible workforce;
- continuing operations during emergency conditions;
- management effectiveness; and
- enhancing work-life balance by allowing employees to better manage their work and personal obligations.

II. DEFINITIONS

The following definitions are intended to guide all employees and their supervisors:

Ad Hoc Telework - Telework performed on an irregular basis, chosen by the employee, to address a specific need of the employee. Ad hoc telework must be requested and approved by the supervisor in advance.

Alternate Worksite - The employee's residence or a location other than the traditional worksite, which has been approved by the manager/supervisor for the performance of the employee's official duties

Approving Official - Manager who approves the employee telework agreement, usually his/her supervisor.

Eligible Employee - All employees are considered eligible to telework unless: 1.) the employee has been officially disciplined for being absent without permission for more than five (5) days in any calendar year (there are no exceptions); or, 2.) the employee has been officially disciplined for violations of 5 CFR Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch) for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties (there are no exceptions).

Eligible Participation - A position is an eligible position unless the official duties require on a daily basis (every workday) the direct handling of secure materials determined to be inappropriate for telework by the head of the bureau/operating unit; the employee performs on-site activities that cannot be performed at an alternate worksite; or the employee's performance does not comply with the terms of the written agreement between the approving official and the employee¹¹.

Emergency Relocation Group (ERG) Member - A person assigned responsibility to report to, be on call, or serve as backup to an alternate site, as required, performing agency-essential

¹¹ Length of this exclusion is at the office director's discretion.

functions or other continuity-related operations. Staff assigned responsibility to continue essential functions from an alternate site in the event that their primary operating facilities are threatened or have been incapacitated by an incident [Federal Continuity Directive 1 (FCD 1) October 26, 2012]

Essential Functions - Functions that enable the Federal Government to provide vital services, exercise civil authority, maintain the safety and well-being of the general populace, and sustain the industrial/economic base in an emergency.

Mandatory telework- Requiring the employee to either use personal leave or do involuntary telework as ordered by Management on a day when the employee would not normally telework.

Official Duty Station - Location of an employee's position of record where the employee regularly performs his or her duties. If the employee's work involves recurring travel or their work location varies on a recurring basis, the duty station is the location where the work activities of the employee's position of record are based, as determined by the manager/ supervisor. An employee's official duty station determines the appropriate locality area for pay purposes for General Schedule or equivalent employees.

Regular/Recurring Telework - Telework that is performed according to a pre-determined schedule on the same day(s) of the week on the employee's regularly scheduled tour of duty.

Remote Worker - The employee is teleworking full-time from an alternate work site. The alternate work site becomes the employee's official duty station for pay purposes.

Telework - Telework, known as "telecommuting," refers to a paid, flexible work arrangement under which an employee performs the duties and responsibilities of his/her position, and other authorized activities, from an alternate worksite, not the traditional worksite.

Telework-Ready Employee - An employee who has completed Telework 101 for Employees via the Commerce Learning Center (CLC); has a signed individual telework agreement; and has the required necessities to telework for their entire work schedule.

Traditional Worksite - The traditional worksite is where the employee would work absent a telework arrangement.

III. TELEWORK STRATEGIES

- A. **Agreeing to Telework.** An employee's decision to telework is voluntary, except that where ERD is operating under a continuity of operations plan, that plan shall supersede any telework policy.
- B. **Types of Telework.** It is the policy of the National Oceanic and Atmospheric Administration (NOAA) to allow eligible employees to work at alternate work sites away from their official duty stations, consistent with the needs of their office, during their regular tour of duty. There are three (3) types of telework:
1. **Regular/Recurring Telework** occurs as part of a preapproved ongoing, regular schedule. Once the schedule is established, the employee may not change the assigned telework day(s) without prior approval of the approving official. An employee may combine teleworking with an alternative work schedule with the prior approval of the approving official.
 2. **Unscheduled Telework** occurs under an announcement by the Office of Personnel Management (OPM) or other appropriate authority (but the employee's office is open). When OPM makes an announcement of "Unscheduled Telework" and it is not the employee's regularly scheduled telework day, the employee may choose to perform unscheduled telework. The employee's decision is not subject to prior approval by the supervisor. However, the employee must notify his/her supervisor in accordance with the applicable policy of the office. In rare circumstances, management may find it necessary to require a non-emergency, telework-ready employee to report for an assignment that requires presence at the worksite (e.g., providing a presentation or performing administrative duties at a pre-scheduled conference). This should not be a last-minute surprise, but a special work circumstance that both the supervisor and employee know about, discuss, and plan in advance as the special work requires.
 3. **Ad Hoc Telework** occurs on an irregular basis, chosen by the employee, to address a specific need of the employee. Ad hoc telework must be requested and approved by the supervisor in advance.

- C. Telework May Not be used as a Substitute for Dependent Care. If elders, children, or other dependents are able to care for themselves, and their self-care is not prohibited by local or state law(s), then their presence at the telework location would not interfere with the employee performing telework.
- D. Teleworkers and Non-Teleworkers Shall, as Set Forth in 5 U.S.C. §6503, be Treated the Same for Certain Purposes:
1. Periodic appraisals of job performance of employees;
 2. Training, rewarding, reassigning, promoting, reduction in grade, retaining, and removing employees;
 3. Work requirements; and
 4. Other acts involving managerial discretion.
- E. Training Requirements. It is the policy of NOAA that all eligible employees must successfully complete Telework 101 for Employees via the Commerce Learning Center (CLC) before they can request to telework. The approving official for individual telework agreements is the applicable office director, or designee, and he/she must have completed Telework 101 for Managers via CLC before they can approve any individual telework agreements.
- F. Maximum Amount of Teleworking. The maximum number of days an employee (including part-time employees) may telework during a pay period is left to the discretion of the approving official or designee (i.e., employee's supervisor). This includes regular/recurring telework and ad hoc telework. See Section VII below for further information.

IV. ELIGIBILITY CRITERIA

- A. Employee Eligibility. This document covers all bargaining unit employees. Participation in telework is open to all eligible employees without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, parental status, military service, or other non-merit factors, unless cited as one of the exceptions identified below and in the Title 5 reference. 5 U.S.C. § 6502(a) (2).

1. **Employee Exceptions.** NOAA employees who meet any of the following exceptions are ineligible to telework:
 - a. The employee has been officially disciplined for being absent without permission for more than five (5) days in any calendar year; or
 - b. The employee has been officially disciplined¹² for violations of 5 CFR Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch) for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties¹³.
2. All employees are initially considered eligible to telework. If an employee is determined to be ineligible to work due to 5 U.S.C. § 6502(a)(2), the employee will receive a written determination from the office director or designee (i.e., employee's supervisor) within 10 working days of the employee's request to telework.

B. **Precluded Due to Nature of Work of Position.** If the official duties of the employee's position require the employee to perform direct handling of secure materials determined to be inappropriate for telework by the agency head; on-site activity that cannot be handled remotely or at an alternate worksite, or the employee is a mobile worker (not eligible due to the nature of work) then the employees' position is not eligible for telework.

¹² Definition of Officially Disciplined - A disciplinary action that results in the placement of a document in an employee's official personnel file (OPF); the bar on telework participation remains in effect as long as the document stays in an employee's OPF. A suspension or termination related to the items mentioned in Public Law 111-292 that results in a document (Standard Form 50) that permanently remains in the OPF would result in permanent prohibition in telework participation.

¹³ No authority to waive provisions "a" or "b."

V. ACCOMMODATIONS FOR EMPLOYEES WITH DISABILITIES

It is important to distinguish between ordinary requests to telework and requests from persons with disabilities for reasonable accommodation. Approving officials/supervisors should consult Department Administrative Order (DAO) 215-10, "Reasonable Accommodation Policy," and the Disability Program Manager as part of the interactive process established by the Rehabilitation Act, in order to fully understand supervisors' responsibilities under the law.

As governed by Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et. seq., the Rehabilitation Act and DAO 215-10, the determination as to whether an employee may be granted telework as a reasonable accommodation due to a disability should be made through the Reasonable Accommodation Coordinator, the employee's first-line supervisor, and the employee.

VI. EXTENT OF TELEWORK

- A. All eligible employees may telework at the alternate worksite up to 60% of their pay period work hours or six (6) days per pay period, whichever is less, as a regular schedule. Management may restrict the amount of telework for any individual employee if it can show that it is essential for the employee's duties to be performed in the traditional worksite more than 40% of the pay period.
- B. Employees may telework more than 60% of the pay period work hours or six (6) days per pay period as a regular schedule only with the mutual consent of the employee and his/her supervisor and/or approving official. Permission to telework greater than 60% must be exercised in a fair and equitable manner.
- C. An employee may request fulltime (40 hours/week) telework for a specified time period under unusual circumstances. The employee will explain to their supervisor the need for the fulltime telework and the expected duration of this need. Reasons for the request may include, but are not limited to, unique work projects, health considerations (including reasonable accommodations as discussed in Section VI above), or special circumstances affecting the employee's normal commute or telework site.

VII. AD HOC AND UNSCHEDULED TELEWORK

Employees may request ad hoc telework from their supervisor for a variety of circumstances. Their supervisor may disapprove any unscheduled telework request if it is essential for the employee to be in the traditional worksite. The amount of ad hoc telework in a particular pay period is not restricted if agreed to by both the employee and their supervisor.

VIII. OPTIONAL TELEWORK PLANS

NOAA recognizes that some employees will opt not to telework at all, others will choose to telework only on a limited ad hoc basis, and others will telework to the maximum extent possible. NOAA offers two levels (Plans) of telework.

Plan A:

1. Total regularly scheduled telework hours do not exceed one day per pay period and total teleworked hours do not exceed 80 hours during a fiscal year. This number excludes telework hours granted under Section 3(D&E) of this article.
2. Employees on Plan A are not subject to mandatory telework; the employee is not required to telework when the office is closed for reasons other than Federal law (i.e., Federal Holiday) or Executive Order.
3. The employee may switch to Plan B at any time prior to reaching the 80-hour limitation, and the individual telework agreement is modified to reflect the change. If an employee on Plan A exceeds the 80-hour limitation, Management may switch the employee to Plan B and modify the individual telework agreement to reflect this change. If the employee is not switched to Plan B, the employee remains on Plan A and may exceed the 80-hour limitation.

Plan B:

1. Includes employees on a regular/recurring telework schedule of more than 1 or employees who desire the option of doing more than 80 hours ad hoc/ unscheduled telework during the fiscal year.
2. An employee under Plan B may return to Plan A only with

Management permission. As specified in this agreement, the Plan B employee can be subject to mandatory telework when his/her office is closed for reasons other than Federal law (i.e., Federal Holiday) or Executive order

Employees on either plan must obtain supervisory approval before performing ad hoc telework. No supervisory approval is needed for unscheduled telework under OPM or other appropriate authority announcement. However, employees must notify their supervisor in accordance with the terms of the written telework agreement. If telework is requested by the employee, the employee is responsible for ensuring that he/she has sufficient work for the period of telework scheduled to be performed.

IX. TELEWORKING CONDITIONS

As conditions for teleworking, all of the following must be readily available:

- A. Telework-ready employees scheduled to telework during their regular tour of duty on a day when their office is closed (or when other employees are dismissed early) are not entitled to receive overtime pay, credit hours, or compensatory time off in lieu of overtime payment for performing work during their regularly scheduled hours.
- B. All time teleworked in a pay period will be recorded per instructions in the appropriate time and attendance system.
- C. All employees designated as "emergency" or with COOP responsibility must have an approved individual telework agreement.
- D. An employee's supervisor may direct an employee to report to the office on a scheduled telework day when the employee's personal attendance at the traditional worksite is specifically required. In such cases the employee and their supervisor will work to reschedule the telework day during the same pay period when possible. Teleworking employees will normally be allowed to teleconference to meetings called by Management. Management must provide a valid reason for requiring teleworking employees to report to the office for meetings if other bargaining unit employees are joining the meeting via teleconference.

X. PERFORMANCE STANDARDS

Performance standards for telework-ready employees must be the same as performance standards for non-telework-ready employees. Expectations for performance should be clearly addressed in each employee's performance plan, and the performance plan should be reviewed to ensure the standards do not create inequities or inconsistencies between telework-ready and non-telework ready employees. Like non-telework-ready employees, telework-ready employees are held accountable for the results they produce. Resources for performance management are available from OPM at www.opm.gov/perform; and NOAA's performance management resources portal: [https://secure.wfm.noaa.gov/noaa only/perfmgmt/index.html](https://secure.wfm.noaa.gov/noaa%20only/perfmgmt/index.html).

XI. PREPARING FOR THE INDIVIDUAL TELEWORK AGREEMENT

A telework agreement between the Agency and employee must be in place for all types of telework. Telework agreements may be different for each employee and can be either ad hoc with no specified schedule for teleworking or set a regular schedule for teleworking.

The following actions are to be taken when establishing an individual telework agreement:

- A. The employee completes the "Telework Application/Agreement and Modification of Telework Agreement" (See Appendix A) and submits it to his/her supervisor along with the certificate showing successful completion of Telework 101 for Employees via the Commerce Learning Center (CLC).
- B. The employee and supervisor discuss the expectations in the proposed telework agreement, including the performance levels required of the employee.

XII. TELEWORK AGREEMENTS

A. Length of Telework Agreements

1. Individual telework agreements cover the period from October 1 through September 30 of the current fiscal year. All telework agreements expire at the end of the fiscal year.
2. An employee may not telework if they do not have a current approved telework agreement in place.

3. In accordance with 5 U.S.C. § 6502(b)(3), an employee is not authorized to continue teleworking if the performance of that employee does not comply with the terms of the written telework agreement between the approving official and the employee.

B. Denial, Modification, and Termination of Telework

Agreement. The operational needs of NOAA are paramount and employees who telework do not have an automatic right to continue to telework.

1. Denial

- a. Management will provide a written justification within ten (10) working days to any employee whose telework application is denied. Any denial decision must be based on operational needs, conduct, or performance in accordance with the law and this agreement.

2. Modification

- a. An employee may request to modify the current telework agreement (e.g., change the regular teleworking day) by submitting a new "Telework Application/ Agreement and Modification of Telework Agreement" (check "Modification") with only the requested changes indicated;
- b. The supervisor and employee shall discuss the employee's requested modifications within five (5) working days of submission;
- c. If the supervisor is not the approving official, the supervisor will forward the request to the approving official with his/her recommendations within five (5) working days;
- d. The approving official will issue a written decision within five (5) working days (of the discussion in (b));
- e. Unless extraordinary circumstances require immediate action, management will provide ten (10) working days notice to the employee prior to any significant involuntary modification of an employee's telework agreement.

3. Termination.

- a. An employee may terminate his/her written telework agreement by providing the approving official with written notice of a decision to terminate his/her written telework agreement.
- b. An employee may request a modification to their current telework agreement by providing written notice to their supervisor or other designated approving official. The official will notify the employee of his/her decision within five (5) working days.
- c. The approving official must provide documentation for the termination to the affected employee. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect;
- d. The approving official must deny or immediately terminate the individual telework agreement, as applicable, if the employee fails to be eligible to telework due to 5 U.S.C. §§ 6502(a)(2) or (b)(3);
- e. Unless extraordinary circumstances require immediate action, management will provide ten (10) working days notice to the employee prior to any involuntary termination of an employee's telework agreement. Management will provide the union notification within ten (10) days of an involuntary termination.

B. Appeals

1. The employee may, within five (5) days of notification of an application denial, or of a significant involuntary modification, request reconsideration of the denial/reduction to the appropriate deciding official, as designated by Management. If the deciding official disapproves of the request, he/she must provide written justification to the employee within 10 working days indicating when or if the employee would be eligible to reapply, and if applicable, what actions the employee should take to improve his/her chance of future approval. Deciding officials are to provide employees copies of signed written denials or terminations of telework agreements.

2. Employees may grieve any teleworking agreement/application denial, termination or modification under the grievance procedure in this CBA.
3. Employees may choose either the appeals process or the negotiated grievance procedure to challenge the referenced telework decisions, but not both.

XIII. ESTABLISHING THE WORK SCHEDULE

Work schedules identify the days and times an employee will work while teleworking. Normally, telework schedules parallel those at the traditional worksite; however, they can differ to meet the needs of the organization and participating employees' needs. Work schedules may also include fixed times during the day for manager/supervisor/employee telephone conversations, which may be helpful to ensure ongoing communication. For additional information on hours of duty, please visit: http://hr.commerce.gov/Practitioners/CompensationAndLeave/DEV01_006627.

Employees may request intermittent/ad hoc telework from their supervisor for a variety of circumstances. Their supervisor may disapprove any unscheduled telework request if it is essential for the employee to be in the traditional office. The amount of intermittent telework in a particular pay period is not restricted if agreed to by both the employee and their supervisor.

A) Employees may request intermittent/ad hoc telework from their supervisor for a variety of circumstances. Their supervisor may disapprove any unscheduled telework request if it is essential for the employee to be in the traditional office. The amount of intermittent telework in a particular pay period is not restricted if agreed to by both the employee and their supervisor.

B) An employee's supervisor may direct an employee to report to the office on a scheduled telework day when the employee's personal attendance at the traditional worksite is specifically required. In such cases the employee and their supervisor will work to reschedule the telework day during the same pay period when possible. Teleworking employees will normally be allowed to teleconference to meetings called by Management. Management must provide a valid reason for requiring teleworking employees to report to the office for meetings if other bargaining unit employees are joining the meeting via teleconference.

XIV. DETERMINING THE OFFICIAL DUTY STATION (5 CFR 531.605)

A. Pay during Telework Agreements.

1. If the traditional worksite and telework site are within the same locality pay area, the official duty station is the location of the traditional worksite;
2. If the traditional worksite and the telework site are NOT within the same locality pay area:
 - a. The official duty station is the location of the traditional worksite as long as the employee physically reports to the traditional work site at least twice each biweekly pay period on a regular and recurring basis;
 - b. The official duty station is the telework location (i.e., home or other alternate worksite) if the employee does NOT report at least twice each biweekly pay period on a regular and recurring basis to the traditional worksite;
3. If a telework employee with a varying work location works at least twice each biweekly pay period on a regular and recurring basis in the same locality pay area in which the traditional worksite is located, the employee **does not** have to report twice each pay period to the official worksite to maintain the locality payment for that area.
4. Telework arrangements may in rare situations entail a change in an employee's official duty station affecting their locality pay and other relevant circumstances. Requests for full time telework that would require an official change in duty location will be considered and granted only on a case-by-case basis with special consideration given to any increased costs to ERD.
5. The same premium pay rules apply to employees when they telework as when they are working at the traditional worksite.

B. Pay during Temporary Telework Arrangements.

1. In certain temporary situations, NOAA may designate the location of the traditional worksite as the official duty

station of an employee who teleworks on a regular basis in a different locality pay area even though the employee is not able to report at least twice each biweekly pay period on a regular and recurring basis to the traditional worksite. The intent of this exception is to address certain situations where the employee is retaining a residence in the commuting area for the traditional worksite but is temporarily unable to report to the worksite for reasons beyond the employee's control (e.g., on a special assignment or working while recuperating from an operation);

2. One key consideration is the need to preserve equity between telework-ready and non-telework ready employees and working in the same areas as the telework location. Also, the temporary exception should generally be used only in cases where: (1) the employee is expected to stop teleworking and return to work at the traditional worksite in the near future, or (2) the employee is expected to continue teleworking but will be able to report in the near future to the traditional worksite at least twice each biweekly pay period on a regular and recurring basis.

XV. PAY AND LEAVE

- A. **Pay.** An employee's locality rate of pay is based on the employee's official duty station, and is determined in accordance with 5 CFR 531.604. The line/staff office must determine and designate the official duty station for an employee covered by a telework agreement using the criteria above.
- B. **Leave and Work Scheduling Flexibilities.** Telework-ready employees are governed by the same procedures as non-telework-ready employees for requesting and obtaining leave approval.

XVI. OFFICE SPACE

- A. Employees who telework 60% of the pay period or less will be treated the same as non-teleworkers for the determination and assignment of office space (see Article 39).
- B. Management may require the employee to vacate or share their office space if the employee teleworks more than 60% for more

than 90 days. If the employee is required to share an office, then Management will consider the wishes of both employees in office assignment. However, Management will first make a good faith effort to find alternative office space such as using office space assigned to telecommuting contractors. Any office change due to this Article will be done fairly and equitably.

C. If an employee is required to vacate their existing office, a suitable office space will be provided to the employee during required work hours at the traditional worksite. Employees will not be vacated from their office until appropriate office space is located.

XVII. UNION DUTIES WHILE TELEWORKING

Union representatives may perform representational duties while teleworking on official time (see Article 7 of this agreement). That time will be recorded in WebTA (see Article 22 of this agreement) as Official Time. Internal Union business will not be conducted on official time regardless of the employees' worksite.

XVIII. TELEWORK SITES AND EQUIPMENT

An employee's residence or other pre-approved location may be used for telework provided it is conducive for telework and is deemed safe. Use of an employee's residence for telework requires the mutual consent of both Management and the employee. If an employee is using their residence as an alternative worksite, it is the employee's responsibility to ensure a proper and safe work environment is maintained. The Telework Safety Checklist, attached as Appendix C, will serve as evidence that the residential alternative worksite is in compliance with Agency guidelines. The Telework Safety Checklist signed by the employee will serve as official certification and shall be recertified quarterly.

The availability of an employee's personal property, including their residence, to perform government functions is at the discretion of the employee. An employee who teleworks from their residence will provide their supervisor with a timely notice if their residence becomes unavailable or unsuitable as a telework location and, if possible, will provide an estimate of how long it will remain unavailable. If an employee's only approved alternative worksite is their residence and this location becomes unavailable, the employee is not considered to be "telework ready" until the employee notifies management that their residence is once again available as a telework location. During this period

the employee is expected to work from their traditional worksite or request appropriate leave.

Teleworkers must have the necessary equipment and tools to effectively perform and complete work assignments while teleworking.

1. Management may provide employees with computer equipment, associated peripheral equipment (e.g., printer, copier, scanner), telecommunications, broadband card, and will provide basic office supplies such as copy paper, folders, pens, and pencils to the extent that such supplies would be used by the employee at his/her non-teleworking work location.
2. Management is not responsible for any operating costs associated with the use of the employee's residence as an alternative workplace, i.e. internet, phone, electrical, or home heating cost, etc. Management may provide employees with computer equipment, associated peripheral equipment (e.g., printer, copier, scanner), telecommunications, and broadband card and will provide basic office supplies such as copy paper, folders, pens, and pencils to the extent that such supplies would be used by the employee at his/her non-teleworking work location.
3. Management will not provide at-home technical support other than remote technical guidance for government furnished equipment.
4. All equipment and materials provided or reimbursed by NOAA remain the property of NOAA.
5. Teleworkers must have the necessary equipment and tools to effectively perform and complete work assignments while teleworking.

XIX. IT SECURITY REQUIREMENTS FOR TELEWORK-READY EMPLOYEES

- A. Teleworking employees must follow all applicable laws, existing government-wide regulations, and future government-wide regulations not in conflict with this Agreement, on IT security. Teleworking employees must also follow Agency policies and practices on IT security, provided that such Agency policies and practices do not conflict with this Agreement and have undergone required collective bargaining as specified in this Agreement and in applicable law.

- B. Supervisors are responsible for ensuring that telework-ready employees agree to comply with all existing IT security requirements and to ensure employees are held accountable to them.
- C. Management agrees to negotiate initiatives regarding IT security policy that are subject to collective bargaining following the effective date of this agreement in accordance with Article 34 of this CBA (Management Initiatives).

XX. THE PRIVACY ACT OF 1974, SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION (PII), AND BUSINESS IDENTIFIABLE INFORMATION (BII) REQUIREMENTS FOR TELEWORK-READY EMPLOYEES

All telework-ready employees are responsible for ensuring that records subject to the Privacy Act of 1974, sensitive Personally Identifiable Information (PII), and Business Identifiable Information (BII) are not disclosed to anyone except those who have been authorized access to such information in order to perform their duties. Bureaus/operating units must ensure that appropriate physical, administrative, and technical safeguards are used to protect the security and confidentiality of such records.

XXI. TELEWORKING DURING UNUSUAL CIRCUMSTANCES

- A If the telework-ready employee faces a personal hardship that prevents him/her from working successfully at the telework site, the employee may request the appropriate leave (annual, sick, compensatory, credit hours, compensatory time for travel). The employee may also switch to an alternative work schedule day off, or use "flexing" consistent with the employee's alternative work schedule, if any.
- B If a localized emergency situation (e.g. power or water failure) closes an employee's traditional worksite or results in an early dismissal, employees who are teleworking on that day and whose ability to work is not affected by the emergency situation, will continue to work. The employee shall notify their supervisor if they cannot continue working the rest of the regularly scheduled shift. If the emergency condition also affects the functionality of the telework site or if the telework-ready employee's duties are such that he/she cannot continue to work without contact with the regular worksite

during emergency situation, the employee will be excused for the same time period as non-teleworking employees.

- C If an early dismissal is announced due to inclement weather to allow employees to return home safely and the employee is working at a Federal Interagency Telecommuting Center, the employee will follow the dismissal procedures of the Telecenter.
- D If the employee is working at their residence when an early dismissal due to inclement weather is announced for the traditional worksite facility, the employee shall exercise discretion in accordance with the current Policy as to whether they are capable of continuing work for the rest of the regularly scheduled shift and will notify their supervisor in a timely manner.
- E When advance notice (no less than 2 hours prior to the end of an employee's work shift) is given of a closure or potential closure of the traditional worksite due to an emergency situation, e.g., a "snow closing day," telework ready bargaining unit employees will telework even if not scheduled to do so provided they are able to perform their normal work assignments at the telework location. If the employee is unable to perform their normal work assignments at the alternative work location, the employee will be excused for the same time period as non-teleworking employees. Possible situations that could preclude an employee from teleworking during a closure of the traditional work site include but may not be limited to:
 - 1. The alternate worksite is in a manner that renders the employee unable to telework (e.g., remodeling activities have disrupted internet access; spouse is required to use the only computer available at the worksite; the home office space is being used by house guests or other cohabitants of the employee, etc.)
 - 2. The presence, due to the emergency, of dependents at the telework location that require the employee's supervision;
 - 3. The emergency event that closed the traditional worksite has also adversely impacted the alternate worksite;
 - 4. The employee has insufficient assigned work that can be

accomplished while teleworking or lacks the necessary equipment or supplies, (and the supervisor is unable to provide additional work) or lacks the necessary equipment or supplies due to circumstances outside of the employee's control.

5. Employees will not be required to telework during non-emergency closures of the traditional worksite (e.g. maintenance or construction activities).
- F. Employees are not responsible for ensuring that they will always have sufficient assigned work to accomplish while doing mandatory telework during an extended emergency closure of their traditional worksite. The employee will notify their supervisor as soon as practical if the alternate worksite is not available or if the employee has insufficient work.
- G. When an early dismissal of employees for non-emergency conditions is announced, such as on the day prior to a Federal holiday or two-hour early dismissal, employees who are teleworking or scheduled to telework will be similarly excused.
- H. When an emergency affects only the alternative worksite for a major portion of the workday, the employee is expected to report to the traditional worksite or request supervisory approval of leave.
- I. When an employee knows in advance of a situation that would preclude working at the alternative worksite, the employee must either come to the traditional worksite or request leave.
- K. Employees who are required to report to work during a COOP event shall follow the relevant COOP plan.
- L. Any single emergency (non-COOP) closure, employees on Plan B will be required to telework at the alternate worksite (AWS) designated in their telework agreement for up to six days of unscheduled telework. Following the sixth day of such unscheduled telework, employees will not be required to telework at the AWS designated in their telework agreement. Rather, if and once management is able to provide an alternate worksite, employees will be required to work at that site. Following the sixth day of unscheduled telework during

the single emergency closure, to the extent management is not able to find an alternate worksite, employees will not be required to perform unscheduled telework.

- M. When advanced notice (no less than 2 hours prior to the end of an employees work shift) is given of a planned closure of the traditional worksite office the next day due to an emergency situation, e.g. a "snow closing day," telework-ready employees on Plan B will telework even if not scheduled to do so.
- N. Employees on Plan B will not be required to do mandatory telework during non-emergency closures of the traditional worksite (e.g. maintenance or construction activities), nor do mandatory telework for more than six (6) non-scheduled telework days for any single emergency closure, nor do mandatory telework of more than ten (10) days in any fiscal year except for ERG employees in a COOP event. The Agency agrees to expeditiously seek alternate work locations for extended emergencies that affect the traditional worksite.
- O. When an early dismissal of employees for non-emergency conditions is announced, such as on the day prior to a Federal holiday or two-hour early dismissal, employees who are teleworking or scheduled to telework will be similarly excused.
- P. When an emergency affects only the alternative worksite for a major portion of the workday, the employee is expected to report to the traditional worksite or request supervisory approval of leave.
- Q. When an employee knows in advance of a situation that would preclude working at the alternative worksite, the employee must either come to the traditional worksite or request leave.
- R. Employees who are required to report to work during a COOP event may request to telework from their residence or report to an alternative worksite determined by Management.

XXII. TELEWORK AND THE CONTINUITY OF OPERATIONS PLAN (COOP)

- A. Employees who are designated members of an Emergency

Relocation Group (ERG) under a Continuity of Operations Plan (COOP) may be required to sign a mandatory telework agreement for COOP events only, provided such an agreement does not require the employee to find, provide, or pay for, the alternate worksite. ERG employees who are eligible may choose to sign a voluntary telework agreement.

- B. If an employee occupies a position deemed essential or serves as an emergency relocation group (ERG) member, he/she may be required to report to work. These designations may vary based on the nature of the emergency for inclement weather or natural or man made emergencies.
- C. If an employee is an ERG member for COOP purposes, management, along with the employee and supervisor, should make advance and/or situational decisions as to whether the employee must physically report for duty or may work from home or an alternative worksite. For example, if the purpose of the employee reporting for duty at the traditional worksite is to provide policy guidance or to notify specific individuals of emergency requirements, this may be able to be accomplished from home, provided the employee has access to the resources necessary to perform the required services. However, in some cases, the only way to obtain the services of the employee may be through telework from an alternative worksite. For example, if inclement weather or other emergency situation results in a transportation shutdown, but phone lines remain working, the employee may be able to work from home rather than reporting to the traditional worksite or COOP site.
- D. Employees designated as COOP Team Members may be required to telework during emergency closures or other emergencies, including pandemics and for COOP exercises, on any day, even if that day is not a regular telework day or a day with specific approval for situational/episodic telework. Telework-ready employees may also be required to perform duties outside of their usual or customary duties to ensure continuation of agency-essential mission or activities.
- E. Management will comply with applicable laws and regulations regarding the designation of the alternate worksite during a COOP event.
- F. In accordance with Public Law 111-292 Section 6504(d)(2) "Continuity of Operations Plans Supersede Telework Policy - During any period that an executive agency is operating under a continuity of operations plan, that plan shall

supersede any telework policy."

XXIII. EQUAL TREATMENT FOR TELEWORKERS AND NON-TELEWORKERS

Teleworkers and non-teleworkers shall be treated the same for certain purposes:

1. Periodic appraisals of job performance of employees;
2. Training, rewarding, reassigning, promoting, reduction in grade, retaining, and removing employees;
3. Work requirements; and
4. Other acts involving managerial discretion.

This Article is consistent with the provisions of the Telework Enhancement Act (Act) of 2010 (Public Law 111-292, October 9, 2010), the Department of Commerce Telework Policy (October 2014), and the Office of Personnel Management's (OPM) policies contained in their Guide to Telework in the Federal Government and Washington, DC Area Dismissal and Closure Procedures (December 2014).

XXIV. REFERENCES

- a. Telework Enhancement Act of 2010, Public Law 111-292, December 9, 2010
- b. U.S. Office of Personnel Management (OPM) Guide to Telework in the Federal Government (2010)
- c. OPM, Washington, DC, Area Dismissal and Closure Procedures (December 2014)

Application
 Modification

APPENDIX A: TELEWORK APPLICATION/AGREEMENT AND
MODIFICATION OF TELEWORK AGREEMENT

Section I - To be completed by the Employee

Date of Request: _____ Proposed Start
Date: _____
Employee Name: _____ Organization: _____
Telephone: _____
Grade or Pay Band: _____
Supervisor's Name and Title: _____
Telephone: _____
Address, Telephone, and Description of Alternate
Worksite: _____

Equipment Needed to Perform Work at Alternate
Worksite: _____

Telework Level Requested: () Plan A () Plan B

Expiration Date of Agreement: _____.

Type of Telework: () Regularly Scheduled () Ad Hoc ()
For Continuity of Operations or Emergency Purposes

Work Schedule Including AWS Day Off (If
Applicable): _____

Telework Days at Alternate Worksite:

Identification of specific data types allowed being accessed

Approved: () Disapproved: () Reason Not
Approved: _____

I certify that the employee is eligible and authorized to telework, that I have reviewed the employee's Safety Checklist as well as the Telework Assessment Tool.

Approving Official's Signature _____
Date: _____

Alternate Worksite Costs - The employee understands that the Government will not be responsible for any operating costs that are associated with the use of the employee's home as an alternate worksite, for example, home maintenance, insurance, or utilities. The employee also understands that any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute or regulation, is not relinquished by this telework agreement.

Liability - The applicant understands that the Government will not be held liable for damages to his/her personal or real property while he/she is working at the approved alternate worksite, except to the extent the Government is held liable under the Military Personnel and Civilian Employees Claims Act and the Federal Tort Claims Act.

Injury Compensation - The applicant understands that he/she is covered under the Federal Employees Compensation Act if injured in the course of actually performing official duties at the alternate worksite. The applicant agrees to notify his/her supervisor immediately of any accident or injury that occurs at the alternate workplace and to complete any required forms. The supervisor agrees to investigate such a report as soon as possible.

Disclosure - The applicant agrees to protect Government records from unauthorized disclosure or damage and will comply with requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a).

Compliance with This Agreement - The employee's failure to comply with the terms of this telework agreement may result in the termination of this telework agreement and the telework arrangement. Failure to comply also may result in disciplinary action against the employee if just cause exists to warrant such action.

Employee's Signature _____ Date: _____

Approving Official's Signature _____ Date: _____

APPENDIX B: TELEWORK ASSESSMENT TOOL

The decision to telework should be based on the ability of an employee to work in a setting that may be in his/her home or a Federal facility other than the regular office, without immediate supervision. The following tool is to be used by the supervisor as a basis for discussing the option and appropriateness of telework for a particular employee. Employees are also required to use the assessment tool to help in determining if telework is suitable for their positions.

Please rate yourself or your employee, using the following scale:

5 - Always 4 - Usually 3 - Sometimes 2 - Rarely 1
- Never

1. Employee works without regular monitoring/supervision.
2. Employee is comfortable working alone.
3. Employee independently identified required work products.
4. Employee successfully plans work production schedule.
5. Employee communicates hindrances to successful completion of a task or project in sufficient time to allow for alterations that improve the opportunity for success.
6. Employee is knowledgeable about your organization's procedures/policies.
7. Employee is fully aware of Department information technology security.
8. Employee meets deadlines.
9. If telework will be in the employee's residence, the residence has an appropriate work environment.
10. Employee is willing to provide his/her own equipment if Government-furnished equipment is not available.
11. Employee is computer literate.

12. Employee has successfully completed the Office of Personnel Management's online teleworking training course.



Approving Official's Signature _____ Date: _____

APPENDIX C: TELEWORK SAFETY CHECKLIST

This checklist is to be completed only if the proposed alternate worksite is in a private residence. This checklist is designed to assess the overall safety of the designated work area of the alternate worksite. Each applicant should read and complete the self-certification safety checklist. Upon completion, the checklist should be signed and dated by the applicant and submitted to the immediate supervisor.

Applicant Name: _____ Date: _____ Telephone: _____

Address, Telephone, and Location of Alternate Worksite: _____

Describe the Designated Work Area:

- 1. Are stairs with four or more steps equipped with handrails? () Yes () No () N/A
- 2. Are aisles, doorways, and corners free of obstruction? () Yes () No () N/A
- 3. Are file/storage cabinets arranged so that open doors/drawers do not create obstacles? () Yes () No () N/A
- 4. Is the office space neat, clean, and free of combustibles? () Yes () No () N/A
- 5. Are phone lines, electrical cords, and surge protectors secured under a desk or alongside a baseboard? () Yes () No () N/A
- 6. Are circuit breakers/hoses in the electrical panel properly labeled? () Yes () No () N/A
- 7. Is electrical equipment free of recognized hazards that could cause physical harm (e.g., frayed, loose, and/or exposed wires, bare conductors, etc.)? () Yes () No () N/A

No N/A

9. Is there a smoke alarm and clear access to a fire extinguisher?

Yes No N/A

By signing this document, the applicant certifies that all of the above applicable questions were answered in the affirmative, or, if answered in the negative, that the applicant will take all necessary corrective actions to eliminate any hazard prior to beginning telework.

Applicant's Signature _____ Date: _____

APPENDIX D: OPTIONAL TELEWORK TERMINATION FORM

The telework option is a privilege and not an employee right. As such, it falls under the supervisor's discretion to determine how work should be accomplished with the organization. Termination from the telework agreement can be either voluntary or involuntary.

This is notification that the telework agreement, which was signed on

i

_____ s no longer in effect and is hereby terminated.

Termination is based on

- (check one): Voluntary
- Withdrawal Involuntary
- Withdrawal

If telework is involuntarily terminated, the

- decision is based on: Requirements of
- the current work assignment
- Reassignment or change in duties
- Failure to maintain employee eligibility standards
- Breach in Information Technology Security policies
- and/or procedures Other (please specify):

Receipt Acknowledged

Employee's Signature: _____ Date: _____

Approving Official's Signature: _____ Date: _____

APPENDIX TWO: Agency's OFFICE SPACE PROPOSAL

Article 39. Office Space

Section 1. General Principles and Shared Offices

- A. To the extent practical, each member of the bargaining unit shall be furnished with office space that facilitates productivity and employee satisfaction.
- B. Management will usually attempt to assign individual offices to staff but may require shared offices in certain circumstances. In the case of a shared office, the employees in the office to be shared may be consulted by Management. Employees in a shared office should be reasonable and flexible regarding their concerns about potential office mates. At an employee's request, the Union may represent either or both employees during this consultation.

Section 2. Individual assignments at Western Regional Center (WRC)

- A. For the purpose of this Article, Vacant Staff Office Space is defined as non-temporary NOAA Western Regional Center office space that is to be allocated to or is presently used by ERD and is vacant (not used as primary office by any employee for greater than 90 days) or soon to be vacant and either:
 1. Management has determined qualifies as vacant ERD staff office space, i.e., space available for occupancy by bargaining unit employees; or
 2. Meets all of the following criteria
 - a. is adjacent to or very near existing office space occupied by bargaining unit personnel; and
 - b. could be available to bargaining unit employees without interfering with Management's exercise of its right to determine the methods and/or means of performing work; and

- c. is not intended to be occupied by managers or other federal employees who are not part of the bargaining unit.

Section 3. Formula

Unless there is a clear and justifiable reason for locating specific staff close to a common area or resource needed by Management to achieve its mission, Vacant Staff Office Space will be assigned as follows:

- A. Management will notify the Union and all bargaining unit employees within that commuting area about the availability of office space and request notification from all employees who are interested in occupying the office.
- B. If no bargaining unit employee applies for the space, then the method of this Section does not apply. If only one bargaining unit employee applies, he/she will be assigned the office space. If more than one bargaining unit member applies, Management will select the bargaining unit member to be assigned to the vacant office space based on the highest applicant score given by the following formula:

Score = 5 times GS level + years of service as determined by the Service Computation Date in WebTA.

- C. The Union will be notified in writing of the selection; this notification will include a list of staff who expressed interest in the vacant office and a brief rationale of the assignment based on the process and the criteria used. The Union reserves the right to grieve the selection with Management if factors other than the formula in Section 3(B) were used to make the assignment.

Section 4. Vacant office space outside of ERD's allotted space

In some instances, office space in the Western Regional Center allocated to the Office of Response and Restoration, that is neither to be allocated to nor in use by ERD, may become vacant. Where such office space meets all of the criteria in Section 1 (other than the requirement that the office space "is to be allocated to or is presently used by ERD") and the Union would like for the space to be

assigned to a bargaining unit member, the Union may, in writing, notify Management of the specific office space it seeks. Management will thereafter raise the request with the division manager responsible for the office space at issue. Management will then provide an answer to the Union and the reason for its answer. Should ERD be able to secure the office space the Union requests, Management will assign the relevant office space in accordance with Section 3. When vacant space is available, Management recognizes that it is generally in the interest of both Management and the Union to secure office space that the Union finds desirable.

Section 5. Union records

Management shall provide the Union Chief Steward a secure storage location for Union documents in an office space dedicated to a Union officer chosen by or designated by the Union.

Section 6. Preservation of rights

Nothing in this Article should be interpreted as abridging the rights of Management or the Union under 5 U.S.C. §7106.