United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of U.S. DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY And AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 169	Case No. 20 FSIP 041

DECISION AND ORDER

The U.S. Department of Defense, Defense Logistics Agency (Agency or DLA), located in Fort Belvoir, Virginia filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerning a dispute from negotiations over a successor collective bargaining agreement (CBA). The DLA manages the global supply chain – from raw materials to end user to disposition – for the Army, Navy, Air Force, Marine Corps, Coast Guard, 10 combatant commands, other Federal agencies, and partner and allied nations. The DLA is responsible for contracting, purchasing, storing, and distributing most of the consumable, expendable, and reparable items for the Department of Defense. Its primary purpose is to meet the logistics requirements of the armed forces for food, clothing, fuel, repair parts, and other items.

The American Federation of Government Employees, Council 169 represents approximately 17,000 bargaining unit employees throughout the country that occupy such positions as Police Officers; Firefighters; Program and Procurement Analysts; Fork Lift Operators; and Distribution Facilities Specialists. The parties are governed by a collective bargaining agreement (CBA) that became effective on May 19, 2016, and expired on May 18, 2019.

BACKGROUND AND PROCEDURAL HISTORY

On February 21, 2019, the Agency provided the Union notice that it was reopening the parties' CBA, which encompassed 50 articles, and that it was terminating permissive topics included in the current CBA. On May 8, 2019, the parties agreed to ground rules for negotiating a new CBA. Pursuant to those ground rules, the parties commenced face-to-face negotiations in July 2019. The parties bargained for all-day sessions on the following dates: July 9 – 12; July 15 – 18; August 6 – 9; August 12 – 15; September 10 – 12; October 1 – 4; October 7 – 10; October 29 – November 1; and November 4 – 7. The parties were unable to reach a full agreement over

all of the CBA articles; therefore, the parties requested mediation assistance from the Federal Mediation and Conciliation Service (FMCS).

FMCS Mediator Louis Faiola provided mediation assistance to the parties on December 3 and 4 2019, and the parties negotiated on their own on December 5. The parties continued their negotiations from January 22 to 24 and January 27 – 28, 2020. A second mediator, Vanessa Bullock filled in and provided the parties mediation assistance on January 29. The parties held seven more mediation sessions from February 19 to 21 and February 24 to 27, 2020, with both mediators present on varying days. On March 6, 2020, Mediator Faiola released the parties from mediation. As a result of the 52 negotiation and mediation sessions, the parties reached agreement on 35 articles from the current agreement, five new articles, and a preamble. The parties, however, could not reach agreement on 14 articles and two memoranda of agreement (MOA). As a result, on March 31, 2020, the Agency filed the instant request for Panel assistance.

On May 20, 2020, the Panel asserted jurisdiction over the 14 articles and two MOAs in dispute. The Panel ordered the parties to a Written Submissions procedure with an opportunity to submit rebuttal statements. The parties have timely provided those submissions. The Union, however, did not abide by the 12-page limitation ordered by the Panel for the parties' rebuttal statements. The Union's rebuttal statement is 13 pages. The Panel's May 22, 2020, procedural determination states, "any document received by the Panel that fails to comply with the deadlines and parameters established in this letter may not be considered." In accordance with its procedural letter, the Panel will not consider the additional page presented by the Union.

ISSUES

There are 14 articles and two MOAs in dispute: Article 3 (Union Representation and Official Time); Article 6 (Use of Facilities and Services); Article 9 (Telework); Article 15 (Safety and Health); Article 18 (Performance Evaluation); Article 21 (Overtime Assignments); Article 29 (Workforce Reshaping); Article 34 (Disciplinary and Adverse Actions); Article 36 (Grievance Procedure); Article 37 (Arbitration); Article 39 (Stays of Suspensions of More Than 14 Days, Removals for Cause, and Demotion); Article 48 (Alternative Dispute Resolution); Article 50 (Duration and Amendments); Article 54 (Smoking and Tobacco Products); Material Handler Equipment MOA; and Lactation Program MOA. Due to the number of issues contained within each Article, the parties' proposals are attached to this Decision.

POSITIONS OF THE PARTIES

1. Article 3 – Union Representation and Official Time

I. Agency's Position

The Agency's proposal establishes a bank of official time of 17,000 hours for section 7131(d) activities under the Statute, which is equivalent to a rate of 1 hour per bargaining unit employee. The Agency's proposal also limits the amount of official time by each employee to no more than 25 percent of their paid time. The Agency states that this amount of official time is consistent with Executive Order (EO) 13837, Ensuring Transparency, Accountability, and

Efficiency in Taxpayer Funded Union Time Use. The Agency asserts that this proposal will allow employees to focus more on accomplishing the Agency's mission.

The Agency argues that the Union's proposal would provide 13 Union representatives 100 percent official time, which would equate to over 27,000 hours of official time. The Agency states that the Union's proposal would also permit additional official time for matters such as representation of an employee or the Union at an arbitration hearing. As a result, the Agency contends that the Union's proposal has the potential to allow for Union representatives to engage in more than 27,000 hours of official time per year. The Agency also asserts that the Union's proposal requires the Agency to pay for the travel and per diem of the Union's nine Executive Board members.

The Agency argues that there is no provision in the Statute that mandates that the Union receive 100 percent official time and that the Agency pay for the travel and per diem expenses for Union representatives. The Agency further argues that the Union's justification for its proposal based on an agreement between a different agency (U.S. Customs and Border Protection) and another AFGE local has no bearing on the amount of official time that the Union's representatives in this case should receive. Thus, the Agency states that the Union's proposal is not supported and should not be adopted by the Panel.

II. Union's Position

The Union contends that there are approximately 33 local facilities at the DLA where the Union has officers representing the bargaining unit. The Union states that it has approximately 40 full-time officers, but in an effort to reach an agreement, it reduced its request for 100 percent official time to only 13 of those officers, while the other officers would receive "reasonable" amounts of official time provided on a case-by-case basis. The Union states that under section 7131 of the Statute, employees representing the Union are entitled to 100 percent official time whenever it is needed for collective bargaining negotiations. Therefore, the Union states that a limit to its official time proposed by the Agency is in violation of the Statute.

The Union also states that its proposal requires the Agency to pay the travel and per diem for the Union's Executive Board, which will permit the Union to travel to meet with the Agency head, negotiate over Agency-wide issues, and discuss other important matters that benefit the Agency and the bargaining unit. The Union states that if the Agency were required to pay for the Union's travel and per diem, as well as afford the Union's representatives 100 percent official time, it would provide for a greater incentive to reach agreements and not incur unnecessary expenses. The Union contends that the FLRA has held that Union representatives are entitled to travel and per diem during negotiations.

In support of its proposal, the Union states that allowing the Union's representatives to be on 100 percent official time will save on time spent scheduling meetings. For example, the Union asserts that under the Agency's proposal, which will not permit any officers 100 percent official time, the Agency representative will first have to inquire whether the Union is available, then the Union will have to seek approval from his or her supervisor, and finally the parties can hold a meeting. The Union asserts that there has never been an instance of abuse of official time

in the past; therefore, there is no evidence to demonstrate a need to limit the Union's official time use as the Agency proposes.

The Union asserts that if the Agency's proposal were adopted, that would result in more Union representatives using official time in order to ensure that the Union performs its statutory responsibilities. The Union states that several representatives (as many as 20) will have to perform the work that one representative could accomplish while on 100 percent official time. The Union contends that it is much more efficient to have a handful of representatives on 100 percent official time serving the interests of the bargaining unit than dozens of representatives on ad hoc official time.

Finally, the Union asserts that other Federal agencies, such as the U.S. Customs and Border Protection permit the union to have 153,920 hours of official time for 74 union positions. The Union states that this agency is comparable to DLA, since its CBA also encompasses around 17,000 bargaining unit employees. That union is also permitted 55, 100 percent official time positions. The Union asserts that this amount of official time is twice as much as being offered by the Agency for the Union's official time use in this case.

III. Conclusion

The Panel will adopt the Agency's proposal, with modification. The parties' main disagreement is over the amount of section 7131(d) official time that Union representatives are entitled to receive under the Statute. Under 5 U.S.C. §7131(d), it provides for official time in any amount that the parties agree to and which is "reasonable, necessary, and in the public interest." The Agency's proposal is largely the same as the Presidents EO 13837 on federal-sector collective bargaining, which the Panel has consistently stated provides important public policy guidance.[1] Specifically, section 2(j) of the EO indicates that the total number of hours that an employee engages in official time shall not exceed 1 hour per bargaining unit employee. In accordance with that guidance, an official time amount in excess of 1 hour per bargaining unit employee should not ordinarily be considered reasonable, necessary, and in the public interest. Section 4(a)(iii) indicates that "[e]mployees shall spend at least three-quarters of their paid time, each fiscal year, performing agency business or attending necessary training." When reviewing official time disputes, the Panel expects the parties to provide sufficient argument and evidence to support their positions.

The Agency did not provide much rationale or evidence to support its proposal. The Agency did not offer any data to indicate the amount of official time that the Union has used during the term of the parties' CBA, nor did it indicate the representational activities that the Union has engaged in during that time. Similarly, the Union did not offer justification for its proposal, which could result in the Union receiving more than 27,000 hours of official time per year. The Union argues that a limitation on its official time is contrary to the Statute; however, the Union's argument is without merit. Under section 7131(d), it states that an employee representing an exclusive representative shall be granted official time in any amount the agency and the exclusive representative involved "agree" to be "reasonable, necessary, and in the

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1 *See, e.g., U.S. Social Security Admin., Office of Hearings Operations and Administrative Law Judges, IFPTE*, 20 FSIP 001 at 13 (April 2020).

public interest." This includes an amount that can be less than 100 percent official time for Union representatives.

The Union's remaining arguments are also unconvincing. The Union contends that if its officers do not receive 100 percent official time then they will need to expend additional time and resources scheduling official time to engage in each representational activity. Any scheduling that a representative may need to do with management will actually contribute to more effective and efficient Agency operations. This is consistent with section 5(c) of EO 13837, which requires each agency to develop and implement a procedure governing the authorization of official time. In furtherance of this goal, the Agency's section 3, (S)(3)(B)(1) of proposal requires representatives to input official time in the Agency's time and attendance system, which will keep track of and record official time use. The Agency's proposal will help to make its operations more efficient.

To support its position, the Union argues that another agency permits a union a significant amount of official time. The fact that representatives of another agency receive official time amounts greater than what this Agency is proposing does not justify the Union's offer for 100 percent official time here. The Union provided no explanation of how the terms and conditions of employment at the U.S. Customs and Border Protection are similar to those at DLA. As previously mentioned, the Panel views the President's EOs as important public policy that informs its resolution of official time disputes where the parties have not substantiated their proposals. Such is the case here. Therefore, the Panel will adopt the Agency's proposal, but with modification.

The Agency's section 3, (S)(3)(A)(5) proposal limits the Union's section 7131(d) use to four activities; however, the Agency did not provide sufficient justification for this proposal. The Panel will remove the limiting language proposed by the Agency. The limit on the amount of official time each year to a 1 hour per one bargaining unit employee will ensure that the Union's official time use is consistent with the Statute.

Finally, the Union argues that the FLRA has held that Union representatives are entitled to the Agency paying for its travel and per diem during negotiations. While a proposal to cover the Union's travel expenses may be negotiable, the Union has not provided any justification for the Panel to adopt a proposal that would reimburse the Union for those expenses. The Panel has consistently taken the position that each party should be responsible for its own travel and per diem when bargaining, to incentivize the parties to negotiate in a timely and efficient manner.[2] The Agency's proposal is consistent with the Panel's approach toward travel. Therefore, the Panel will adopt the Agency's Official Time Article with the modification suggested.

2. Article 6 – Use of Official Facilities and Services

I. Agency's Position

The Agency asserts that its proposal limits access to its facilities, systems, and equipment. The Agency states that its language is intended to limit the use of the Agency's

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2 *See, e.g., U.S. Dep't of VA and NFFE*, 2019 FSIP 024 (September 2019).

Information Technology (IT) system to employees with common access cards (CACs), which provides security to the Agency's technological information. The Agency asserts that to allow some Union representatives who are non-DLA employees access to its IT system without the proper CAC credentials would have a negative effect on the security of the system. The Agency states that non-DLA employees who are Union representatives will have access to Agency facilities and resources in accordance with DLA policies and procedures, and the Union's representatives who are employees will be permitted to use Agency resources if it is used in the course of the employees' duties or required for their position of record.

The Agency provides support for its proposal by stating that it is consistent with EO 13837, which does not allow for the free or discounted use of agency equipment or facilities by labor organizations. The Agency contends that the Union's proposal would allow non-DLA employees to have unfettered access to the Agency's IT systems and facilities and require the Agency to expend resources to ensure that its equipment is secure for those representatives. The Agency states that the Union's proposal also requires the Agency to notify the Union via U.S. certified mail of any meetings and phone calls between it and management, which the Agency asserts would cause an unnecessary delay to labor-relations at DLA. The Agency argues that the Union's proposal is unreasonable considering the electronic nature of communications in the workplace.

II. Union's Position

The Union asserts that the Agency's proposal to restrict the Union's access to Agency facilities will inhibit the Union from performing representational responsibilities except at their own residence or a Union office, which are not at all Agency locations. The Union also proposes that all notifications to the Union, including notifications for meetings and changes to conditions of employment must be accomplished via the U.S. Postal Service. The Union states that the reasoning for its proposal is because if the Agency's Article 3 proposal is adopted that would mean that the Union representative would have to first obtain approval for official time prior to holding any meetings with the Agency. If this were the case, the Union would have to expend additional time in order to ensure that the meeting could take place. If the Union receives the notification via U.S. mail, the Union asserts that it would not have to expend such time. Finally, the Union asserts that the Agency did not bargain in good faith over this proposal.

III. Conclusion

The Panel will adopt the Agency's proposal. The parties' disagreement surrounds the Union's access to the Agency's property and its resources. Once again, the Agency's proposal is largely consistent with EO 13837, specifically section 4(a)(iii) of the EO. That section states, "[n]o employee, when acting on behalf of a union, is permitted the free or discounted use of government property or agency resources if such free/discounted use isn't generally available for non-agency business by employees when acting on behalf of non-federal organizations." The Agency argues that its proposal permits the Union to access its property and resources if such use is generally available for non-Agency business by non-Federal organizations. The Union has not demonstrated that the Agency's proposal will interfere with its ability to represent the bargaining unit with the Agency.

The Union's bad faith bargaining argument is not advanced in the proper forum. The Panel's role is to resolve disputes over their bargaining impasse. That is, the Panel's focus is on the current language that the parties could not reach agreement over during their negotiations. The Panel concluded that the parties satisfied the jurisdictional requirements of an impasse over their successor CBA, which includes this Article as well as the remaining Articles and MOAs. Therefore, this matter is properly before the Panel.

The Union's proposal also requires that the Agency serve notices to the Union via the U.S. Postal Service. This is not an effective and efficient use of Agency resources and taxpayer dollars. The Agency should be permitted to serve the Union via email, as this will reduce the costs, resources, and time required of the Agency to provide the Union notice and bargaining rights under the Statute. The Union's opposition to this method of communication iswithout merit, as the Union will have to take the necessary steps to schedule a meeting regardless of the way that the Agency disseminates information to the Union. The use of alternative forms of communication, such as email will actually decrease the amount of time that the parties need to expend corresponding with one another, which will provide the parties a more efficient and effective way to communicate and do business.

3. Agency Article 9 – Telework

I. Agency's Position

The Agency asserts that its proposal requires an employee to perform Agency work at his or her duty station 60 percent of their work schedule. This means that employees would be required to be at their duty station performing Agency work six days per pay period. The Agency states that requiring employees to be at their duty station more during the workweek will allow the Agency to better serve its customers, particularly those that require in-person assistance. Furthermore, the Agency argues that more time at the duty location will allow employees to collaborate and communicate with their co-workers, facilitating team building and problem solving. The Agency asserts that its proposal recognizes the importance of face-to-face interaction, which supports workforce development and contributes to a unified culture.

The Agency states that the Union's proposal allows for up to five days of telework per week, or ten days per pay period, with the frequency of telework being determined by the employee, regardless of mission needs or requirements. Based on this proposal, the Agency states that an employee may never have to report to his or her duty station. The Agency argues that the Union's proposal does not further the Agency's mission and disregards the critical nature of providing in-person, direct service to its customers.

The Agency states that the Union's proposal also references remote work, which is separate from telework. Unlike telework, the Agency contends that remote work occurs when an employee's official duty station is at the remote location where he or she is approved to work. Under remote work, there is no requirement for the employee to report to their official duty station. The Agency states that while the DOD Instruction permits remote telework, there is nothing in the Instruction that requires the Agency to offer it as part of its telework program.

The Agency states that the Union's proposal for remote work would result in pay discrepancies because employee pay would be based on the remote location. The Agency contends that the Office of Personnel Management (OPM) stated in its Guide to Telework that "[w]hile 'remote' and 'mobile' work are also terms that are sometimes used as synonyms for telework, they tend to operate differently than telework…"[3] The Agency contends that remote work and telework are different and should not be treated the same as the Union proposes. Finally, the Agency proposes in section 6(c), not to permit grievances over telework determinations regarding eligibility, location, or the number of days an employee may telework.

II. Union's Position

The Union makes several legal arguments. The Union asserts that the Agency has implemented its proposal, which restricts employee telework in violation of the parties' ground rules and the Statute. The Union further states that the Agency's proposal, which requires employees to be present at the worksite for at least 60 percent of their work schedule is contrary to the Telework Enhancement Act[4] because it does not allow employees to participate in a telework program to the maximum extent possible. The Union contends that telework includes remote work, but the Agency refused to negotiate over that topic and include it in the parties' CBA. The Union argues that it will not waive its right to negotiate over remote work.

On the merits of its proposal, the Union states that currently employees are permitted up to five days a week of telework and at least a third of the employees telework more than 40 percent of the time. The Union states that its proposal permits an employee to request up to five days a week to telework, but does not mandate that the employee will telework for five days. The Union states that it is ultimately within the supervisor's discretion to approve that request.

Finally, the Union states that on April 1, 2020, the Agency announced that it reduced its operations to only emergency and mission-critical personnel. The Union asserts during an emergency, such as the Corona Virus 2019 pandemic there are no restrictions to telework. The Agency will provide the employees one day notification if they are required to return to the office and there is not a limitation on the employees' ability to work remotely. The Union states that contrary to this guidance, the Agency's proposal requires employees to be within a recallable distance (2 hours or 100 miles one-way), which disqualifies many employees that currently work remotely. The Union asserts that if there are no restrictions in place during a pandemic to the employee's work location, then there should not be restrictions in place when the Agency is operating normally. Finally, the Union states that the Agency's proposal to remove telework determinations regarding eligibility, location, or the number of days an employee may telework from the grievance procedure is not supported.

III. Conclusion

The Panel will adopt the Agency's proposal, with modification. The parties' main disagreement is over the number of days that employees may telework in a pay period. The

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3 OPM Guide to Telework in the Federal Government, https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf, pg. 4.
4 5 U.S.C. §§ 6501, et. seq.

current telework arrangement permits employees to telework up to ten days per pay period. The Union proposes to maintain the status quo, while the Agency proposes to limit the employees' telework to up to four days per pay period.

As discussed above, the Union's argument that the Agency has bargained in bad faith is not advanced in the proper forum. Further, the Union did not provide sufficient explanation over how the Agency violated the Statute or the parties' ground rules agreement. Additionally, the Union argues that anything less than the ability to work full-time telework is contrary to the Telework Enhancement Act. This argument is without merit, as employees do not have a right to telework. Under the Telework Enhancement Act, it requires each agency to establish a policy under which eligible employees *may* participate in telework. The Agency's proposal permits employees to telework, while also ensuring that its employees are in the office to serve its customers. The Agency's proposal conforms with the intent of the Telework Act.

The parties also disagree over remote telework. Remote telework is an arrangement where the employee resides and works at a location beyond the local commuting area of the employing organization's worksite.[5] The Union argues that it is not waiving its right to negotiate over remote telework; however, the Agency's proposal does not waive the Union's right to negotiate over this topic. Instead, the Agency is proposing not to include remote telework in the parties' agreement. The Agency is not required to advance a proposal over a topic of negotiations because the Union would like it included in the successor CBA.

Currently, there is ongoing pandemic which has required the Agency, like many other Federal agencies to modify the way it operates. The pandemic has required agencies to take measures that they may not otherwise take. Therefore, the Union should not rely on the current state of affairs to justify the need for remote telework when the need to participate in that form of telework is not necessary for the Agency to continue functioning as effectively as possible.

Finally, the Agency proposes to remove telework determinations regarding eligibility, location, and the number of days an employee may telework from the negotiated grievance procedure but does not provide any justification for doing so. The parties agreed under Article 36 to remove telework eligibility determinations from the negotiated grievance procedure, but did not agree to exclude determinations over location or number of days an employee may telework. As will be discussed more fully below, the party proposing to exclude a matter from the grievance procedure bears the burden of establishing the reasonableness of its exclusion. The Agency did not meet that burden; therefore, the Panel will remove these two exclusions from the Agency's section 6(S)(6)(C) proposal.

4. Union Article 15 – Safety and Health

I. Agency's Position

The Agency's proposal provides employees $165 for purchasing necessary safety shoes and official time from the bank of hours set forth in Article 3 for safety committee meetings and

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5 OPM Guide to Telework in the Federal Government, https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf, pg. 4.

safety inspections. The Agency asserts that it surveyed locations where safety shoes are required and purchased, which revealed that $165 is more than sufficient to cover the cost to purchase this item. Specifically, for Fiscal Year 2018, the Agency states that it provided 1,305 employees with safety shoes, totaling $158,288. This data yields an average cost for a pair of safety shoes at $121. The Agency asserts that its offer accounts for any increases in costs that may occur over the course of the parties' CBA for purchasing shoes. Despite this data, which was provided to the Union, the Union proposes that the Agency provide employees $175 toward the purchase of safety shoes.

II. Union's Position

The Union states that it can agree to the Agency's $165 proposal for safety shoes if the Agency agrees to the permit the employees two hours of official time to obtain the shoes. The Union also states the Agency should have at least one Automated External Defibrillator (AED) per building and one AED per 50 employees. The Union is requesting that the Agency provide training to employees that are on a safety committee to ensure that employees are properly trained on the appropriate safety techniques and procedures. The Union further states that the Agency's proposal's does not demonstrate that it is interested in the safety and well-being of its employees because it does not permit the Union additional official time to perform safety-related duties.

III. Conclusion

The Panel will adopt the Agency's proposal. The Agency's proposal affords employees personal protective equipment without charge or cost when the Agency determines that such equipment is necessary for the work to be done safely. In furtherance of this commitment to the employees' safety, the Agency has agreed to provide safety shoes to employees or reimburse the employees up to $165 annually for the purchase of safety shoes when required in the performance of assigned duties. Based on the survey performed by the Agency, for Fiscal Year 2018, the average cost per pair of safety shoes for employees was $121. The Agency's proposal far exceeds this amount. Further, if the cost of shoes increases during the term of the agreement, the Agency has committed in section 2, (S)(2)(C) to discuss any impact that inflation may have on the purchasing of shoes. The Agency's proposal demonstrates a commitment to the employee's safety and well-being.

The Union asserts that it will agree to the $165 subsidy if the Agency authorizes the employees two hours of official time to obtain and purchase the shoes. However, the Agency's proposal already permits the employees "up to two hours of duty time to visit an outside vendor to select and purchase shoes." The Union is also requesting that the Agency have at least one AED for every 50 employees. Based on the Agency's proposal, which states that it will abide by applicable safety and emergency response guidelines and provide employees the appropriate job-related safety and health training, it appears that the Agency will take the necessary steps to ensure that it is in conformance with the proper protocols and procedures for access to AEDs.

Finally, the Union requests that the Agency provide its representatives additional official time to perform safety-related activities; however, the Union did not elaborate on the types of representational activities that the Union has performed under the current contract and will

perform moving forward to justify the need for the official time. The Agency's proposal permits the Union to utilize official time for these activities under the bank of hours in Article 3. The official time bank should provide the Union with a sufficient amount of time to adequately represent the bargaining unit for safety-related matters. Thus, on balance, the Agency provides better support for its proposal, while also ensuring that the employees' safety and Union's interests are satisfied. As such, the Panel adopts the Agency's Article 15.

5. Article 18 – Performance Evaluation

I. Agency's Position

The Agency states that its proposal is consistent with EO 13839, Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles because it excludes the contents of performance elements or standards from the negotiated grievance procedure. Conversely, the Agency states that the Union's proposal allows employees who disagree with their performance appraisals to use the negotiated grievance procedure, which the Agency asserts is inconsistent with the EO. The Agency states that under section 7121(c) it sets out five mandatory exclusions from the negotiated grievance procedure.[6] Except for those mandatory exclusions, the Agency asserts that the parties can agree on which topics will be covered by the negotiated grievance procedure and which topics will be excluded. The Agency states that the employees will still be permitted to grieve performance evaluation disputes through the administrative grievance procedure.

II. Union's Position

The Union asserts that the only dispute is over the employee's ability to grieve performance evaluations. The Union states that employees should have the ability to seek redress over the Agency's failure to properly rate an employee, since a negative rating can impact an employee's promotion and can also lead to termination. The Union argues that the Agency's proposal which does not permit employees to grievance performance disputes violates the Statute.

III. Conclusion

The Panel will adopt the Agency's proposal. The Agency proposes to exclude the contents of performance elements or standards from the parties' negotiated grievance procedure. It appears that the Union is not disputing whether the Agency may exclude the contents of the performance elements or standards from the negotiated grievance procedure. Instead, the Union in its position statement disputes that the employees should be able to grieve their performance ratings. However, under Article 36 Grievance Procedure, section 3(GG), the Union offered a proposal in which it agreed to exclude an employee's performance rating from the parties' grievance procedure. The Panel will adopt the Agency's exclusion here and the Agency's

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6 The five (5) exclusions are: 1) any claimed violation of subchapter III of chapter 73 of [title 5] (relating to prohibited political activities); 2) retirement, life insurance, or health insurance; 3) a suspension or removal under section 7532 of [title 5] (in the interests of national security); 4) any examination, certification, or appointment; or 5) the classification of any position which does not result in the reduction in grade or pay of an employee.

Article 18 because the Union has not explained this inconsistency and the parties' proposals appear to be the same from the language that they provided the Panel.

6. Article 21 – Overtime Assignments

I. Agency's Position

The Agency's proposal provides employees payment for overtime that is scheduled and worked, whereas the Union's proposal requires the Agency to pay a minimum of two hours of overtime if the employee was scheduled for the overtime even if he or she did not work. The Agency states that it is not willing to expend additional money for work not performed except in the limited circumstances of call back overtime under 5 C.F.R. §532.503(c). Under those circumstances, the Agency asserts that the overtime is mandatory. Finally, the Agency asserts that in the event of a breach of this Article, the Union's proposal provides an automatic remedy of back pay. Conversely, the Agency's proposal permits a third party the flexibility to either award back pay or some other remedy, such as providing the employee the opportunity to work the next available overtime assignment.

II. Union's Position

The Union proposes that the parties maintain the status quo, which will continue to provide employees at least two hours of pay at the applicable overtime rate if they are scheduled to work overtime. The Union asserts that if the employee rearranges their schedule in order to accommodate the Agency to work overtime (e.g., arrange for daycare), then they should receive the compensation that they were originally offered. Finally, the Union asserts that the appropriate remedy for a violation of this Article is providing the employee back pay because that is the most equitable way to compensate employees based on an Agency breach of this Article.

III. Conclusion

The Panel will adopt the Agency's proposal. The parties are in disagreement over two issues: whether employees who are scheduled to work overtime will be provided overtime payment if they do not work the overtime; and whether a violation of the Article will result in a remedy of back pay. The Union argues that if the employees are scheduled to work the overtime then they should be compensated for the overtime regardless of whether it was worked because they rearranged their schedule to accommodate the Agency. The Union's explanation for providing employees payment for overtime that is scheduled, but not worked lacks rationale and would create an unjustified enrichment for employees.

Next, the Union's proposal in section 3, (S)(3)(F) requires a third-party, such as an Arbitrator to award back pay payment in the event of a breach of this Article is also not supported with sufficient rationale. Arbitrators have broad authority and latitude to fashion remedies for a violation of a collective bargaining agreement.[7] There may be instances where awarding back pay may not be an appropriate remedy. For example, if the Agency improperly

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7 *See NTEU, Chapter 68,* 57 FLRA 256, 257 (2001).

bypassed an employee for overtime opportunities, there must be proof that the employee actually suffered a monetary loss stemming from the contract violation in order to receive back pay.[8] If there is no proof, then the employee would not be entitled to back pay, and under the Union's proposal would not receive a remedy. Conversely, under the Agency's proposal, that same employee could still be made whole by awarding the employee the opportunity to work the next available overtime shift. Thus, the Agency's proposal will ensure that the Arbitrator is able to fashion the most appropriate remedy based on the facts and circumstances of each case. As such, the Panel will adopt the Agency's Article 21.

7. Article 29 – Workforce Reshaping

I. Agency's Position

The Agency asserts that its proposal combines several topics in different articles that are related to reshaping the workforce: reduction-in-force; transfer of functions; reorganizations; details; emergency furloughs; and administrative furloughs. The Agency states that the rationale for this change was to ensure that all issues related to the shaping of the workforce are in one article rather than several, so it can be easily viewed and referenced by the employees and managers. The Agency further contends that the Union's proposal reference a "loan" as a detail, which the Agency states is not a recognized personnel action in the Federal government. The Agency asserts that simply because the parties have described a "loan" as a detail does not support the proposition that the parties should continue to abide by a practice that is not consistent with law, rule, or regulation.

II. Union's Position

The Union states that the Agency's proposal combines Article 29, Reassignments, Details, and Loans; Article 30 Reorganization; Article 31, Reduction-in-Force; and Article 32, Transfer of Function into one article. The Union asserts that it wishes to maintain the status quo and keep the articles separate. The Union states that the reason for this is because the contract acts as a guide for employees and if the articles are separate then it will be clearer and easier to understand. The Union contends that while some of the information in the articles may be repetitive, it serves to assist the employees and management in understanding the complex issues of those articles.

The Union states that the first key difference in the parties' proposals is in section 3. In that section, the Union uses the term "loan" to refer to details. The Union asserts that "loaning" an employee to a different location occurs daily within the Agency. The Union proposes a limit on the loan time, so that the Agency does not abuse its ability to temporarily use an employee's skills in another part of the workforce. The Union also proposes that the Agency provide employees training prior to a management-directed reassignment. The Union states that this is necessary to ensure that the employees are successful in their reassignment while also benefiting the Agency by ensuring that the employee is qualified to perform the work.

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8 *See, e.g., AFGE, Local 916,* 57 FLRA 715 (2002).

Finally, in section 8, the Union states that the Agency's proposal disregards two things: 1) a MOA signed by the parties in 2011; and 2) seniority. The Union asserts that its proposal simply protects the concept of seniority. Similarly, the Union asserts that the Agency's proposal under section 9 does not adequately address seniority, whereas the Union asserts that its proposal protects the concept of seniority.

III. Conclusion

The Panel will adopt the Agency's proposal. The parties disagree over consolidating several articles pertaining to personnel actions into one article in the parties new CBA; whether to continue to refer to details as "loans"; and whether seniority is adequately addressed in the Article. First, synthesizing several articles into one article will provide for a more effective and efficient way to do business, and will make it easier for employees and managers to review and reference personnel actions on a day-to-day basis. Second, the Union has not explained the benefit that would ensue by continuing to refer to short term details as "loans."

In relation to a management-directed reassignment, the Union argues that the Agency should provide employees training for the new position. However, the Agency's section 3, (S)(3)(B) ensures that it will provide employees the necessary training so that he or she can sufficiently perform the new job. The Union contends that in section 8 of the Agency's proposal it does not properly account for a MOA between the parties; however, the Union did not include that MOA as evidence to support its argument. The Union also contends that the Agency's section 8 and 9 proposals do not adequately account for seniority when selecting employees for a detail; yet, the Agency's section 4, (S)(4)(G) and section 9, (S)(9)(A) proposals actually require the Agency to consider seniority prior to making a selection for a detail and when determining an employee's status in the event of a furlough. Thus, the Panel will adopt the Agency's Article because it demonstrates a commitment to improve efficiency, while also ensuring that the employees' have adequate arrangements in place in the event of a detail or furlough.

8. Article 34 – Disciplinary and Adverse Actions

I. Agency's Position

The Agency states that its proposal creates a bright line distinction between informal corrective measures such as letters of warning, instruction, and counselings, and formal discipline such as letters of reprimand and suspensions. The Agency states that this distinction is necessary since informal actions do not result in a loss of grade or pay for the employee and are not recorded in the employee's official personnel folder. Instead, the Agency asserts that they serve as notice to the employee that more formal action could result if the conduct or performance does not improve. Therefore, the Agency states that supervisors should be able to use these informal corrective measures without the concern that their actions will be subject to the negotiated grievance procedure.

The Agency states that the Union's proposal maintains the status quo, which denotes all actions taken by supervisors as an adverse action whether an oral counseling or a suspension. The Agency's concern with maintaining the status quo is that it states that it will result in delay, inefficiency, and unnecessary expenditure of Agency time and resources since grievances and

arbitrations will be filed regarding a supervisor's use of informal measures to correct employee conduct and performance that the Agency will need to defend. The Agency further argues in its rebuttal statement that because the Union did not address this topic in its statement of position, the Panel should adopt the Agency's proposal.

II. Union Position

The Union did not provide a position on Article 34. The Union, however, did address Article 34 in its rebuttal statement.

III. Conclusion

The Panel will adopt Agency's proposal, with modification. The Union did not provide its position on this Article in its position statement to the Panel, nor did it provide any explanation for not addressing it. The Panel will not permit the Union to address its proposals in its rebuttal statement with the Agency's statement of position in hand, as that would unfairly prejudice the Agency.

On the merits, the Agency proposes to remove from the parties' negotiated grievance procedure adverse actions and informal corrective actions. The Panel has now repeatedly written[9] that it will not limit matters that can be grieved in the parties' negotiated grievance procedure unless the moving party presents persuasive evidence that its proposal is the more "reasonable" proposal under *AFGE.*[10] The Agency has not established persuasively that the Panel should exclude these matters from the parties' negotiated grievance procedure. Here, the Agency did not provide any data to indicate the time and money it has spent over the course of the parties' contract processing and litigating informal actions. Similarly, the Agency did not address or put forth sufficient explanation or rationale for its need to remove adverse actions from the grievance procedure. As explained by the FLRA in a case enforcing an interest arbitrator's imposition of a grievance exclusion, and interpreting the *AFGE* decision, "...the Arbitrator's factual findings show that he examined the evidence and found the Agency's arguments as to a limited-scope grievance procedure 'persuasive'...[t]he Arbitrator's findings show that he did not unlawfully place the burden on the Union, but properly assessed the persuasive weight of each side's presentation in reaching his conclusion. Accordingly, the Union has not established that the award is contrary to *AFGE v. FLRA."*[11] *NAGE, Local R3-77 and PBGC,* 59 FLRA No. 168 (2004).

Conversely, here the Agency did not present any arguments justifying its proposal to exclude other than the text of the EO. The Panel does not enforce the Executive Orders referenced. Rather, the Panel looks to the EOs as a source of public policy where the parties fail to establish their claims persuasively. Here the Agency did not present any evidence, much less persuasive evidence, to justify its proposal for exclusion. Therefore, the Panel will permit the employees the ability to grieve these actions.

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9 *Social Security Administration and AFGE,* 2019 FSIP 019 (May 2019).
10 *AFGE Local 225 v. FLRA*, 712 F. 2d 640 (D.C. Cir 1983) (AFGE).
11 *NAGE, Local R3-77 and PBGC*, 59 FLRA 937 (2004).

The Panel will also modify the Agency's section 7(S)(7)A) proposal as follows: "An employee who is dissatisfied with the Agency's decision to effect an adverse action of a suspension of 15 days or more, removal, furlough of 30 days or less, or reduction in grade and/or pay may elect to either appeal the decision in accordance with 5 U.S.C. 7701 or 7702 as applicable, *or use the parties' negotiated grievance procedure*." The Panel will adopt the remainder of the Agency's Article.

9. Article 36 – Grievance Procedure

I. Agency's Position

The Agency states that its proposal would increase the number of topics excluded from the negotiated grievance procedure. The Agency contends that increasing the number of topics excluded from the negotiated grievance procedure would ensure that only the most important matters are eligible for a grievance, which would make for an effective and efficient use of Agency resources. The Agency again asserts that the negotiated grievance procedure in the current CBA allows employees to grieve oral admonishments and letters of warning, which results in the Agency spending a significant amount of time, manpower, and money litigating these issues that only intend to provide instruction from a supervisor to an employee. The Agency again proposes to eliminate adverse actions, such as removals from the negotiated grievance procedure because the employees may address these matters before the Merit Systems Protection Board (MSPB). By using the MSPB to adjudicate removals, the Agency states that the parties are less likely to expend additional resources challenging those decisions since the MSPB is the authority on adverse personnel actions. The Agency argues that the Union's proposal, which requires the parties to maintain the status quo is inconsistent with the Agency's goal of reducing unnecessary resources spent in litigation.

The Agency states that contrary to the Union's assertion, the Agency's proposal does not prevent an employee who has left the bargaining unit from filing a claim in the event that they experienced an illegal or prohibited personnel action. The Agency contends that the employee would have several avenues to pursue the claim, such as the administrative grievance procedure, another statutory forum, the Agency's Inspector General, among other options. The Agency states that the Union also incorrectly characterizes the Agency's proposed timeframe to file a grievance. The Agency asserts that its proposal imposes restrictions on both parties for missing grievance deadlines, not just the Union with the goal of streamlining and shortening the time periods at every stage of the grievance procedure in order to resolve disputes in an expeditious manner.

II. Union's Position

The Union states in section 3, it is opposed to the Agency's proposal which prohibits employees from filing grievances over informal actions. The Union asserts that this limits the employees' due process rights and rights under the Statute to file a grievance and points to *Army Corp of Engineers and AFGE, Local 0033,* 20 FSIP 019 (May 2020) to support its position. The Union is also opposed to the Agency's proposal that prohibits a grievance from proceeding through the grievance procedure if the employee leaves the bargaining unit while the grievance is pending. In section 6, the Union disagrees with the Agency's proposal that only requires the

supervisor provide a response to an informal grievance and does not require the supervisor to attempt to resolve the matter. Finally, the Union argues that in section 8, the Agency unfairly permits a grievance to continue through the grievance procedure if the Agency misses a timeframe, but if the Union misses a deadline, it results in a dismissal of the grievance.

III. Conclusion

The Panel will adopt Agency's proposal, with modification. The Agency again reasserts that it wishes to exclude informal corrective actions and adverse actions from the grievance procedure, as it did under the prior Article. For reasons already addressed, the Agency has not established the reasonableness of this proposal to limit a grievance over these matters in the parties' negotiated grievance procedure.

The Agency also proposes under section 3 that in the event an employee leaves the bargaining unit while a grievance is pending, the grievance will not proceed through the negotiated grievance procedure. The Agency does not justify the need for its proposal other than stating that the employee may pursue other available options for relief, such as the Agency's administrative grievance procedure. The Union may have an interest in litigating the matter to safeguard the interests of the bargaining unit. Therefore, the Panel will remove this language from the Agency's proposal.

The Union argues that the Agency should require the supervisor to try and resolve a grievance with the employee to avoid it from proceeding formally though the grievance procedure. However, under section 6 of the Agency's proposal it does require the first-level supervisor to counsel the employee if he or she can provide the employee the requested relief in order to resolve the issue. If the matter is not resolved to the employee's satisfaction, the employee may continue to seek relief through the grievance procedure.

Finally, the Union argues under section 8 that the Agency's proposal unfairly penalizes the Union for missing a grievance filing deadline, but does not impose the same penalty on the Agency. A reading of the Agency's proposal states that the "[f]ailure of the Union to meet any of the prescribed time limits without mutual consent to extent the same will result in the dismissal of the grievance with prejudice." As the Union contends, the Agency's proposal does not address the penalty that will arise from the Agency's failure to meet a timeframe if the Agency is the initiating party. The parties should be on equal footing and both face the same consequences if they miss a deadline. Therefore, the Panel will modify the language in section 8 as follows: "Failure of the *parties* to meet any of the prescribed time limits without mutual consent to extend the same will result in the dismissal of the grievance with prejudice." The Panel will adopt the remainder of the Agency's Article, as the parties are in agreement to follow those proposed grievance procedures.

10. Article 37 – Arbitration

I. Agency's Position

The Agency asserts that its proposal requires the parties to bifurcate a grievance so that the Arbitrator can make a finding on any procedural issues prior to ruling on the merits of the

case. The Agency contends that this change will result in greater efficiency in the arbitration process, since an Arbitrator would not make a ruling on the merits when he or she does not have jurisdiction over the grievance. The Agency states that this will also save time and resources that would be spent on unnecessary litigation.

The Agency's proposal also requires the party moving for arbitration to request from FMCS a list of seven arbitrators within five workdays from the date of the notification that the case has been submitted to arbitration. It also requires the moving party to pay the fee for the list of arbitrators from FMCS. The Agency states that this requirement will eliminate the delay it has experienced when making requests for arbitrators. For example, the Agency asserts that there is a current case where the Union has moved a grievance to arbitration, but has neither requested nor paid for the list of arbitrators from FMCS. The Agency states that this has resulted in the case languishing for five years with no arbitrator selected or dates set for arbitration. The Agency argues that its proposal is needed to prevent this situation from happening in the future and moving the case to arbitration in a timely manner.

The Agency's proposal requires the losing party to pay for the arbitration costs. The Agency states that this approach will allow for a more effective and efficient prosecution of the case. Conversely, the Agency states that the Union's proposal requires the parties to split the cost of arbitration regardless of which party prevails. The Agency asserts that based on AFGE National's 2019 financial report filed with the U.S. Department of Labor, it has a budget of $139,997,788. The Agency contends that AFGE National can afford to support the Union with various costs, including litigation. Thus, the Agency states that its approach will ensure that the parties will dedicate time and resources to the grievances that are in need of resolution compared to frivolous filings.

II. Union's Position

The Union states that in most grievances it is the moving party, yet the Agency wants to place restrictive requirements on the arbitration process that may result in the grievance being dismissed prior to the parties receiving a hearing on the merits. The Union is not in favor of bifurcating the arbitration process and asserts that all issues should be addressed during the hearing. The Union also asserts that there should be no limits on the parties' settlement discussions by the Agency imposing a penalty fee if the settlement discussion is initiated after the arbitrator's fees have been incurred and a settlement is reached.

Finally, the Union argues that it should not have to pay for the travel and per diem of its witnesses as the Agency proposes. The Union contends that it will incur a significant expense since the Union is the initiating party in a grievance the majority of the time. The Union states that its budget is separate from AFGE National and it has its own financial obligations. The Union contends that the Agency's budget provides it millions of dollars to spend on labor relations matters, while the Union has a very limited budget to allocate to representing its bargaining unit. To the Agency's argument that the Union has contributed to the delay in processing grievances, the Union states that the Agency has never mentioned this issue to the Union before and that if this was a "real issue" the Agency would not have waited until now to bring it up.

III. Conclusion

The Panel will adopt the Agency's proposal, with modification. The Agency's proposal provides for a bifurcated grievance process to allow the Arbitrator to rule on any procedural matters prior to a hearing on the merits of the grievance. The Union is opposed to this process because it asserts that the grievance may be dismissed prior to a hearing on the merits. The Union is correct that the Arbitrator may in fact dismiss the grievance on a procedural matter; however, this will serve both parties' interests because they will not need to expend unnecessary resources litigating a matter that could have been disposed of during a bifurcated process.

The Union argues that the Agency's proposal to require the moving party to pay for a list of Arbitrators from FMCS unfairly penalizes the Union because the majority of the time the Union is the party moving the matter to arbitration. The Union also argues that it should not have to pay for its own witnesses to travel to testify at a hearing because it has a limited budget. The Union's arguments are unpersuasive.

The Union, just as the Agency should timely prepare and move its grievance throughout the negotiated procedure, up to and including arbitration. A matter should not be left pending for months on end, let alone five years because of a failure by a party to request and pay for a list of arbitrators to preside over the dispute. The Agency's proposal will ensure that the grievance moves through the process in an efficient and effective manner. Additionally, each party should be responsible for their own witnesses travel expenses, as this will ensure that the parties call on only the most relevant individuals to testify. Similarly, the Agency's proposal which requires the losing party to pay for the arbitration will ensure that only the most important grievances are submitted to arbitration.

The Agency's proposal, which penalizes the party who initiates a settlement discussion after the arbitrator's fees have been incurred by requiring that party to pay all fees and expenses charged by the arbitrator if the settlement leads to a resolution, will actually encourage the parties to reach a resolution in the matter in a timely fashion. This proposal will encourage the parties to discuss and resolve issues early on in the grievance procedure, saving both parties the unnecessary expenditure of litigation fees that could have been avoided if the parties initiated those settlement discussions prior to a hearing.

Finally, the Agency proposes to remove the ability of the parties to settle issues involving a "clean 50" and "removal of adverse information from an employee's Official Personnel Folder" without any explanation for excluding these two actions. The Panel will strike that language in favor of allowing the parties to address and resolve all issues subject to a grievance. Thus, the Panel adopts the Agency's proposal, but will modify it to remove this limiting language.

11. Article 39 – Stays of Suspensions of More than 14 Days, Removals for Cause, and Demotion

I. Agency's Position

The Agency proposes to remove this article from the new CBA. The Agency contends that the Union's proposal to continue the status quo, which allows an employee to request a stay of a suspension of more than 14 days, removal for cause, or a demotion for a minimum of 45 days does not further the interest of an effective and efficient government. The Agency states that these actions are proposed for serious employee misconduct or performance deficiencies and actions must be taken in a timely manner. The Agency argues that permitting employees to delay the imposition of these actions has had an adverse effect on the morale of other employees and has undermined the authority of the supervisors who propose these actions.

To the Union's argument that the Agency refused to negotiate over its proposal to remove this article, the Agency states that argument is without merit. The Agency asserts that it explained its rationale to the Union for excluding this article from the parties' successor CBA during negotiations and the Union rejected the Agency's explanation. The Agency further states that proposing to remove an article from the parties' new CBA is not a refusal to bargain, but instead is bargaining over its position.

II. Union's Position

The Union's position is that the Agency's proposal to remove this article from the new CBA is not good faith bargaining. The Union argues that the Agency's proposal states "[n]o Agency proposal" for Article 39. However, in the Agency's position statement it stated that it now wishes to "delete this article." The Union states that the Agency should have proposed to delete this article in the first place and should not now be able to offer that proposal.

III. Conclusion

The Panel will adopt Agency's proposal to remove this article from the CBA. Article 39 in the parties' current CBA, which the Union proposes to carry over to their successor CBA permits bargaining unit employees to request a stay of a suspension of more than 14 days, removal for cause, or demotion. The Union did not provide sufficient support for continuing to keep this Article in existence. Permitting employees to request a stay of an adverse action sets up the expectation that management may grant that request. Granting a stay of matters that are of significant importance to not only the Agency, but to employees would not result in a timely and expeditious resolution of the action, which does not contribute to an effective and efficient government. Further, the parties are free to mutually agree to such a stay without an article in the CBA dedicated to such an action.

The Union also argued that the Agency did not bargain in good faith and the Agency has changed its proposal. To the former point, as the Panel previously stated, the Panel is not the proper forum to litigate the Union's bad faith bargaining argument. To the latter point, the Union misinterprets the Agency's proposal. When the Agency stated "[n]o…proposal" as its offer to the Union during negotiations and then stated in its statement of position it is proposing

to delete the Article, the Agency indicated that the meaning of the two proposals are the same. Further, a party is permitted to modify its proposal as part of the dispute resolution process of the Panel's proceedings to facilitate a resolution of the matter. Thus, the Union's argument is without merit. As such, the Panel will adopt the Agency's proposal to remove Article 39 from the parties' successor CBA.

12. Article 48 – Alternative Dispute Resolution

I. Agency's Position

The Agency proposes to remove the parties' article on Alternative Dispute Resolution (ADR) from the successor CBA because the Agency states that this article, like Article 39 has been used by the Union to delay management from imposing any adverse actions. The Agency states that the delays have negatively impacted the employees in the bargaining unit, as well as the supervisors' ability to maintain good order and discipline. The Agency states that the delays have resulted in an expenditure of time and resources which could be better used in furtherance of the Agency's mission. In this respect, the Agency states that the Union has used the ADR procedure to attempt to force the Agency to reach agreements and dictate the outcomes of a resolution. The Agency asserts that there is nothing to stop the parties from voluntary agreeing to engage in ADR if they choose; however, codifying the process in the new CBA will result in a voluntary process becoming compulsory and subject the parties to binding arbitration.

II. Union's Position

The Union states that many federal agencies use ADR as a mechanism to reduce costs associated with litigation. Therefore, its proposal to maintain the ADR Article is appropriate and will help to develop a collaborative relationship between the parties and reduce the unnecessary costs that result from litigation. The Union states, as it did under the previous Article, that the Agency initially asserted that it had "[n]o Agency proposal" for this article, but now states that it is proposing to delete this article. The Union argues that the Agency should not be permitted to alter its proposal.

III. Conclusion

The Panel will adopt the Union's proposal. The Union proposes to maintain the parties' Article on ADR in the successor CBA. The Agency asserts that this Article has caused significant delay in management's ability to impose actions, yet it did not provide any evidence or explanation to support its position. ADR is meant to and should be used to facilitate timely and efficient resolution of issues, while saving the parties significant time and resources that they otherwise would have spent in litigation. The parties should utilize ADR to their benefit, not to their detriment. However, as the Union notes in section 2(c) of its proposal, participation in the ADR process is voluntary and may be terminated at any time. The Panel will impose the Union's proposal, which will maintain the current ADR Article in the parties' new CBA, but will caution each party that they should not require the other to participate in a voluntary process.

13. Article 50 – Duration and Amendments

I. Agency's Position

The Agency proposes a six-year contract with an automatic one-year renewal. The Agency asserts that a contract of this length will provide the parties stability and result in a significant amount of resources saved. For example, the Agency asserts that for these successor CBA negotiations, the Agency spent approximately $42,000 to rent space at a local hotel for the eight-month negotiations period. During the most recent bargaining, the Agency states that its team consisted of one Senior Executive Service employee; three GS-15s; two GS-14s; and one GS-13. The Agency contends that as a result of its team member's travel, per diem, and salary, it cost the Agency $271,027 to negotiate a new contract. The Agency asserts that the Union's proposal offers the parties no certainty or stability, since it consists of a one-year term with an automatic renewal term of three years unless either party provides notice of its desire to renegotiate prior to the end of the three-year term. The Agency argues that to require it to spend $313,117 (including the cost to rent space) to potentially renegotiate another CBA in one year does not provide for an effective and efficient government.

II. Union's Position

The Union states that a CBA term of one-year is reasonable because this agreement is a drastic departure from the parties' current agreement and past agreements. The Union asserts that a one-year contract will permit the parties to reevaluate the terms that they agreed to and whether they work for the parties and the employees. The Union also states that there should be one effective date that denotes when the agreement will become binding. Finally, regarding the Agency's argument over the cost to negotiate a contract, the Union asserts that it was the Agency's idea to pay for the Union's travel to Washington D.C. for the current CBA negotiations, so that the Agency did not have to pay for both its team and the Union's to travel to a different location.

III. Conclusion

The Panel will adopt the Agency's proposal. The parties' main disagreement is over the term of the successor CBA. The Agency's proposal, which provides for a six-year contract will provide the parties stability, will save both parties a significant amount of resources that they could spend renegotiating a new contract under the Union's proposal. The Panel has consistently stated that it is in favor of efficiency. The best way to accomplish this is by securing an agreement with a duration that will not require the parties to be in a perpetual state of bargaining. The Agency spent over $300,000 negotiating the successor contract. Requiring the Agency to continually incur these expenses would not be a good use of Agency resources or taxpayer dollars.

The Union asserts that there should be one date for when the CBA will go into effect. However, the Agency's proposal is consistent with section 7114(c)(1) of the Statute. It states that the "[a]greement is effective and binding on the parties upon approval by the agency head, or on the 31st day after its execution if the agency head has neither approved nor disapproved the Agreement." This language mirrors the statutory requirements that an agreement becomes

effective when the Agency head approves the agreement within 30 days from its execution, or on the 31st day if not approved. As such, Panel adopts the Agency's Article 50.

14. Article 54 – Smoking and Tobacco Products

I. Agency's Position

The Agency asserts that its proposal is consistent with the Department of Defense Instruction 1010.10, which requires all designated smoking areas to be at least 50 feet away from building entrances, exists, and air intake ducts. The Agency states that the Union's proposal allows for designated smoking to be 25 feet from building entrances, exits, and air intake ducts. The Agency argues that not only is this proposal inconsistent with DOD instructions, but it also presents a health risk to anyone who enters and exists a DLA facility, or is in the vicinity of the air intake ducts.

II. Union's Position

The Union asserts that its proposal, which permits the use of tobacco products within 25 feet from entrances, exits, and air intake ducts is consistent with the Occupational Safety and Health Administration, the General Service Administration, and with EO 13058, Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace.

III. Conclusion

The Panel will adopt the Agency's proposal. The parties' main disagreement is over the location that employees may use tobacco products. Specifically, whether the employees must maintain at least 50 feet of distance from entrances, exits, windows, and ventilation systems. The Union did not explain the harm that would result from requiring employees to be at least 50 feet away from any facility while using tobacco. The Panel will adopt the Agency's proposal.

15. Memorandum of Agreement – Material Handler Equipment

I. Union's Position

The Union withdrew its proposal for continuing the MOA on Material Handler Equipment.

II. Agency's Position

In the Agency's rebuttal statement, it accepted the Union's withdrawal of the MOA.

III. Conclusion

The Panel will accept the Union's withdrawal of this proposal, since the Agency is also in agreement to remove this agreement from the CBA.

16. Memorandum of Agreement – Lactation Agreement

I. Union's Position

The Union states that it asked the Agency whether it could provide the Union with specific guidance on the DLA policy over permitting employees time to express milk. Instead, the Union argues that the Agency provided it with a broad instruction over the lactation program. The Union states that once the Agency can provide the written guidance for the Union to review, the Union can then determine whether to eliminate the MOA or keep it in existence.

II. Agency's Position

The Agency states that Article 2, agreed to by the parties, provides that they will abide by DOD and DLA regulations. The Agency points to DLA Instruction 6000.01 for employees and managers to follow when an employee would like to express milk. The Agency states that the parties negotiated the Instruction in 2016, and it is currently in place. The Agency asserts that the Union's proposal focuses on a MOA dated 2011, which has been replaced by the Instruction 6000.01.

III. Conclusion

The Panel will adopt the Union's proposal. The parties disagree over whether the MOA on a lactation program will continue once the successor CBA is executed. The Agency contends that in Article 2, the parties agreed to abide by DOD and DLA regulations; however, the Agency did not provide the Panel the regulation it is referring to support its position, nor did it explain how the MOA conflicts with that those regulations. The MOA merely indicates that the different DLA locations will permit mothers to express milk during breaks. This is consistent with the Affordable Care Act, which requires employers to provide nursing mothers with a reasonable break time to express milk for one year after her child's birth and a private space to do so.[12] Thus, the Panel will adopt the Union's proposal which will keep this MOA in place.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.

Mark A. Carter
FSIP Chairman

September 21, 2020
Washington, D.C.

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12 29 U.S.C. § 207(r).

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 3, Section 1, Council Officers	S1.A. The Employer agrees to recognize Council 169's Executive Board, as specified in the Council's Constitution. S1.B. Council 169 will keep the Employer informed of the names, current email addresses, and current U.S. Postal Service addresses of the Council 169 Executive Board members on a biannual basis, or as requested by the Employer, and when there are changes.	S1.A. The Employer agrees to recognize Council 169's Executive Board, as specified in the Council's Constitution. The official time and travel/per diem provisions of this MLA are limited to a maximum of nine Executive Board members. S1.B. Council 169 will keep the Employer informed of the names and addresses of the Council Executive Board. S1.C. The Employer agrees to provide reasonable amounts of official time to Council 169 Executive Board members who are DLA employees to perform their duties as national officers. Such time will be limited to the purposes authorized in this agreement and will be requested and approved prior to its use.	The Agency's proposal does not include payment of travel and per diem and requires the Union to keep it informed of identity and contact information for Union representatives on a regular basis, upon request, or when there is a change. This will assist the Agency in identifying the appropriate Union representative for meetings, negotiations, etc.
2. Art. 3, Section 2, Council 169 Locals	S2.A. The Council 169 Local Presidents will advise the Employer, in writing, of all elected officers, appointed representatives, and	S2.A. The Council 169 Local President will advise the Employer, in writing, of all elected officers and appointed or	Same as for Art. 3, Section 1 supra.

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
	stewards on a quarterly basis, or as requested by the Employer, and when there are changes. S.2.B. The Employer will recognize those locally elected officers and appointed or designated representatives and stewards of the Council 169 Local whose name(s) are on the list provided by the Council 169 Local President pursuant to paragraph A of this section.	designated representatives and stewards. S2.B. The Employer will recognize those locally elected officers and appointed or designated representatives and stewards of the Council 169 Local whose name(s) are on the list provided by the Council 169 Local President in accordance with paragraph A of this Section.	
3. Art. 3, Section 3, Official Time	S3.A. General: S3A.1. "Official time" means time granted by the Employer to an exclusive representative whose name has been provided to the Employer pursuant sections 1 and 2 of this Article as being elected, designated, or appointed officer or representative of the Council 169 Executive Board or Council 169 Local to perform representational functions only as described in paragraphs 2. , 3, and 5 below, when the employee would otherwise be in a duty status. Such time granted is without charge to leave or loss of pay.	A.General - "Official time" means time granted by the Employer to a bargaining unit employee whose name has been provided in accordance with Section 1 or 2 of this Article as being an elected, designated, or appointed officer or representative of the Council 169 Executive Board or Council 169 Local to perform representational functions defined in paragraph 2 below, when the employee would otherwise be in a duty status. Such	The Agency's proposal provides for a bank of official time hours to be used by those Union representatives identified in Sections 1 and 2. There is no obligation for the Agency to pay travel and per diem for Union representatives. Also, no official time for lobbying. The Union's proposal provides for up to 9 Executive Board members, with the Council President able to

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S3.A2. An employee representing an exclusive representative in the negotiation of a collective bargaining agreement will be authorized official time for such purposes. This includes time to attend impasse proceedings. The number of employees for whom official time is authorized will not exceed the number of management officials engaged in bargaining. S3.A3. Official time may be authorized, as determined by the Federal Labor Relations Authority, for employees participating in any phase of proceedings before the Federal Labor Relations Authority during the time the employee would otherwise be in a duty status. S3.A4. Union Bank of Official Time. Total available hours of union official time per fiscal year for activities covered by 5 U.S.C. 7131(d) is calculated by 1 hour per bargaining unit employee (e.g. 1 hour x 17, 000 bargaining unit employees = 17,000 available hours) as of October 1 for the activities. The bank time is for all AFGE Council 169 representatives. Unused union official time bank hours do not carry over into the next fiscal year. S3.A5. Union representatives may be authorized union official time hours as discussed in Paragraph 4, on a fiscal year	time granted is without charge to leave or loss of pay, and is considered hours of work. Except as otherwise restricted in this Agreement representational functions performed while on official time include travel and per diem.	unilaterally assign more 100% FTEs, all of the local sites presidents on 100% official time, with other Union representatives being able to ask for unlimited "reasonable" official time. The Union's proposal also allows representatives to be trained, once a month for 8 hours, on the MLA and representational duties. The Agency's proposal in 3(A)(5) describes what functions are appropriate for official time; including the non-statutory official time under 7131(D)

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
	basis, not to exceed 25% of their established annual tour of duty, paid time (subject to the overall bank limitation noted in Paragraph 4) in the performance of union representational activities. Representational functions that are appropriate for bank official time means the following authorized activities: a. Participation in formal discussions. b. Preparation for and attendance at management-initiated meetings, not otherwise described in this Agreement, when invited. c. Participation on committees or panels as authorized by this Agreement, such as Voluntary Protection Program activities. d. Assisting an employee, when designated as his/her representative, in preparing a response to a proposed adverse action. S3.A6. Official time is prohibited for lobbying of any kind. S3.B. Requesting Official Time	B. Use of Official Time. The Employer and Council 169 share the mutual responsibility of ensuring that official time is used only for purposes authorized in this	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S3.B1. Official time will be authorized only in the amount necessary to complete the authorized representational function. All union representatives will request release for representational functions, using the Appendix A Official Time form, in advance and as required by their supervisor. All union representatives are required to input all official time used into the Agency time and attendance system. Failure to properly request and accurately record official time will result in forfeiture of such time and conversion into the appropriate leave category (e.g., annual leave, credit hours used, comp hours used, leave without pay, etc.).	agreement. The Employer and Council 169 support the prudent use of official time and will authorize only the amount necessary to complete the authorized representational function. 1. Council Officers. The Council 169 President will be on 100 percent official time. Up to nine members of the Council 169 Executive Board who are DLA employees will be authorized reasonable official time to perform representational functions. Council Officers will normally request release for each incidence of official time, using Appendix A. It is expected that Executive Board members can maintain effective contact with Employer Headquarters officials and Council 169 officials through the official facilities provided by this	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
		Agreement. It is incumbent upon Executive Board members to make every effort to resolve matters concerning the implementation and application of this Agreement without incurring travel expenses. The Employer shall pay per diem and travel for official labor management functions in instances aside from those described above where no other alternative exists but for a Council 169 Executive Board member to be authorized travel to another DLA location. Such travel will be authorized and approved by the HQ DLA Human Resources Office. 2. Local Representatives. Official Time -one (1) FTE will be allocated based upon the locations listed below at the	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
		time this agreement is made. LOCATION DLA Disposition Services Field National Capital Region (including all DLA Installation Support sites) Battle Creek, Michigan Philadelphia Richmond Columbus DLA Distribution HQ/DDSP (both DDSP sites) DDJC DLA Sites: Oklahoma City Ogden Warner Robins Council President Designation** 1 . **The Council 169 President will advise the Employer on a semi-annual basis of the location to	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S3.C. No Agency Proposal	which he/she will assign use of this 1 FTE. It may be allocated as two .5 FTE or four .25 FTE. The Union may choose to use the FTEs as 100% official time, 50% official time, or combinations thereof. The parties intent is that most representational work will be accomplished by representatives on block grants of official time. Other local officials/stewards will normally request release for each incidence of official time, using Appendix A. Requests for official time using Appendix A may not be used in a manner that replicates the effect of a block grant of official time. Use of Appendix A is not required for very brief uses of official time (5 minutes or less) such as responding to an individual e-mail message or answering a phone call. Such use of official time without Appendix A is limited to 30 minutes per day. The supervisor will assess workload	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
		and the reasonableness of the official time request. If the official time is disapproved due to workload reasons, the supervisor will indicate when approval can be granted. C. In addition official time which is reasonable, necessary and in the public interest will be granted for the following activities: 1. Safety activities 2. represent an employee or the Union at an arbitration hearing; 3. appear as a witness at any step of a grievance; 4. appear as a witness at an arbitration hearing; 5. attend meetings scheduled by management; 6. meet and confer or consult with management; 7. represent an employee in appeal hearings covered by statutory procedures;	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
		8. represent the Union on approved committees authorized by this Agreement; 9. represent the Union on the DoD wage fixing authority wage survey teams or other approved labor management fact-finding studies; 10. be present as an observer in an adverse action proceeding or grievance adjustment where the Union is not the employee's representative (subject to approval of the hearing officer in charge of the proceeding); 11. represent the Union in formal discussions involving personnel policies, practices, working conditions, or grievances between bargaining unit employees and management; 12. represent the Union in investigatory interviews between supervisors and employees; 13. participate in partnership activities as authorized by the	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
		installation Partnership Council; 14. participate in informal Unfair Labor Practice resolution proceedings with management officials; 15. present grievances at any step of the Negotiated Grievance Procedure or associated Alternate Dispute Resolution Procedure as specified in Article 6; 16. assist an employee when designated as their representative in preparing a response to a proposed disciplinary action; 17. prepare responses to management-initiated correspondence, including Promotion Plan Templates (Templates); 18. prepare Union grievances; 19. assist an employee in preparing a response to any personnel action resulting from a directed fitness for duty examination;	

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S3.D: No Agency proposal.	20. prepare for arbitration; 21. allow travel time to the applicable worksite or to/from the Union office to accomplish any of the above. 22. Negotiations over the impact and/or implementation of changes in conditions of employment of bargaining unit employees which occur during the term of this Agreement. 23. Preparation for and participation in proceedings before the Federal Labor Relations Authority (FLRA) in accordance with FLRA's rules and regulations, and other third D. Once a Month for 8 hours on the same day Union Representative will go to union office or designated place by Union to receive training on the MLA and representational duties.	
4. Art. 3, Section 4	No Agency proposal.	The word "representative" as used in this Agreement means one	The Union's proposal limits the number of Management

Article 3 – Official Time

Article/Section	Agency Proposal	Union Proposal	Key Differences
		representative. However, the Employer agrees that in those situations when meetings require the attendance of an employee and his/her representative, the Employer will normally and reasonably limit attendance to not more than two (2) supervisory/managerial employees. When more than two supervisory/managerial personnel are required, the number of Council representatives may be increased by one (i.e., three management representatives equals an employee plus two Council representatives), up to a maximum of three Council representatives in any one situation. In the event that advisory staff are needed to deal with a matter of mutual concern (i.e., labor relations, safety, health, etc.) both parties may mutually agree not to count these advisors as representatives.	officials at a meeting and increases the number of Union representatives at the same.

[i]

[i] The differences in the two proposals are so substantive and numerous that highlighting the difference is not practicable. See the Key Differences for a summary.

Article 6 – Use of Official Facilities and Services

Article/Section	Agency Proposal	Union Proposal	Key Differences
Article 6, Section 1, Use by Union	S1.A. Access to all DLA facilities, systems, and equipment is subject to DLA, DOD, and government-wide internal security rules, regulations, and policies, (e.g., use of the Common Access Card). The use of any government system (e.g., email) is limited to employees of DLA. S1.B. The Employer supports an effective and efficient government and as such will maintain sound fiscal procedures to include the elimination of unreasonable expenditures. 1. The Employer will authorize use of government property or any other Agency resources if such use is generally available for non-Agency business by employees when acting on behalf of non-Federal organizations.	S1.A. Access to all DLA facilities, systems, and equipment is subject to ~~DLA, DOD~~, DOD, DLA and government-wide internal security rules, regulations, and policies, (e.g., use of the Common Access Card). ~~The use of any government system (e.g., email) is limited to employees of DLA.~~ [Agency note – Strikethrough in original.] S1.B. The Employer supports an effective and efficient government and as such will maintain sound fiscal procedures in accordance with all applicable laws to include the elimination of unreasonable expenditures. [Agency note – red type in original.] 1. The Employer will authorize use of government property or any other Agency resources if such use is generally available for non-Agency business by	The Agency's proposal seeks efficient and effective use of Agency office facilities and systems. Union representatives who use computer as part of the duties of their position of record will be able to use that equipment for representational duties. Access to DLA facilities is based on security rules. Non-DLA employees will not have access to DLA systems. The Union's proposal requires private space for 9 Council 169 Executive Board Members. Local representatives will have offices with various furniture and equipment. Although a DLA requirement, telephones will not be CAC (Common Access Card)-enabled. The Union's proposal also requires the Agency to provide a wide variety of research resources, as well as tokens for DLA retires to

Article 6 – Use of Official Facilities and Services

Article/Section	Agency Proposal	Union Proposal	Key Differences
		employees when acting on behalf of non-Federal organizations. 2. Each local will be provided similar opportunities under this section, as directed by management of the local activity. 3. Union representatives that are DLA employees, will be provided a computer, network access, and other equipment and permissions based on his/her <u>position of record</u>. DLA employee union representatives who have Government-issued computers and network access based on their	access the Agency's computer system.
	2. Each local will be provided similar opportunities under this section, as directed by management of the local activity. 3. Union representatives that are DLA employees, will be provided a computer, network access, and other equipment and permissions based on his/her <u>position of record</u>. DLA employee union representatives who have Government-issued computers and network access based on their positions of record may continue to use their Government-issued computer		

Article 6 – Use of Official Facilities and Services

Article/Section	Agency Proposal	Union Proposal	Key Differences
	and email for union representational duties. 4. Network access will not be provided to the union separately as an organizational entity for representational functions. No network access will be provided to representatives that are not DLA employees.	positions of record may continue to use their Government-issued computer and email for union representational duties. 4. Network access will not be provided to the union separately as an organizational entity for representational functions. ~~No network access will be provided to representatives that are not DLA employees~~. 5. All correspondence, such as notification(s) of all proposed changes including Article 5, meetings, setting up phone calls,	

Article 6 – Use of Official Facilities and Services

Article/Section	Agency Proposal	Union Proposal	Key Differences
		teleconferences, VTCs, etc..., will be done by certified mail, via United States Postal Service (USPS). [Agency note – Strikethroughs and red type in original.]	
Art. 6, Section 2, Access to DLA Facilities	S2.A. The Employer will allow access to DLA facilities for listed members of Council 169 and/or members of Local AFGE organizations or AFGE representatives for purposes of conducting representational duties based on section 1 of this article. Access will be processed in accordance with DLA policies and procedures required for entrance to DLA facilities for non-employees or Government retirees.	S2.A. The Employer will allow access to DLA facilities for listed members of Council 169 and/or members of Local AFGE organizations or AFGE representatives for purposes of conducting representational duties based on section 1 of this article. Access will be processed in accordance with DLA policies and procedures required for entrance to DLA facilities for non-employees or Government retirees.	The Agency's proposal provides for access to DLA facilities by DLA employees, and requires non-DLA employees or Government retirees to be subject to DLA's security protocol for access. The Agency's proposal also allows for administrative leave in the event an employee is temporarily/mistakenly detained in gaining access to the DLA facility. Agreed to

Article 6 – Use of Official Facilities and Services

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S2.B. An employee temporarily detained for a non-valid alert (e.g., an error in reporting, wrong person, wrong information, etc.) will be granted administrative leave during the period detained. S2.C. An employee who is initially detained, but does not have an active warrant and is then cleared to have access to the facilities, should be granted administrative leave for the time detained.	S2.B. An employee temporarily detained for a non-valid alert (e.g., an error in reporting, wrong person, wrong information, etc.) will be granted administrative leave during the period detained. S2.C. An employee who is initially detained, but does not have an active warrant and is then cleared to have access to the facilities, should be granted administrative leave for the time detained.	this provision during negotiations.
Art. 6, Section 3, Mass Transportation Benefit Program	The Mass Transportation Benefit Program (MTBP) will be administered in accordance with DOD regulations. At sites where parking is controlled by DLA, parking arrangements for employees who utilize MTBP but have intermittent parking needs may be negotiated locally.	The Mass Transportation Benefit Program (MTBP) will be administered in accordance with DOD regulations. At sites where parking is controlled by DLA, parking arrangements for employees who utilize MTBP but have intermittent parking needs may be negotiated locally.	Agreed to by the parties on during negotiations.

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
Article 9, Section 1, Overview	The purpose of this Article is to provide eligible employees the opportunity to participate in the DLA Telework Program. The parties acknowledge telework must consider the nature of the work, the effect on organizational culture and mission requirements. The parties also recognize that current Federal rules and regulation governing telework benefit both the employee and Employer in mission accomplishment and employee work/life balance, such as: A. Ensuring effectiveness in continuing operations in the event of a crisis or national emergency (e.g., pandemic influenza); B. Assisting in the recruitment and retention of high quality employees; C. Improving employee morale; D. Allowing employees to establish a better balance between their work and personal lives; E. Reducing commuting costs and commuting stress; F. Improving job access for employees with disabilities; G. Accommodating employee needs for convalescence from short-term injuries or illnesses;	e Telework, is a flexible work arrangement in which an employee works most or all of the time from a different geographic area. This type of work arrangement is becoming increasingly more common. Remote work can help organizations recruit new employees with hard-to-find skillsets, or retain current employees who move due to spouse relocation or other life events. Can't (*Can't change the highlights in the union proposal).I* An Employee (BUE)'s participation in the telework program is voluntary; thus, an agency may not compel an Employee (BUE) to participate in the telework program, even if some or all of the duties of the position can be performed at an alternative location. At the same time, telework is not an Employee (BUE) entitlement, but a flexibility approved at an agency's discretion. The intent of the laws on telework is to encourage agencies to allow employee participation in the telework program to the maximum extent possible	The Agency's proposal sets out more clearly for employees the situations where telework can be used.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	H. Promoting the Defense Logistics Agency as an Employer of choice.	without diminished employee performance SECTION 1. A. Telework -A voluntary work arrangement where an Employee (BUE) performs assigned official duties and other authorized activities during any part of regular, paid hours at an approved alternative worksite (e.g., home, telework center) on a regular and recurring or a situational basis. Telework includes remote work where an Employee (BUE) resides and works at a location beyond the local commuting area of the employing organization's worksite (DoDI 1035.01). B. Actively promoted and implemented throughout DoD/DLA in support of the DoD/DLA commitment to workforce efficiency, emergency preparedness, and quality of life. Telework facilitates the accomplishment	

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
		of work; can serve as an effective recruitment and retention strategy; enhance DoD/DLA efforts to employ and accommodate people with disabilities; and create cost savings by decreasing the need for office space and parking facilities, and by reducing transportation costs, including costs associated with payment of transit subsidies. C. Authorized for the maximum number of positions to the extent that mission readiness is not jeopardized. D. Used to the broadest extent possible by eligible Employee (BUE) on a regular and recurring basis, up to and including full-time telework, or a situational basis at an approved alternative worksite. Telework, however, is not an entitlement. E. Periodically exercised to ensure its effectiveness in continuing operations in the event of a crisis or national emergency (e.g., pandemic influenza).	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		F. Used to help create employment and return-to-work opportunities for veterans, people with disabilities, and spouses of Service members and Employee (BUE) being relocated. G. The parties recognize that both regular and recurring and ad hoc (intermittent) Telework arrangements benefit Employee (BUE) and the Employer by, among other things: H. potentially improving the productivity of Employee (BUE); I. assisting in the recruitment and retention of high quality Employee (BUE) J. improving Employee (BUE) morale; K. allowing Employee (BUE) to establish a better balance between their work and personal lives; L. reducing commuting costs and commuting stress; M. improving job access and reasonable accommodations for disabled Employee (BUE);	

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
		N. reducing costs for office space and related costs for utilities, parking, etc.; O. accommodating Employee (BUE) needs for convalescence from short-term injuries or illnesses; P. accommodating work needs when the regular workspace is unavailable (e.g., during office renovation); and Q. promoting the Defense Logistics Agency as an Employer of choice. [Agency note: Highlights in original.]	
2. Art. 9, Section 2, Telework Program Requirements	S2. Telework is a voluntary work arrangement that allows an employee to perform assigned official duties from an approved alternate worksite (e.g. employee's primary home). The alternate worksite should be within a recallable distance (est. 2 hour or 100 mile one-way distance) to ensure the employee can report to the official worksite within a reasonable period. Management has the sole and exclusive right to determine where work will be performed including any alternate worksite.	The parties recognize that some positions are not generally eligible for Telework. These positions involve tasks that are not suitable to be performed away from the traditional worksite, including tasks that:	The Agency's proposal provides employees with a general understanding of a reasonable recall distance since all teleworkers are subject to being called back to the installation at any time. The section also reiterates the basic management right to determine where work will be performed. The Agency's proposal also includes statutory

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	Parties entering a telework agreement recognize that some positions, due to the inherent nature of the work, are not generally suitable for regular and recurring telework, such as: A. Positions that require employees to have daily face–to-face contact with the supervisor, colleagues, clients, or the general public in order to perform his or her job effectively, which cannot otherwise be achieved via email, telephone, fax or similar electronic means; B. Positions that require direct handling of secure or classified materials on a recurring basis; or C. Trainee or entry-level positions, until the incumbent reaches an acceptable skill level as determined by management. The parties also recognize that by law some employees are permanently barred from telework: A. An employee officially disciplined for being absent without leave for more than 5 days in any calendar year; and	A. require the Employee (BUE) to have daily face–to-face contact with the supervisor, colleagues, clients, or the general public in order to perform his or her job effectively, which cannot otherwise be achieved via email, telephone, fax or similar electronic means; B. require daily access to classified information; or C. are part of trainee or entry-level positions, until they reach their skill level.	prohibition regarding telework eligibility.

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	B. An employee officially disciplined for violations of the Standards of Ethical Conduct for viewing, downloading, or exchanging pornography on a government computer while performing official duties. The parties recognize that teleworkers must be available to work at the traditional worksite on telework days if necessitated by work requirements (e.g. staff meetings, town halls, training, etc.), as determined by the supervisor. Supervisors should consider requests to change or swap scheduled telework days in a particular week or biweekly pay period consistent with mission requirements. Pre-authorization is required for each request.		
3. Art. 9, Section 3, Eligibility Requirements	S3. Employees who wish to telework, must meet the following requirements: A. Occupy a telework eligible position; B. Work from an alternate worksite within a recallable distance of the official worksite; NOTE: Supervisors should not rely solely on the 2-hour/100-mile rule of thumb as the basis for determining whether an employee would be "recallable." Travel conditions vary by geographic locations	DLA and the Council recognize that Employee (BUE) who Telework must be available to work at the traditional worksite on Telework days on an occasional basis if necessitated by work requirements. Conversely, requests by Employee (BUE) to change scheduled Telework days in a particular week or biweekly pay period should be accommodated by the supervisor	The Agency's proposal describes clearly to eligibility for telework. The Union's proposal does not list any of these requirements, which gives the impression that all employees are eligible to telework regardless of position, recallability, or past disciplinary actions.

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	and supervisors are encouraged to confirm travel time prior to approving a telework request. C. Be performing at least a Fully Successful level (e.g. not on a PIP or rating of record less than fully successful); D. Not have a disciplinary action in their record during the prior 18 month period (12 months for reprimands) from the date they request to telework; E. Not be under a letter of leave restriction; F. Be fully oriented to the organization (generally working for a minimum of 90 days from the assignment to the activity or 30 days from the assignment to a different position within the activity); G. Have an approved telework agreement on file; H. Complete mandatory DLA Telework Program training; and I. Be able to remotely access the DLA network.	wherever practicable, consistent with mission requirements.	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
4. Art.9, Section 4, Types of Telework	S4.A. Regular and Recurring Telework. An employee scheduled to work at an approved alternate worksite in a regular and recurring pattern (e.g. every Monday). The number of days of telework is based upon items such as organizational requirements; workload requirements; ability to maintain effective group communications in the workplace and implement new work processes; knowledge transfer; unit cohesion; and mission accomplishment. When an employee submits a telework request, he/she will meet with the supervisor to discuss these specifics. This discussion will assist the supervisor in recommending the number of days per week that telework should be authorized. Approving officials have the sole and exclusive discretion to determine the number of days per week and to ensure teleworkers can be effectively recalled to the duty location, if needed, from the alternate worksite. All alternate worksites must be within a recallable distance from the traditional work site.	S4.A. Regular and recurring Telework arrangements are approved work schedules allowing eligible Employee (BUE) to work at an approved alternative worksite at least one day per week (including from home). Organizations may not impose blanket or arbitrary restrictions on the number of days of telework. The number of days of Telework is based upon workload requirements, ability to maintain effective communications in the workplace, implement new work processes, and accomplish the mission of the Agency. When an Employee (BUE) submits a Telework request, he/she will meet with the supervisor to discuss these specifics. This discussion will assist the supervisor in recommending the number of days per week Telework should be authorized. Approving officials have the sole discretion to determine the number of days per week (from one to five) a Teleworker is approved to work. Approving officials will advise Teleworkers of the number of days per week they are authorized to Telework. If the number of approved days per week is less than that requested by the	The Agency's proposal describes limits to telework, such as set an expectation of on-site presence at 60% and the limit on the number of telework days, and the supervisors' sole and exclusive discretion to determine the number of the same. The Union's proposal effectively bars the Agency from making this determination, having to provide a "business/mission" reason for denying an employee's request for, in effect, limitless telework days. The Agency's proposal puts mission requirements at the forefront. The Agency proposal in "D" also discusses and documents the requirement for unscheduled telework for Weather and Safety Leave.

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		Employee (BUE), the employer will advise the Employee (BUE) of the business/mission reason. Mere generic statements such as "mission requirements" are not sufficient reasons. Denial of telework request will follow at least these basic principles: • Be in writing • Provide an explanation • Be timely • Follow Agency policies and procedures for denial/termination of telework request • Include any appeals/grievance procedures available to the Employee (BUE) eneric statements such as "mission requirements" are not sufficient reasons. S4.B. Ad hoc (intermittent) Telework means occasional, one time, or irregular Telework by an Employee (BUE) at an approved alternative worksite typically for a day, or a block of days, to work on projects or	
	S4.B. All employees must be physically present to work at the traditional work site at least 60% of days of the approved work schedule. Approving officials will advise teleworkers of the number of days per week they are authorized to telework. If the number of approved days per week is less		

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	than that requested by the employee, the Employer will advise the employee of the business/mission reason.	assignments that may be effectively performed away from the traditional worksite. Ad hoc (intermittent) Telework provides an ideal arrangement for Employee (BUE) who, at infrequent times, have to work on projects or assignments that require intense concentration. Work assignments in this situation may include a specific project or report, such as drafting a local directive, preparing a brief or arguments, preparing an organization's budget submission, reviewing various types of proposals, or preparing research papers. Such situations may occur through the year or be a one-time event.	
	S4.C. Situational (also referred to as periodic, ad hoc, or intermittent) Telework. An employee pre-approved to telework in an unscheduled, project-oriented, or irregular fashion. Situational telework requires pre-authorization from designated approving officials for each instance. Such situations may occur through the year or be a one-time event. Examples include: a. To perform projects or tasks that require concentration and uninterrupted blocks of time (e.g.	S4.C. Employee (BUE) who are typically on non-eligible telework position (e.g., wage grade) shall be allowed to work situational (ad hoc) to complete training courses or if assigned to a special project.	

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	web-based or other distance learning, special projects, significant reading or writing); b. Allow work by an employee who is temporarily unable to physically report to the traditional worksite; or c. Unanticipated personal circumstances. S4.D. Unscheduled Telework. A form of situational telework that allows a telework-ready employee to perform work when DLA offices are either – d. Closed during adverse weather conditions or other emergency situations; or e. Open but circumstances disrupt commuting or compromise employee safety. Employees participating in unscheduled telework must telework throughout the duration of the day or event. Please refer to Article 22 (Administrative Leave) for additional information regarding unscheduled telework.		

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Article/Section	Agency Proposal	Union Proposal	Key Differences
5. Art. 9, Section 5, Telework Agreements	S5.A. The employee must request telework using the appropriate System of Record prior to commencement of any form of telework. Written approval or disapproval will normally occur within 10 (ten) workdays but no later than 15 workdays. Approved requests result in an agreement in place for one year but no more than two years.	A. Prior to commencement of regular and recurring Telework arrangements, the supervisor and the Employee (BUE) must request approval to Telework using the form at Appendix C. Written approval or disapproval normally will occur, within 10 (ten) workdays of submission by the Employee (BUE), but no later than 15 workdays. If disapproved, the Employee (BUE) will be provided with a written explanation of the reason. If approved, the Employee (BUE) must complete and sign a Telework Agreement (copy at Appendix D) that outlines the terms and conditions of the arrangements. The purpose of the Telework Agreement is to prescribe the approved alternative worksite, Telework scheduling, and to address personnel and security issues. If the agreement is for work from home, the Employee (BUE) must designate one area of the home as the official workstation, and must sign a self-certification safety checklist (copy at Appendix E) that proclaims the home safe. Appendix F must be completed by	The Agency's proposal reflects the current, more streamlined/electronic process for requesting telework, which is more efficient. The Union's proposal is paper driven, which is less efficient and does not reflect the current practice.

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		the supervisor and Employee (BUE) to ensure proper understanding of the Telework Program.	
	S5.B. Disapproved requests require written justification to the employee of the reason.	S5.B. Individual participants may terminate their personal Telework agreement by giving advance written notice.	
	S5.C. Terminated agreements require written justification to the employee of the reason. Telework agreements are normally reviewed annually and typically renewed unless the employee terminates their agreement or no longer meets the eligibility requirements described in Section 3. Participants may terminate their agreement at any time by providing a written notice in the System of Record. The Employer may modify or terminate a telework agreement for any of the following reasons: A. Changes to mission requirements; B. Any negative impact to work operations resulting from telework; or C. Changes in organizational or individual performance. When practicable, the supervisor or manager will provide written notice prior to termination in	S5.C. Telework agreements will normally be approved on an biennial basis and will be extended unless the Employee (BUE) or the Employee (BUE)'s position no longer meets the eligibility requirements to Telework. The Employer may modify or terminate a Telework arrangement if that arrangement is having a demonstrated undue adverse impact on work operations or performance. When practicable, the supervisor or manager will provide written notice prior to the cancellation of participation in order to provide adequate time for conversion back to the official duty station. New Telework agreements are not required simply because a new supervisor or approving official is assigned to an organization.	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	order to provide adequate time for conversion back to the official duty station. New telework agreements may be required upon the assignment of a new supervisor to an organization. The new supervisor may use his or her discretion in approving, disapproving, or modifying existing telework agreements according to mission requirements. S5.D. No Agency proposal.	D. Employee (BUE) covered by a telework agreement need not work at least twice each biweekly pay period at the regular official worksite (where the Employee (BUE)'s work activities are based) as long as the Employee (BUE) is regularly performing work within the same locality pay as the worksite.	
6. Art. 9, Section 6, Grievances	S6.A. If an employee disputes the reason given by a supervisor for not approving him or her for telework or for terminating his or her telework Agreement, the employee may submit a grievance using the negotiated grievance procedure.	**Union Art. 9, Section 6, Performance Management** A. Teleworkers and non-teleworkers shall be treated the same for the purpose of work requirements, periodic appraisals of job performance, training, rewarding, reassigning, promoting, reducing in grade, retaining and removal, and other acts requiring management discretion.	The Agency's proposal describes how employees may dispute telework determinations, besides eligibility, location, and number of days, through the negotiated grievance procedure. The Union's proposal, in effect, allows employees to not be accountable for their whereabouts, the performance of their assigned duties, or even

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S6.B. If the Union believes that the Employer is not complying with the negotiated policies or applicable laws, rules, or regulations concerning teleworking, the matter may be grieved under the negotiated grievance procedure. S6.C. Telework determinations regarding eligibility, ~~location or the number of days an employee may telework~~ are not subject to the negotiated grievance procedure or arbitration.	S6.B. Performance standards for Employee (BUE) that telework should be the same as performance standards for on-site Employee (BUE). S6.C. There will be no sign in or sign out boards (physical) or electronically. To include the understanding that phone, Skype, etc. tools to be used, will not be used as time and attendance. Therefore no Employee (BUE) will be required to have a certain light on Skype or have to call in to start work, send an email, etc. at the beginning or end of shift—including before and at the end of lunch.	contact their supervisors during the work day. Finally, the Agency's proposal addresses grievances; Union's proposal addresses performance.
7. Art. 9, Section 7, Telework and Reasonable Accommodation	Telework may be used as a Reasonable Accommodation (RA) in certain circumstances. The parties must use the interactive process to determine if telework or some other potential alternative may be an effective accommodation that will enable the employee to perform the essential functions of the job. The parties agree telework as a RA must apply procedures from any telework policy or related guidance.	**Union Art. 9, Section 7, Requirements** mployee (BUE) who wish to Telework must meet the following requirements: A. Be performing at the Fully Successful level. B. Not have a disciplinary action in their record during the prior 18 month period (12 months for	The Agency's proposal deals with using telework as a reasonable accommodation. The Union's proposal attempts to limit the requirements for telework by, for example, not requiring the employee to be at a recallable distance, be oriented to the organization, or be able to remotely access the DLA network.

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
		reprimands) from the date they requested to Telework. C. Not be under a letter of leave restriction. D. Complete a Telework training course approved by DLA J-1. The Telework approving official may waive some or all of the requirements above. Situations leading to a waiver may include requests for short term Telework because of a documented temporary medical condition or due to serious illness of a family member.	
8. Art. 9, Section 8, Initial Transition	To assist employees with the initial transition to the telework requirements of the MLA, employees will have 90 calendar days from the effective date of the MLA to execute a revised telework agreement. If the number of days on an employee's current agreement is not affected by the new MLA telework requirements, employees are not required to submit a new agreement.	**Union Art. 9, Section 8, Grievances** A. If an Employee (BUE) disputes the reason given by a supervisor for not approving him or her for Telework or for terminating his or her Telework Agreement, the Employee (BUE) may submit a grievance using the negotiated grievance procedure. B. If the Union believes that the Employer is not complying with the negotiated policies or applicable laws, rules, or regulations concerning	The Agency's proposal addresses how telework agreements will be treated after there is a renegotiated MLA. The Union's proposal allows any and all disputes regarding telework to be addressed through the negotiated grievance procedure.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		Teleworking, the matter may be grieved under the negotiated grievance procedure.	
9. Art. 9, Section 9, Information	No Agency proposal.	he parties agree to discuss emerging issues related to Telework when either party requests it. Such updates will include information concerning the number of positions designated as eligible by job title, series and grade, the number of Employee (BUE) requesting Telework and the number actually approved for Telework by Local activity and other information viewed as mutually relevant by the parties.	The Union's proposal allows it to discuss "emerging" issues related to telework upon request. Failure for the Agency to do so would most likely result in a grievance, regardless of the Agency's reason for not participating in such meeting.
10. Art. 9, Section 10, Flexiplace	No Agency proposal.	Flexiplace is a term traditionally applied to Telework when used for reasonable accommodation of an Employee (BUE)'s disability. An Employee (BUE) requesting Telework as a reasonable accommodation will use Appendix C and provide the necessary documentation to support the request. Nothing in the Article diminishes the obligation of the Employer to provide reasonable accommodations. Should the Employer determine the requested	There is no real flexiplace at DLA.[i]

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
		accommodation is reasonable; the Employer will waive the requirements of Section 6.	
11. Art. 9, Section 10 (sic, Union proposal), Weather	No Agency proposal.	he agency policy bars an Employee (BUE) from teleworking at his or her home when there is a child or elder care situation, then the home is not an approved location under the Act and OPM's regulations. Therefore, if the Employee (BUE) is not permitted to telework under agency policies, and cannot safely travel to or perform work at the regular office location, an agency may grant weather and safety leave to the Employee (BUE). Example 1: Brian is a Federal Employee (BUE) who is a telework program participant. Brian also has a 3-year old daughter who lives in his home. A major snowstorm hits the area causing Brian's agency to announce a closure. Brian is unable to transport his daughter to a day care provider due to the weather conditions. Brian is prepared to telework but his agency bars Employee (BUE) from performing telework when children are in the home without supervision by another	The issue of weather and safety leave is addressed in Article 22 (Administrative Leave), which the parties have agreed to.

Article 9 – Telework

Article/Section	Agency Proposal	Union Proposal	Key Differences
		adult. Therefore, since Brian cannot safely travel to the worksite due to the closure and he cannot perform telework due to his agency's policy, Brian's agency shall grant him weather and safety leave for the entire workday. APPENDIX C DLA FORM 1864, JULY 2004 APPENDIX D DLA FORM 1865, JULY 2004 APPENDIX E DLA FORM 1867, FEB 2003 APPENDIX F DLA FORM 1866, JULY 2004	

[i] The proposals are too different for a section-by-section highlighting. Please see the narrative in the "Key Differences" section

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Complete proposals
Note: Track changes in original Union proposal.

Article 15 – Safety and Health

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 15, Section 1, General	S1.A. The Employer will, to the extent of its authority, provide and maintain safe and healthful working conditions for all Employee (BUE). Safe and healthful working conditions will be determined in accordance with the definitions and standards contained in Section 19 of the Occupational Safety and Health Act (OSHA), in Executive Order 12196, and in implementing regulations and directives.	A. The Employer will, to the extent of its authority, provide and maintain safe and healthful working conditions for all Employee (BUE). Safe and healthful working conditions will be determined in accordance with the definitions and standards contained in Section 19 of the Occupational Safety and Health Act (OSHA), in Executive Order 12196, and in implementing regulations and directives.	S1E/F: The Agency's proposal allows for use of official time from the official time bank of hours in Article 3. The Union's proposal allows for free/unaccounted for time.
	S1.B. Council 169 will support the Employer's efforts to acquaint every Employee (BUE) with his/her safety and health responsibilities. Any bargaining unit member who is performing duties, which he/she believes endangers his/her health or safety, will promptly notify the nearest available supervisor. If the supervisor agrees with the Employee (BUE) and cannot solve the problem by	B. Council 169 will support the Employer's efforts to acquaint every Employee (BUE) with his/her safety and health responsibilities. Any bargaining unit member who is performing duties,	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	providing immediate adequate protection, the supervisor shall remove the Employee (BUE) from the situation and refer the problem through appropriate channels for action.	which he/she believes endangers his/her health or safety, will promptly notify the nearest available supervisor. If the supervisor agrees with the Employee (BUE) and cannot solve the problem by providing immediate adequate protection, the supervisor shall remove the Employee (BUE) from the situation and refer the problem through appropriate channels for action.	
	S1.C. An Employee (BUE)'s bona fide refusal to work in unsafe or unhealthy areas, as described above in this Section, will not result in reprisal by the Employer. A "bona fide refusal" is based upon the Employee (BUE)'s reasonable belief that under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard	C. An Employee (BUE)'s bona fide refusal to work in unsafe or unhealthy areas, as described above in this Section, will not result in reprisal by the Employer. A "bona fide refusal" is based upon the Employee (BUE)'s reasonable belief that under the circumstances the task	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	reporting and abatement procedures. (29 C.F.R. § 1960.46(a))	poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures. (29 C.F.R. § 1960.46(a))	
	S1.D. The Council 169 Local will be promptly notified of all work areas used by bargaining unit Employee (BUE) that are determined to be unsafe or unhealthful. Copies of safety or health inspections of such spaces will be provided to Council 169 Locals.	D. The Council 169 Local will be promptly notified of all work areas used by bargaining unit Employee (BUE) that are determined to be unsafe or unhealthful. Copies of safety or health inspections of such spaces will be provided to Council 169 Locals.	
	S1.E. Council 169 Local representatives may be approved for official time in accordance with Article 3 to engage in investigations of work related accidents, reports of unsafe or unhealthful working	E. ~~Council 169 Local representatives will may be approved for official time in accordance with CFR 1960 Article 3 to engage in~~	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	conditions, or other safety and health related complaints. S1.F. The Employer is responsible for providing a safe and healthful work environment; and will perform additional safety and mishap prevention functions for all personnel under its supervision. [Note: Highlight of Article 3 in Agency original.]	~~investigations of work related accidents, reports of unsafe or unhealthful working conditions, safety and health inspections, or other safety and health related complaints will not be charged from the preset limits on official time.~~ F. The parties share a commitment to the establishment and maintaining an effective, comprehensive and cooperative occupational safety and health program. Section 19 of the Act and the Executive Order 12196 (February 26, 1980) DoDI 6055.1 require specific opportunities for employee participation in the operation of agency safety and health programs. We	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		agree to follow CFR 1960.Time on boards, committees and formal activities is not considered to be official time for purposes of tracking such time under the provisions of Article 3. Employees designated by the local union as their representative for formally safety activities are considered as operating under the protected activity provision. No AFGE 169 Local will participate or support another safety program such as Occupational Safety and Health Administration Voluntary Protection Program (VPP). Without the agreement and/or permission of the Council. . The Employer is responsible for providing a safe and healthful	

Article 15 – Safety and Health

Article/Section	Agency Proposal	Union Proposal	Key Differences
		work environment; and will perform additional safety and mishap prevention functions for all personnel under its supervision.	
2. Art. 15, Section 2, Protective Clothing, Equipment, and Tools	S2.A. The Employer will furnish personal protective equipment (PPE) without charge or cost to the Employee (BUE) when it determines that such equipment is necessary for the work to be done safely, including special situations as determined by the employer. Employee (BUE) will be allowed to retain such equipment if it is not suitable for use by other Employee (BUE) when they no longer need it (i.e., eyeglasses, safety shoes, etc.). Employee (BUE) are expected to exercise due care and diligence in use of PPE. Consistent with the nature of the work assignment and subject to management approval, work schedules may provide for a reasonable amount of time to be included in the scheduled tour of duty for those tasks, which are related directly to the performance of work assignments, such as personal cleanliness and storage as well as a	A. The Employer will furnish personal protective equipment (PPE) without charge or cost to the Employee (BUE) when it determines that such equipment is necessary for the work to be done safely, including special situations as determined by the employer. Employee (BUE) will be allowed to retain such equipment if it is not suitable for use by other Employee (BUE) when they no longer need it (i.e., eyeglasses, safety shoes, etc.). Employee (BUE) are expected to exercise due care and diligence in use of PPE. Consistent with	S2C: The Agency's proposal, based on information also provided to the Union, allows for $165 annually for the purchase of necessary safety shoes which is more than adequate for purchasing the same. The Union's proposed amount is $175. The Agency's proposal outlines several payment options.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	cleanup of Government property, tools and equipment. ~~Such time does not constitute overtime.~~	the nature of the work assignment and subject to management approval, work schedules may provide for a reasonable amount of time to be included in the scheduled tour of duty for those tasks, which are related directly to the performance of work assignments, such as personal cleanliness and storage as well as a cleanup of Government property, tools and equipment. ~~Such time does not constitute overtime.~~	
	S2.B. If required for representational functions, Union representatives shall be ~~temporarily~~ provided PPE as appropriate.	B. If required for representational functions, Union representatives shall be ~~temporarily~~ provided PPE as appropriate.	
	S2.C. To the extent required by the Employer, safety shoes will be provided for employees or the employee will be reimbursed for the amount up	C. ~~To the extent required by the Employer, safety shoes will be provided for employees or the employee will be~~	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	to $165 annually for the purchase of safety shoes when required in the performance of assigned duties. The method for providing safety shoes and/or reimbursement will be determined by the employer. To the extent feasible, the Employer will implement a method for providing safety shoes that does not require the employee to purchase up front, at his/her own expense, with subsequent reimbursement. Where employees are required to visit an outside vendor location to select/purchase safety shoes, up to two hours of duty time will be granted, subject to mission requirements and supervisory approval. -Either Party may request to meet annually to discuss an inflationary price adjustment in the payment for safety shoes or if there is a substantial cost increase in the purchase price. In the event an employee demonstrates a need, subject to supervisory approval, for an additional pair of safety shoes within the year, the employee will be authorized the replacement. ~~Management~~ The shoes will meet the ANSI/OSHA specifications. Request for specialized safety shoes due to medical conditions will be administered in accordance with the reasonable accommodation procedures. [Note: Highlights and strikethrough in Agency original.]	~~reimbursed for the amount up to $150 annually for the purchase of safety shoes when required in the performance of assigned duties. The method for providing safety shoes and/or reimbursement will be determined by the employer~~. The Employer agrees to make direct payment to an outside vender for shoes purchased which are required, as a condition of employment, to obtain and wear safety shoes. Employees will be authorized up to two hours of duty time to obtain shoes when using an outside vendor. The Employer agrees to pay up to $175.00 for the purchase of safety shoes for each eligible employee annually.-Either Party may request to meet annually to discuss an inflationary price adjustment in the payment for safety shoes or if there is a substantial cost increase in the purchase price. In the event an employee demonstrates a need for an additional pair of	

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		safety shoes within the year, the employee may be authorized the replacement. ~~Management~~ Trained safety personnel will determine whether an individual employees' safety shoes are unserviceable due to working conditions prior to approving a request for replacement issue. The shoes will meet the ANSI/OSHA specifications. Request for specialized safety shoes due to medical conditions will be administered in accordance with the reasonable accommodation procedures.	
3. Art.15, Section 3, Safety Inspections	S3.A. The Employer will conduct annual safety inspections at every Agency installation. For safety inspections conducted in accordance with 29 CFR 1960, the Council 169 Local will be afforded an opportunity to participate Council 169 Local	A. The Employer will conduct annual safety inspections at every Agency installation. The Council 169 Local will be afforded an opportunity to	The Agency's proposal allows for the use of official time from the bank of official time hours in Article 3. The Union's proposal allows for free/unaccounted for time.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	representatives will be approved for official time in accordance with Article 3 for such inspections. S3.B. The Council 169 Local will be notified when a Federal health officer, Employer safety inspector or private contractor visits the facility for the purpose of a safety inspection of spaces used by bargaining unit Employee (BUE). A representative of the Council 169 Local will be invited to participate in these inspections. The Employer will provide the local with a timely copy of the inspection report. S3.C. Council 169 Locals may, at their expense, bring in their own appropriately certified experts to conduct safety inspections and/or testing. Such experts will be certified by OSHA. Such inspections and/or testing will be coordinated in advance through the local Safety Office and the Safety Office will accompany the inspector. Coordination will include the credentials of the inspector and/or lab	participate in these inspections. B. The Council 169 Local will be notified when a Federal health officer, Employer safety inspector or private contractor visits the facility for the purpose of a safety inspection of spaces used by bargaining unit Employee (BUE). A representative of the Council 169 Local will be invited to participate in these inspections. The Employer will provide the local with a timely copy of the inspection report. C. Council 169 Locals may, at their expense, bring in their own appropriately certified experts to conduct safety inspections and/or testing. Such experts will be certified by OSHA. Such	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	and the testing/inspection protocols to be followed. The Safety Office will be provided with a timely copy of the report. It is understood that security considerations may preclude the admission of inspectors or testing personnel into restricted areas. [Note: Highlight and strikethrough in Agency original.]	inspections and/or testing will be coordinated in advance through the local Safety Office and the Safety Office will accompany the inspector. Coordination will include the credentials of the inspector and/or lab and the testing/inspection protocols to be followed. The Safety Office will be provided with a timely copy of the report. It is understood that security considerations may preclude the admission of inspectors or testing personnel into restricted areas. ~~Union representatives that are DLA employee's m ay request official time for inspections.~~ Council 169 Local representatives will be approved for official time in accordance with CFR 1960 for inspections and will not be charged from the preset limits on official time.	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
4. Art. 15, Section 4, First-Aid Kits	S4.A. At activities where local health services are not available, the Employer will furnish one industrial first aid kit for every building and an additional first-aid kit for every 50 Employee (BUE), and will ensure that at least one Employee (BUE) of the activity is qualified to administer first aid. B. The Employer supports lessening the impact of sudden cardiac arrest by supporting employee and worksite preparedness and response. For DLA hosted locations, and in coordination with host installations, the Employer will consider equipping DLA facilities with Automatic External Defibrillators (AEDs) in accordance with applicable safety and emergency response guidelines. In locations where AEDs are provided, the Employer will ensure employee awareness of emergency response procedures. S4.B. No Agency proposal. [Note: Highlights in Agency original.]	A. At activities where local health services are not available, the Employer will furnish one industrial first aid kit for every building and an additional first-aid kit for every 50 Employee (BUE), and will ensure that at least one Employee (BUE) of the activity is qualified to administer first aid. B. The Employer supports lessening the impact of sudden cardiac arrest by supporting employee and worksite preparedness and response in accordance with Volunteer Protection Acts and Good Samaritan Laws. The Employer will furnish one Automatic External Defibrillator (AED) for every building and an additional AED for every 50 Employee (BUE).~~For DLA hosted locations, and in~~	The Agency's proposal looks to applicable guidelines in supplying AEDs. The Union's proposal requires 1 AED per 50 employees, regardless of whether this satisfies applicable guidelines.

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		~~coordination with host installations, the Employer will consider equipping DLA facilities with Automatic External Defibrillators (AEDs) in accordance with applicable safety and emergency response guidelines.~~ In locations where AEDs are provided, the Employer will ensure employee awareness of emergency response procedures.	
5. Art. 15, Section 5, Health Services and Medical Evaluations	S5.A. The Employer will provide the necessary Occupational Health medical surveillance for Employee (BUE) whose exposure in the performance of official duties requires medical surveillance. At a minimum, this will include all bargaining unit Employee (BUE) who are covered by a Medical Surveillance Program (MSP). Such Employee (BUE) will be notified in writing of the reasons for inclusion in the MSP. Such Employee (BUE) will be provided appropriate baseline, periodic and exit medical surveillance evaluations	A. The Employer will provide the necessary Occupational Health medical surveillance for Employee (BUE) whose exposure in the performance of official duties requires medical surveillance. At a minimum, this will include all bargaining unit Employee (BUE) who are covered by a Medical Surveillance	

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	as determined by the occupational Health physician. S5.B. The Employer will provide Employee (BUE) whose positions are not covered by an MSP a diagnostic examination if they have been exposed to hazardous material or prolonged exposure to unhealthful working conditions and such examination is determined by competent medical authority to be necessary. In addition, Employee (BUE) have the option of seeking medical examinations from sources of their own choice at no cost to the Employer.	Program (MSP). Such Employee (BUE) will be notified in writing of the reasons for inclusion in the MSP. Such Employee (BUE) will be provided appropriate baseline, periodic and exit medical surveillance evaluations as determined by the occupational Health physician. B. The Employer will provide Employee (BUE) whose positions are not covered by an MSP a diagnostic examination if they have been exposed to hazardous material or prolonged exposure to unhealthful working conditions and such examination is determined by competent medical authority to be necessary. In addition, Employee (BUE) have the option of seeking	

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		medical examinations from sources of their own choice at no cost to the Employer.	
	S4.C. The Employer maintains the right to require medical examinations in accordance with 5 C.F.R. 339.301 at no cost to the Employee (BUE), for Employee (BUE) covered by an MSP. However, Employee (BUE) maintain the right to submit additional medical documentation from sources of their choice at no cost to the Employer.	C. The Employer maintains the right to require medical examinations in accordance with 5 C.F.R. 339.301 at no cost to the Employee (BUE), for Employee (BUE) covered by an MSP. However, Employee (BUE) maintain the right to submit additional medical documentation from sources of their choice at no cost to the Employer.	
	S5.D. A review of the health services of each local organization will be conducted at least once a year.	ED. A review of the health services of each local organization will be conducted at least once a year.	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
6. Art. 5, Section 6, Work in Unsafe Areas	S6.A. If an Employee (BUE) alleges that an unsafe work condition exists, the Employee (BUE) will inform the supervisor and may notify the Council 169 Local and Safety Office. S6.B. The provisions of DLA safety policies, E.O. 12196, and 29 C.F.R. § 1960 in effect at the time wil be followed so that Employee (BUE) who are involved in occupations with identified safety/health hazards are made aware of the hazards, informed of safe work practices, and educated in the use of appropriate personal equipment. S6.C. Appropriate abatement procedures in accordance with DLA safety policies, E.O. 12196, and 29 C.F.R. § 1960 in effect at the time will be	A. If an Employee (BUE) alleges that an unsafe work condition exists, the Employee (BUE) will inform the supervisor and may notify the Council 169 Local and Safety Office. B. The provisions of DLA safety policies, E.O. 12196, and 29 C.F.R. § 1960 in effect at the time will be followed so that Employee (BUE) who are involved in occupations with identified safety/health hazards are made aware of the hazards, informed of safe work practices, and educated in the use of appropriate personal equipment. C. Appropriate abatement procedures in accordance	

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	followed to correct a work area which has been determined by a competent authority to be unsafe or unhealthful. S6.D. Bargaining unit Employee (BUE) may sometimes be assigned to work alone, or in confined or restricted access spaces, where safety hazards exist. Employee (BUE) required to work alone or in confined spaces will be provided a means of communication, such as a cell phone or two-way radio for emergency use. If the work is being performed in an area that is not conducive to the use of such devices, the Employer will ensure that the supervisor or other personnel check on the Employee (BUE) often to verify his/her safety. No Employee (BUE) shall be allowed to work in confined or enclosed spaces without either mechanical or natural ventilation without having someone posted outside equipped with necessary protective equipment to effect a safe rescue.	with DLA safety policies, E.O. 12196, and 29 C.F.R. § 1960 in effect at the time will be followed to correct a work area which has been determined by a competent authority to be unsafe or unhealthful. D. Bargaining unit Employee (BUE) may sometimes be assigned to work alone, or in confined or restricted access spaces, where safety hazards exist. Employee (BUE) required to work alone or in confined spaces will be provided a means of communication, such as a cell phone or two-way radio for emergency use. If the work is being performed in an area that is not conducive to the use of such devices, the Employer will ensure that the supervisor or other	

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		personnel check on the Employee (BUE) often to verify his/her safety. No Employee (BUE) shall be allowed to work in confined or enclosed spaces without either mechanical or natural ventilation without having someone posted outside equipped with necessary protective equipment to effect a safe rescue.	
	S6.E. Employee (BUE) shall report accidents immediately as required by existing regulations. (Note: If an Employee (BUE) is injured, transportation for medical treatment will be provided in accordance with the provisions of Article 19). The Employer will notify the Council 169 Local President or designee in a timely manner after an accident is reported. The Council 169 Local will be permitted to dispatch a representative to the scene of a reported accident, subject to the official time provisions of Article 3. Such representatives will not interfere with the official investigation of	E. Employee (BUE) shall report accidents immediately as required by existing regulations. (Note: If an Employee (BUE) is injured, transportation for medical treatment will be provided in accordance with the provisions of Article 19). The Employer will notify the Council 169 Local President or designee in a timely	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	accidents, but may investigate on behalf of the Employee (BUE) and the Union. Upon request, the Council 169 Local will be provided a copy of accident reports involving bargaining unit Employee (BUE). On a quarterly basis, the Council 169 Local will be provided copies of statistical reports (summaries) maintained by the Employer. S6.F. The Employer will promptly notify the Council 169 Local President or designee of any hazardous working condition or situation involving imminent	manner after an accident is reported. The Council 169 Local will be permitted to dispatch a representative to the scene of a reported accident, subject to the official time provisions of Article 3. Such representatives will not interfere with the official investigation of accidents, but may investigate on behalf of the Employee (BUE) and the Union. Upon request, the Council 169 Local will be provided a copy of accident reports involving bargaining unit Employee (BUE). On a quarterly basis, the Council 169 Local will be provided copies of statistical reports (summaries) maintained by the Employer. F. The Employer will promptly notify the Council 169 Local	

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	danger (i.e., bomb threat, violence in the workplace, etc.) or when the force protection condition (FPCON) changes. S6.G. Employee (BUE) are encouraged to detect and report unsafe work practices, unsafe conditions, and health hazards to the immediate supervisor or Safety and Health Officer, and the Council 169 Local.	President or designee of any hazardous working condition or situation involving imminent danger (i.e., bomb threat, violence in the workplace, etc.) or when the force protection condition (FPCON) changes. G. Employee (BUE) are encouraged to detect and report unsafe work practices, unsafe conditions, and health hazards to the immediate supervisor or Safety and Health Officer, and the Council 169 Local.	
7. Art.15 Section 7, Health and Safety Committees	Where the Employer establishes a Safety and Health Committee under 29 CFR 1960, the agency will comply with those provisions. Such Safety and Health Committees shall have access to appropriate Agency information relevant to their duties, including information on the nature and hazardousness of substances in the Employer's workplace, and will monitor performance of the Employer's Safety and Health programs.	Where the Employer establishes a Safety and Health Committee to ensure compliance with OSHA requirements, the appropriate Council 169 Local will have equal numbers of ~~be offered a seat~~ representatives on that Committee. Disestablishment of such Committees is subject to the mid-	The Agency's proposal allows for the use of official time from the bank of official time hours in Article 3. The Union's proposal allows for free/unaccounted time.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	Representatives of the Union may be approved for official time to participate on any committees in accordance with Article 3. ~~Representatives of the Union will be on official time to participate in any committees.~~ [Note: Strikethrough and highlights in Agency original.]	term bargaining provisions of Article 5. The Safety and Health Committee shall have access to appropriate Agency information relevant to their duties, including information on the nature and hazardousness of substances in the Employer's workplace. The Safety and Health Committee will monitor performance of the Employer's Safety and Health programs. Representatives of the Union will be approved for official time to participate on any committees in accordance with CFR 1960 and will not be charged from the preset limits on official time. .~~Representatives of the Union will be on official time to participate in any committees.~~	
8. Art. 15, Section 8, Wellness Programs	The Employer will publicize the availability of medical programs (such as Flu shots or blood pressure screening) that may be offered to Employee (BUE) as part of a Wellness Program.	The Employer will publicize the availability of medical programs (such as Flu shots or blood pressure screening) that may be offered to	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	Participation in such programs is voluntary and may be done on regular duty time if it is offered during the Employee (BUE)'s duty hours.	Employee (BUE) as part of a Wellness Program. Participation in such programs is voluntary and may be done on regular duty time if it is offered during the Employee (BUE)'s duty hours.	
9. Art. 15, Section 9, Fire Safety	The Employer will provide fire evacuation routes and post evacuation plans in all work areas. The Employer agrees to supply and maintain on a regular basis an adequate number of fire extinguishers in all sections as determined by the Fire Department.	The Employer will provide fire evacuation routes and post evacuation plans in all work areas. The Employer agrees to supply and maintain on a regular basis an adequate number of fire extinguishers in all sections as determined by the Fire Department.	
10. Art. 15, Section 10, Heat Stress and Cold Weather Policy	The parties recognize that temperature conditions in and around work areas have a direct bearing on employee's comfort, morale, productivity, health and safety. It is agreed that work conditions and accommodations such as extra breaks for the employee to get hydrated in hot temperatures and warm up periods in cold weather are necessary and will be permitted based on local weather conditions and heat/cold indices.	The parties recognize that temperature conditions in and around work areas have a direct bearing on employee's comfort, morale, productivity, health and safety. It is agreed that work conditions and accommodations such as extra breaks for the employee to get hydrated in hot temperatures and warm up periods in cold weather are necessary and will be permitted	

Article 15 – Safety and Health

Article/Section	Agency Proposal	Union Proposal	Key Differences
		based on local weather conditions and heat/cold indices.	
11. Art. 15, Section 11, Training	The Employer will provide appropriate job related safety and health training for Employee (BUE) including specialized job safety training appropriate to the work performed by the Employee (BUE). Employee (BUE) who are assigned to positions that are covered by a MSP or who are required to certify hazardous material will be provided the necessary training (necessary training may include the identification and classification of hazardous materials, proper packing and shipping methods, emergency procedures, etc.). ~~This training will take place on duty time.~~ [Note: Strikethrough and highlight in Agency original.]	The Employer will provide appropriate job related safety and health training for Employee (BUE) including specialized job safety training appropriate to the work performed by the Employee (BUE). Employee (BUE) who are assigned to positions that are covered by a MSP or who are required to certify hazardous material will be provided the necessary training (necessary training may include the identification and classification of hazardous materials, proper packing and shipping methods, emergency procedures, etc.). ~~Officials and Union Representatives will be given comprehensive training and education Safety, inspections, mishaps, reenactments, etc.~~ ~~This training will take place on duty time.~~ Occupational safety and health training for employees of the agency who are representatives of	The Union's proposal requires the Agency to provide specific training unrelated to an employee's position of record.

Article 15 – Safety and Health

Article/Section	Agency Proposal	Union Proposal	Key Differences
		employee groups, such as labor organizations which are recognized by the agency, shall include both introductory and specialized courses and materials that will enable such groups to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting workplace safety and health inspections.	

[i] Attempted to work with the union track changes. Any errors were inadvertent.

Article 18 – Performance Evaluation

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 18, Section 1, General	A. Periodic observation and evaluation of performance, accompanied by discussions, should serve to increase understanding between supervisors and subordinate employees regarding performance. B. Management will prepare and use written performance plans to evaluate the work of subordinates. Performance plans will be applied to an employee in a fair and objective manner. Upon request, the Employer will provide the Union existing production records to substantiate that the application of quantitative performance standard is based on a fair and objective review of actual production. The requested data must be relevant and for the purpose of carrying out representational duties. C. Performance plans must be current and derived from the duties and responsibilities of the position, and performance standards must be reasonably attainable.	A. Periodic observation and evaluation of performance, accompanied by discussions, should serve to increase understanding between supervisors and subordinate employees regarding performance. B. Management will prepare and use written performance plans to evaluate the work of subordinates. Performance plans will be applied to an employee in a fair and objective manner. Upon request, the Employer will provide the Union existing production records to substantiate that the application of quantitative performance standard is based on a fair and objective review of actual production. The requested data must be relevant and for the purpose of carrying out representational duties. C. Performance plans must be current and derived from the duties and responsibilities of the position, and performance standards must be reasonably attainable.	

Article 18 – Performance Evaluation

Article/Section	Agency Proposal	Union Proposal	Key Differences
	D. Employees will be given the opportunity to participate in the initial development and substantial revision of performance plans for their positions. Employees may suggest changes to their performance plans during the rating cycle.	D. Employees will be given the opportunity to participate in the initial development and substantial revision of performance plans for their positions. Employees may suggest changes to their performance plans during the rating cycle.	
	E. Management will keep employees informed periodically of their performance, and must provide them with counseling and training necessary to be fully productive.	E. Management will keep employees informed periodically of their performance, and must provide them with counseling and training necessary to be fully productive.	
	F. Performance ratings will be one of the bases for decisions regarding employee training, awards, reassignments, promotions, within-grade increases and quality step increases, retention, reductions in grade, and performance-based removals from the Federal Service. Those employees whose performance falls below the Fully Successful level will be given the opportunity to improve.	F. Performance ratings will be one of the bases for decisions regarding employee training, awards, reassignments, promotions, within-grade increases and quality step increases, retention, reductions in grade, and performance-based removals from the Federal Service. Those employees whose performance falls below the Fully Successful level will be given the opportunity to improve.	

Article 18 – Performance Evaluation

Article/Section	Agency Proposal	Union Proposal	Key Differences
	G. The Agency will not prescribe a distribution of levels of ratings for employees covered by this Agreement. Each employee's performance will be judged solely against his/her performance standards. H. Employees who serve as representatives or officials of labor organizations will be rated solely on the basis of how well they perform the duties and responsibilities of their officially assigned positions. They will not be disadvantaged in their performance rating because of the time spent in a representational capacity. Employees who spend 100% of their time as labor representatives or officials of labor organizations are considered unrateable for performance appraisal purposes. For reduction-in-force, employees who spend 100% of their time as labor representatives will receive a modal rating.	G. The Agency will not prescribe a distribution of levels of ratings for employees covered by this Agreement. Each employee's performance will be judged solely against his/her performance standards. H. Employees who serve as representatives or officials of labor organizations will be rated solely on the basis of how well they perform the duties and responsibilities of their officially assigned positions. They will not be disadvantaged in their performance rating because of the time spent in a representational capacity. Employees who spend 100% of their time as labor representatives or officials of labor organizations are considered unrateable for performance appraisal purposes. For reduction-in-force, employees who spend 100% of their time as labor representatives will receive a modal rating.	

Article 18 – Performance Evaluation

Article/Section	Agency Proposal	Union Proposal	Key Differences
2.Article 18, Section 2, Definitions	A. Rating Official. The individual who is authorized to assign and review work, and is responsible to oversee performance of the employee being evaluated. This individual is normally the immediate supervisor who exercises full range of personnel management responsibility. B. Higher Level Reviewer. The individual(s) responsible for approving ratings submitted by the rating official(s) for those ratings which fall below Fully Successful. This is normally the next higher-level supervisor above the rating official. C. Critical Element. A component of a position consisting of one or more duties and responsibilities which contribute toward accomplishing organizational goals and objectives, and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.	A. Rating Official. The individual who is authorized to assign and review work, and is responsible to oversee performance of the employee being evaluated. This individual is normally the immediate supervisor who exercises full range of personnel management responsibility. B. Higher Level Reviewer. The individual(s) responsible for approving ratings submitted by the rating official(s) for those ratings which fall below Fully Successful. This is normally the next higher-level supervisor above the rating official. C. Critical Element. A component of a position consisting of one or more duties and responsibilities which contribute toward accomplishing organizational goals and objectives, and which is of such importance that unacceptable performance on the element would	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		result in unacceptable performance in the position.	
	D. Fully Successful. The performance level necessary for the employee to function adequately, fulfill the duties and responsibilities of the position, and properly contribute to meeting organizational performance goals.	D. Fully Successful. The performance level necessary for the employee to function adequately, fulfill the duties and responsibilities of the position, and properly contribute to meeting organizational performance goals.	
	E. MyPerformance: The DoD automated appraisal tool authorized for use by both supervisors and employees to document the performance management process of the DoD Performance Management and Appraisal Program.	E. MyPerformance: The DoD automated appraisal tool authorized for use by both supervisors and employees to document the performance management process of the DoD Performance Management and Appraisal Program.	
	F. Outstanding: Performance that, as described in DoDI 1400.25, volume 431, produces exceptional results or exceeds expectations well beyond specified outcomes; sets targeted metrics high and far exceeds them (e.g., quality, budget, quantity); handles roadblocks or issues exceptionally well and makes a long-term difference in doing so; is widely seen as an expert, valued role model, or	F. Outstanding: Performance that, as described in DoDI 1400.25, volume 431, produces exceptional results or exceeds expectations well beyond specified outcomes; sets targeted metrics high and far exceeds them (e.g., quality, budget, quantity); handles roadblocks or issues exceptionally well and makes a long-term	

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	mentor for this work; exhibits the highest standards of professionalism	difference in doing so; is widely seen as an expert, valued role model, or mentor for this work; exhibits the highest standards of professionalism	
	G. Performance Appraisal. The process of reviewing and evaluating the performance of an employee against the written performance plan.	G. Performance Appraisal. The process of reviewing and evaluating the performance of an employee against the written performance plan.	
	H. Performance Plan. The written combination of critical elements and standards of performance for them.	H. Performance Plan. The written combination of critical elements and standards of performance for them.	
	I. Performance Standard. The results-oriented statement that describes the level of performance established for a critical element in such dimensions as quality, quantity, timeliness, and manner of performance. To the extent performance standards are based on numerical goals or numerical performance levels, the numerical goals for which the employee is responsible will be stated in the performance standard.	I. Performance Standard. The results-oriented statement that describes the level of performance established for a critical element in such dimensions as quality, quantity, timeliness, and manner of performance. To the extent performance standards are based on numerical goals or numerical performance levels, the numerical goals for which the employee is responsible will be stated in the performance standard.	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	J. Rating of Record. The summary rating under 5 U.S.C. § 4302 ordinarily required at the end of the appraisal period. Illustrative of the summary rating determinations in DoD Instruction 1400.25, Volume 431, period Level 5 - Outstanding (the average score of all critical element performance ratings is 4.3 or greater with no critical element being rated "1" (Unacceptable) resulting in a rating of record that is a 5); Level 3 - Fully Successful (the average score of all critical element performance ratings is less than 4.3 with no critical element being rated a "1" (Unacceptable) resulting in a rating of record that is a "3") and Level 1 - Unacceptable (any critical element rated as "1").	J. Rating of Record. The summary rating under 5 U.S.C. § 4302 ordinarily required at the end of the appraisal period. Illustrative of the summary rating determinations in DoD Instruction 1400.25, Volume 431, period Level 5 - Outstanding (the average score of all critical element performance ratings is 4.3 or greater with no critical element being rated "1" (Unacceptable) resulting in a rating of record that is a 5); Level 3 - Fully Successful (the average score of all critical element performance ratings is less than 4.3 with no critical element being rated a "1" (Unacceptable) resulting in a rating of record that is a "3") and Level 1 - Unacceptable (any critical element rated as "1").	
	K. Summary Level. An ordered category of performance from Level 1 through Level 5, with Level 1 as the lowest and Level 5 as the highest. Level 1 is "Unacceptable;" Level 3 is "Fully Successful;" and Level 5 is "Outstanding."	K. Summary Level. An ordered category of performance from Level 1 through Level 5, with Level 1 as the lowest and Level 5 as the highest. Level 1 is "Unacceptable;" Level 3 is "Fully	

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		Successful;" and Level 5 is "Outstanding." L. Unacceptable. Performance which fails to meet the Fully Successful level for a critical element. Also refers to the summary rating assigned if an employee is rated Unacceptable in one or more critical elements.	
3.Article 18, Section 3, Procedures	A. Establishing Written Performance Plans 1. Written performance plans related to the duties and responsibilities of each position will be prepared, revised as necessary, and kept current. Performance plans will set forth the criteria by which work will be measured for each critical element. Employees will be encouraged to participate in the initial development of performance plans for their positions and may make suggestions to their supervisor concerning changes thereto during the rating cycle. To the extent feasible, the performance standards should include specific, measurable, achievable, relevant, and timely (SMART) criteria, which provides the framework for developing effective results and	A. Establishing Written Performance Plans 1. Written performance plans related to the duties and responsibilities of each position will be prepared, revised as necessary, and kept current. Performance plans will set forth the criteria by which work will be measured for each critical element. Employees will be encouraged to participate in the initial development of performance plans for their positions and may make suggestions to their supervisor concerning changes thereto during the rating cycle. To the extent	S3(J): The Union's proposal is inconsistent with DoDI 1400.25, Volume 431, which indicates when a performance rating is final and, therefore, when an employee may file a grievance via the administrative grievance process. The proposal also is inconsistent with Executive Order 13837, a Government-wide regulation, which excludes grievances concerning performance ratings from the negotiated grievance procedure. Finally, the burden of proof is

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	expectations. To the extent feasible, performance standards shall be objective and provide opportunities for outstanding performance. Absolute (i.e., pass/fail) standards are permissible when a single instance of failure to meet the standard could result in death, injury, breach of security, or great monetary loss.	feasible, the performance standards should include specific, measurable, achievable, relevant, and timely (SMART) criteria, which provides the framework for developing effective results and expectations. To the extent feasible, performance standards shall be objective and provide opportunities for outstanding performance. Absolute (i.e., pass/fail) standards are permissible when a single instance of failure to meet the standard could result in death, injury, breach of security, or great monetary loss.	incorrectly assigned to the non-moving party.
	2. Performance standards describe how the requirements and expectations provided in the performance elements are to be evaluated. Performance standards must be provided for each performance element in the performance plan and will be written at the Outstanding, Fully Successful and Unacceptable level. An employee will be provided a copy of the performance plan for his/her position at the beginning of each appraisal period, upon initial entry into the position, and when a new or revised performance plan is established.	2. Performance standards describe how the requirements and expectations provided in the performance elements are to be evaluated. Performance standards must be provided for each performance element in the performance plan and will be written at the Outstanding, Fully Successful and Unacceptable level. An employee will be provided a copy of the performance plan for his/her position at the beginning of	

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		each appraisal period, upon initial entry into the position, and when a new or revised performance plan is established.	
	3. Any substantial change to or revision of performance plans will be discussed with the concerned employees and their comments considered prior to the plan becoming official. When a new or substantially revised performance plan is prepared, copies of the draft plan will be provided to the employee(s) and the Union.	3. Any substantial change to or revision of performance plans will be discussed with the concerned employees and their comments considered prior to the plan becoming official. When a new or substantially revised performance plan is prepared, copies of the draft plan will be provided to the employee(s) and the Union.	
	4. While the content of the performance plans is the exclusive determination of the Employer, the Employer will give consideration to any comments received from the employee or the Union prior to the performance plan(s) being finalized and implemented provided they are received within 10 calendar days. An employee's acknowledgement, initials or signature do not imply agreement with the performance plan.	4. While the content of the performance plans is the exclusive determination of the Employer, the Employer will give consideration to any comments received from the employee or the Union prior to the performance plan(s) being finalized and implemented provided they are received within 10 calendar days. An employee's acknowledgement, initials or signature do not imply agreement with the performance plan.	

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	5. Changes will be acknowledged and the revisions noted in the MyPerformance appraisal tool. Employees will be advised if: (1) the element or standard will apply at the beginning of the next appraisal cycle; (2) the plan is being updated during the current cycle (if the employee does not have an opportunity to perform under the revised element(s) for the minimum 90-calendar-day period, the revised elements will not be rated); or (3) the current appraisal cycle is being extended by the amount of time necessary to allow 90 calendar days of observed performance under the revised element or standard. (Extending the appraisal cycle will affect the start date of the employee's subsequent appraisal cycle; however, the subsequent appraisal cycle will still end March 31 of the following calendar year.	5. Changes will be acknowledged and the revisions noted in the MyPerformance appraisal tool. Employees will be advised if: (1) the element or standard will apply at the beginning of the next appraisal cycle; (2) the plan is being updated during the current cycle (if the employee does not have an opportunity to perform under the revised element(s) for the minimum 90-calendar-day period, the revised elements will not be rated); or (3) the current appraisal cycle is being extended by the amount of time necessary to allow 90 calendar days of observed performance under the revised element or standard. (Extending the appraisal cycle will affect the start date of the employee's subsequent appraisal cycle; however, the subsequent appraisal	

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		cycle will still end March 31 of the following calendar year.	
	6. To the extent practicable, as determined by the agency, employees performing like duties and working under the same position description, will have the same standards.	6. To the extent practicable, as determined by the agency, employees performing like duties and working under the same position description, will have the same standards.	
	B. Discussing Performance with Employees	B. Discussing Performance with Employees	
	1. Performance appraisal is a continuous process involving periodic discussions between the supervisor and employee (at least three documented discussions per year, initial, one mid-period discussion and a summary discussion at the end of the appraisal period or when performance is rated). Every effort should be made to assure that employees understand the performance plan for their positions, as well as the extent to which their performance meets standards. Employees, at their request, will receive clarification of any aspect of their plan which is not clear.	1. Performance appraisal is a continuous process involving periodic discussions between the supervisor and employee (at least three documented discussions per year, initial, one mid-period discussion and a summary discussion at the end of the appraisal period or when performance is rated). Every effort should be made to assure that employees understand the performance plan for their positions, as well as the extent to which their performance meets standards. Employees, at their	

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		request, will receive clarification of any aspect of their plan which is not clear.	
	2. When an employee's performance falls below the Fully Successful level, the employee will be counseled regarding his/her performance and the consequences that may result such as potential denial of a within-grade increase, inability to be considered for merit promotion and loss of RIF retention standing.	2. When an employee's performance falls below the Fully Successful level, the employee will be counseled regarding his/her performance and the consequences that may result such as potential denial of a within-grade increase, inability to be considered for merit promotion and loss of RIF retention standing.	
	3. Each employee's performance will be discussed at the time a rating is given. If an employee is temporarily unavailable for this discussion, the supervisor should reschedule the discussion, if practicable.	3. Each employee's performance will be discussed at the time a rating is given. If an employee is temporarily unavailable for this discussion, the supervisor should reschedule the discussion, if practicable.	
	4. Formal performance discussions will be documented in the automated tool (i.e., MyPerformance). If written (paper-based) documents are used, the employee will be furnished with copies of the documents at the time of the meeting. Formal performance meetings will be held in person, to the extent	4. Formal performance discussions will be documented in the automated tool (i.e., MyPerformance). If written (paper-based) documents are used, the employee will be furnished with copies of the documents at the	

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	practicable, which may include the use of various video teleconference or office communicator tools (e.g. "Skype") to ensure face-to-face communication. The meetings will be in private. The documented discussions will include employee's accomplishments and contributions; employee's level of performance, including any areas that need improvement; barriers to success; and employee's developmental needs and career goals.	time of the meeting. Formal performance meetings will be held in person, to the extent practicable, which may include the use of various video teleconference or office communicator tools (e.g. "Skype") to ensure face-to-face communication. The meetings will be in private. The documented discussions will include employee's accomplishments and contributions; employee's level of performance, including any areas that need improvement; barriers to success; and employee's developmental needs and career goals.	
	C. Rating Performance	C. Rating Performance	
	1. The DoD and DLA rating cycle begins April 1st and ends on March 31st each year. Ratings will be based on at least 90 calendar days working under an approved performance plan. When an employee changes from one position to another, but has served 90 calendar days in the former assignment for the losing supervisor, a narrative assessment will be prepared and forwarded to the gaining	1. The DoD and DLA rating cycle begins April 1st and ends on March 31st each year. Ratings will be based on at least 90 calendar days working under an approved performance plan. When an employee changes from one position to another, but has served 90 calendar days in the former	

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	supervisor. To the extent that it is applicable, that narrative assessment will be considered when the employee's performance is rated at the end of the appraisal period. When a position change occurs during the last 90 days of the appraisal period and the employee is otherwise eligible for a rating, a rating of performance will be prepared. Ratings thus prepared will become the rating of record for the appraisal period.	assignment for the losing supervisor, a narrative assessment will be prepared and forwarded to the gaining supervisor. To the extent that it is applicable, that narrative assessment will be considered when the employee's performance is rated at the end of the appraisal period. When a position change occurs during the last 90 days of the appraisal period and the employee is otherwise eligible for a rating, a rating of performance will be prepared. Ratings thus prepared will become the rating of record for the appraisal period.	
	2. Descriptions of Performance Rating Levels. The performance rating assigned should reflect the level of the employee's performance as compared to the standards established.	2. Descriptions of Performance Rating Levels. The performance rating assigned should reflect the level of the employee's performance as compared to the standards established.	
	3. Employees will be advised in sufficient time of deadlines in which employee input is due for consideration in the performance evaluation.	3. Employees will be advised in sufficient time of deadlines in which employee input is due for	

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		consideration in the performance evaluation.	
	4. Employee self-assessments should be given serious consideration in developing the performance rating for that employee.	4. Employee self-assessments should be given serious consideration in developing the performance rating for that employee.	
	5. Choosing not to provide the voluntary self-assessment will not disadvantage an employee relative to those who do provide such assessments, in and of itself. However, it is the performance of the employee with regard to the performance plan that should determine the rating and the rating official remains responsible for adequately and accurately observing, fostering, motivating and evaluating that performance throughout the entire rating period.	5. Choosing not to provide the voluntary self-assessment will not disadvantage an employee relative to those who do provide such assessments, in and of itself. However, it is the performance of the employee with regard to the performance plan that should determine the rating and the rating official remains responsible for adequately and accurately observing, fostering, motivating and evaluating that performance throughout the entire rating period.	
	6. Supervisors will write a performance narrative that succinctly addresses the employee's performance measured against the performance standards for the appraisal cycle. (a) The performance narrative discusses the employee's performance and provides support	6. Supervisors will write a performance narrative that succinctly addresses the employee's performance measured against the performance standards for the appraisal cycle. (a) The	

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	for other personnel actions. (b) Performance narratives are required for each element rated as a means of recognizing all levels of accomplishments and contributions to mission success.	performance narrative discusses the employee's performance and provides support for other personnel actions. (b) Performance narratives are required for each element rated as a means of recognizing all levels of accomplishments and contributions to mission success.	
	7. An employee who has been on long-term training or other lengthy absence from duty, or for other reasons has not completed the minimum 90 days of work necessary for a rating at the end of the appraisal period is not eligible for a rating. When either a temporary promotion or a reassignment NTE (date) is processed, the agency will ensure that an appropriate performance plan exists for the position. If one is not available, he or she must follow the procedures outlined in section 3.A. above.	7. An employee who has been on long-term training or other lengthy absence from duty, or for other reasons has not completed the minimum 90 days of work necessary for a rating at the end of the appraisal period is not eligible for a rating. When either a temporary promotion or a reassignment NTE (date) is processed, the agency will ensure that an appropriate performance plan exists for the position. If one is not available, he or she must follow the procedures outlined in section 3.A. above.	
	8. When a performance rating is prepared, each performance element will be rated consistent with the DoD Instruction	8. When a performance rating is prepared, each performance element will be rated consistent	

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	1400.25, volume 431, (e.g. Outstanding, Fully Successful, Unacceptable). 9. In the event the employee has had insufficient opportunity to demonstrate performance on an element, the element will be annotated as unrateable and will not be considered in determining the summary adjective rating unless the supervisors extends the appraisal cycle. 10. If an employee's performance fails to completely meet the Fully Successful level, performance for that element should be rated Unacceptable. The appraising supervisor will provide a copy of the completed performance rating to the employee, discuss its contents and the employee's performance and obtain the employee's acknowledgement, which will be documented in MyPerformance. The employee's acknowledgement does not imply agreement; it merely verifies that the rating has been received and discussed.	with the DoD Instruction 1400.25, volume 431, (e.g. Outstanding, Fully Successful, Unacceptable). 9. In the event the employee has had insufficient opportunity to demonstrate performance on an element, the element will be annotated as unrateable and will not be considered in determining the summary adjective rating unless the supervisors extends the appraisal cycle. 10. If an employee's performance fails to completely meet the Fully Successful level, performance for that element should be rated Unacceptable. The appraising supervisor will provide a copy of the completed performance rating to the employee, discuss its contents and the employee's performance and obtain the employee's acknowledgement, which will be documented in MyPerformance. The employee's acknowledgement does not imply agreement; it	

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		merely verifies that the rating has been received and discussed.	
	11. When an employee has been informed that his/her performance is below the Fully Successful level, the Employer will promptly initiate efforts to help the employee overcome the deficiencies. Section 4 provides further guidance to be followed when performance is considered to be at or below the Fully Successful level.	11. When an employee has been informed that his/her performance is below the Fully Successful level, the Employer will promptly initiate efforts to help the employee overcome the deficiencies. Section 4 provides further guidance to be followed when performance is considered to be at or below the Fully Successful level.	
	12. When employees are appraised, supervisors will consider extenuating circumstances (such as special assignments, abnormal workload fluctuations, etc.).	12. When employees are appraised, supervisors will consider extenuating circumstances (such as special assignments, abnormal workload fluctuations, etc.).	
	13. Employees will be assessed on the DoD or DLA values, and activity-level goals and objectives, only to the extent applicable to the assessment of individual performance elements as described in the performance standards for each element.	13. Employees will be assessed on the DoD or DLA values, and activity-level goals and objectives, only to the extent applicable to the assessment of individual performance elements as described in the performance standards for each element.	

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	14. A performance standard is a statement of the expressed level of achievement in terms of the quality, quantity, timeliness, etc., required for the performance of an element of an employee's job. Application of all performance standards shall be fair and equitable, and consistent with regulatory requirements and the requirements of the position.	14. A performance standard is a statement of the expressed level of achievement in terms of the quality, quantity, timeliness, etc., required for the performance of an element of an employee's job. Application of all performance standards shall be fair and equitable, and consistent with regulatory requirements and the requirements of the position.	
	D. Rerating Performance During the Appraisal Period 1. It is expected that employees will usually receive only one performance rating per year. However, performance may be rerated when an employee's performance in one or more critical elements has become Unacceptable. Consistent with government-wide regulation, performance must be rerated when the rating of record does not agree with the decision to grant or withhold a within grade increase. Normally, supervisors will counsel employees about performance deficiencies that would result in a denial of a within-grade increase sufficiently in advance	D. Rerating Performance During the Appraisal Period 1. It is expected that employees will usually receive only one performance rating per year. However, performance may be rerated when an employee's performance in one or more critical elements has become Unacceptable. Consistent with government-wide regulation, performance must be rerated when the rating of record does not agree with the decision to grant or withhold a within grade increase.	

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	of the due date (60 days, when practicable) so as to allow them the opportunity to improve their performance to the Fully Successful level.	Normally, supervisors will counsel employees about performance deficiencies that would result in a denial of a within-grade increase sufficiently in advance of the due date (60 days, when practicable) so as to allow them the opportunity to improve their performance to the Fully Successful level.	
	2. A rerating may not take place until the employee has completed a minimum of 90 calendar days in the job working for an appraising supervisor, and at least 90 calendar days have elapsed since the previous rating It is not necessary to rerate an employee at the end of a warning period (see Section 4 below) in order to take an appropriate performance-based personnel action.	2. A rerating may not take place until the employee has completed a minimum of 90 calendar days in the job working for an appraising supervisor, and at least 90 calendar days have elapsed since the previous rating It is not necessary to rerate an employee at the end of a warning period (see Section 4 below) in order to take an appropriate performance-based personnel action.	
	E. Appraising Performance on a Detail, Temporary Promotion, or Reassignment NTE (date)	E. Appraising Performance on a Detail, Temporary Promotion, or Reassignment NTE (date)	
	1. When a detail, temporary promotion, or reassignment NTE (date) within DLA is expected to last 90 days or more and a change	1. When a detail, temporary promotion, or reassignment NTE (date) within DLA is expected to	

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	to the performance plan is required the employee will be furnished with a copy of the performance plan for the position. 2. Upon completion of a detail, temporary promotion, or reassignment NTE (date) lasting 90 days or more, the employee will receive a narrative statement documented in MyPerformance. A narrative statement is a brief narrative description of an employee's performance, accomplishments and contributions during the temporary assignment. A narrative statement is not a rating of record. If the temporary promotion or reassignment NTE (date) lasted less than 9 months during the rating period, such a narrative statement is for information only and does not become the rating of record. It will be considered to the extent that is applicable to the employee's regular position when the employee's performance is rated at the end of the appraisal period. See section 3.C.3. for information concerning longer temporary assignments.	last 90 days or more and a change to the performance plan is required the employee will be furnished with a copy of the performance plan for the position. 2. Upon completion of a detail, temporary promotion, or reassignment NTE (date) lasting 90 days or more, the employee will receive a narrative statement documented in MyPerformance. A narrative statement is a brief narrative description of an employee's performance, accomplishments and contributions during the temporary assignment. A narrative statement is not a rating of record. If the temporary promotion or reassignment NTE (date) lasted less than 9 months during the rating period, such a narrative statement is for information only and does not become the rating of record. It will be considered to the extent that is applicable to the employee's regular position when the employee's performance is	

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		rated at the end of the appraisal period. See section 3.C.3. for information concerning longer temporary assignments.	
	F. Probationary Period Evaluation 1. During the probationary period required after competitive appointment, a new employee will be appraised to determine whether conduct, performance, and overall fitness warrants retention in the Federal service. 2. 5 CFR 315 provides guidance and procedural requirements for the separation of a probationary employee.	F. Probationary Period Evaluation 1. During the probationary period required after competitive appointment, a new employee will be appraised to determine whether conduct, performance, and overall fitness warrants retention in the Federal service. 2. 5 CFR 315 provides guidance and procedural requirements for the separation of a probationary employee.	
	G. Performance Ratings and Other Personnel Actions 1. An employee's performance will govern the decision to grant or withhold a within grade increase when one is due. General Schedule (GS) employees must be performing at "an acceptable level of competence." An acceptable level of competence equates to a rating of record at the	G. Performance Ratings and Other Personnel Actions 1. An employee's performance will govern the decision to grant or withhold a within grade increase when one is due. General Schedule (GS) employees must be performing at "an acceptable level of	

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	Fully Successful or higher summary level. Employees covered by the Federal Wage System must perform at a "satisfactory" or higher level as provided in 5 U.S.C. § 5343(e)(2). A satisfactory rating equates to a rating of record at the Fully Successful or higher summary level. The most recent rating of record must agree with the decision to grant or withhold a within grade increase.	competence." An acceptable level of competence equates to a rating of record at the Fully Successful or higher summary level. Employees covered by the Federal Wage System must perform at a "satisfactory" or higher level as provided in 5 U.S.C. § 5343(e)(2). A satisfactory rating equates to a rating of record at the Fully Successful or higher summary level. The most recent rating of record must agree with the decision to grant or withhold a within grade increase.	
	H. Effective Date of the Appraisal. A rating of record is final when it is signed by the employee's supervisor, in his or her capacity as rating official and, where required by DLA policy, by a higher level reviewer (HLR). A rating of record finalized before June 1 will be effective June 1.	H. Effective Date of the Appraisal. A rating of record is final when it is signed by the employee's supervisor, in his or her capacity as rating official and, where required by DLA policy, by a higher level reviewer (HLR). A rating of record finalized before June 1 will be effective June 1.	
	I. In the event the Employer is conducting a Reduction in Force, the Employer will ensure that all performance ratings based on the established cutoff, are	I. In the event the Employer is conducting a Reduction in Force, the Employer will ensure that all performance ratings based	

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	entered into DCPDS prior to generating a retention register. J. Employees are expected to seek informal resolution of disagreements with their supervisor concerning performance ratings. Employees may seek reconsideration of individual performance element ratings through the Administrative Grievance process. Employees may not challenge the contents of performance elements or standards. If the administrative grievance is granted, the rating will be adjusted accordingly.	on the established cutoff, are entered into DCPDS prior to generating a retention register. J: Performance Rating Grievances 1. Employee (BUE) are expected to seek informal resolution of disagreements with their supervisors concerning performance ratings. A grievance may be filed only after a performance rating has been completed and communicated to the Employee (BUE). If it is alleged that the summary rating has been incorrectly determined, this should be reviewed and corrected, if appropriate, by management, the summary rating itself may not be grieved 2.. The summary rating will be appropriately adjusted automatically depending upon the outcome of a grievance on one or more critical elements. 3. When an Employee (BUE) grieves one or more critical elements rated below Fully Successful, the burden of proof	

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		that the rating(s) given is proper rests with management.	
4.Article 18, Section 4, Warning Employees of Serious Performance Deficiencies	A. When performance is considered by management to be below the Fully Successful level for non-probationary employees, the supervisor will notify the employee of performance deficiencies, specifically identify areas of performance below the Fully Successful level, explain what must be done to improve, and suggest ways for improvement. While counseling sessions are encouraged, it is not intended to preclude supervisors from initiating the appropriate performance-based action at any time. As a matter of practice, performance deficiencies should be addressed as early as possible during the performance cycle. 1. Unacceptable performance: If performance is considered to be at the Unacceptable level in one or more critical elements after the employee is made aware, the procedures in 5 U.S.C. Chapter 43 or 75 will be used to address the deficiency. To the extent practicable, counseling sessions will be	SECTION 4. WARNING EMPLOYEES OF SERIOUS PERFORMANCE DEFICIENCIES A. When performance is considered by management to be below the Fully Successful level for non-probationary employees, the supervisor will notify the employee of performance deficiencies, specifically identify areas of performance below the Fully Successful level, explain what must be done to improve, and suggest ways for improvement. While counseling sessions are encouraged, it is not intended to preclude supervisors from initiating the appropriate performance-based action at any time. As a matter of practice, performance deficiencies should be	

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	face-to-face. If an employee is provided an opportunity to improve performance (e.g. PIP) under Chapter 43, the notice will state that performance is considered to be Unacceptable, establish a period (normally 30 days) during which the employee will be expected to attain the Fully Successful level in the deficient element(s), and generally include the following: a. Identification of each critical element in which performance is considered to be Unacceptable and description of those aspects of work that are deficient. b. What performance is required to overcome the deficiencies. c. The personnel action (reassignment, demotion, or removal) that may result if performance is not improved to the Fully Successful level and generally, the types of assistance management determines necessary to improve performance. 2. The written performance plan must form the basis for the requirements of the improvement period warning notice letter. During the warning period, the employee must	addressed as early as possible during the performance cycle. 1. Unacceptable performance: If performance is considered to be at the Unacceptable level in one or more critical elements after the employee is made aware, the procedures in 5 U.S.C. Chapter 43 or 75 will be used to address the deficiency. To the extent practicable, counseling sessions will be face-to-face. If an employee is provided an opportunity to improve performance (e.g. PIP) under Chapter 43, the notice will state that performance is considered to be Unacceptable, establish a period (normally 30 days) during which the employee will be expected to attain the Fully Successful level in the deficient element(s), and generally include the following: a. Identification of each critical element in which performance is considered to be Unacceptable and description of those	

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	be periodically counseled noting where improvements have been made and where they have not. If an annual performance rating becomes due during the warning period, the rating will be deferred until the end of the period and the employee will be so notified. 3. If during, or at the end of the warning period, performance has improved to the Fully Successful level, and the PIP is completed, the employee will be notified in writing.	aspects of work that are deficient. b. What performance is required to overcome the deficiencies. c. The personnel action (reassignment, demotion, or removal) that may result if performance is not improved to the Fully Successful level and generally, the types of assistance management determines necessary to improve performance. 2. The written performance plan must form the basis for the requirements of the improvement period warning notice letter. During the warning period, the employee must be periodically counseled noting where improvements have been made and where they have not. If an annual performance rating becomes due during the warning period, the rating will be deferred until the end of the period and the employee will be so notified.	

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		3. If during, or at the end of the warning period, performance has improved to the Fully Successful level, and the PIP is completed, the employee will be notified in writing.	
5.Article 18, Section 5, Remedial Actions Based on Unacceptable Performance	An employee may be reassigned, demoted, or removed from the Federal service because of Unacceptable performance in one or more critical job elements. A decision for such action may only be based on instances of Unacceptable performance which occurred within a 12-month period ending with the date of the proposed action. A. Demotions and removals due to Unacceptable performance are actions subject to the formal job protection procedures. When proposing to take such an action under 5 CFR 432, the following procedures will be followed:	An employee may be reassigned, demoted, or removed from the Federal service because of Unacceptable performance in one or more critical job elements. A decision for such action may only be based on instances of Unacceptable performance which occurred within a 12-month period ending with the date of the proposed action. A. Demotions and removals due to Unacceptable performance are actions subject to the formal job protection procedures. When proposing to take such an action under 5 CFR 432, the following procedures will be followed:	

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	1. Employees will be advised of their right to representation and will be given a 30-calendar day advance notice. 2. The charge must list the critical job elements and standards of performance that were not met. It must include the basic facts developed in following the warning period outlined in paragraph A above. 3. A reasonable amount of official time to prepare and present a reply to the charge must be given and the employee so informed in the notice of proposed action. 4. Any records or documents relied upon to support the charge will be made available or provided to the employee or the representative for review upon request. Information on this matter must be also provided in the notice of proposed action. 5. Any reply made by the employee must be carefully considered. If it is decided that the proposed action is warranted and supported, the employee will be given a notice of decision. The decision to take the action must be made by the approving official. The notice of decision must include information on the employee's appeal or grievance rights, as	1. Employees will be advised of their right to representation and will be given a 30-calendar day advance notice. 2. The charge must list the critical job elements and standards of performance that were not met. It must include the basic facts developed in following the warning period outlined in paragraph A above. 3. A reasonable amount of official time to prepare and present a reply to the charge must be given and the employee so informed in the notice of proposed action. 4. Any records or documents relied upon to support the charge will be made available or provided to the employee or the representative for review upon request. Information on this matter must be also provided in the notice of proposed action. 5. Any reply made by the employee must be carefully	

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	appropriate, as well as the right of Union representation. 6. The employee will be notified in writing when it is decided to cancel the proposed action. B. A performance-based action may also be taken under 5 CFR 752 when the requirements of these regulations are followed. C. The procedural requirements above do not apply to the separation of employees during their probationary period after competitive appointment. Requirements pertaining to probationers are contained in Part 315, 5 CFR.	considered. If it is decided that the proposed action is warranted and supported, the employee will be given a notice of decision. The decision to take the action must be made by the approving official. The notice of decision must include information on the employee's appeal or grievance rights, as appropriate, as well as the right of Union representation. 6. The employee will be notified in writing when it is decided to cancel the proposed action. B. A performance-based action may also be taken under 5 CFR 752 when the requirements of these regulations are followed. C. The procedural requirements above do not apply to the separation of employees during their probationary period after competitive appointment. Requirements pertaining to probationers are contained in Part 315, 5 CFR.	

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6.Article 18, Section 6, Performance Appraisal Records	A. The DoD automated appraisal tool, MyPerformance, will serve as the Employee Performance Folder (EPF) for performance plans and ratings. These records will be retained consistent with government-wide regulation, typically 4 years. B. All bargaining unit employees will have access to computers and duty time for the purpose of utilizing MyPerformance. All efforts will be made to avoid disadvantaging employees who do not regularly use a computer in their jobs. To the extent the Agency requires employees to use computers for the Performance Management System, those employees will receive any necessary training and assistance. C. Employees, and their union representatives, if requested, will be able to see the performance related information about themselves that is kept in the system and will have subject to mission requirements, a maximum of 1 hour per week during their	A. The DoD automated appraisal tool, MyPerformance, will serve as the Employee Performance Folder (EPF) for performance plans and ratings. These records will be retained consistent with government-wide regulation, typically 4 years. B. All bargaining unit employees will have access to computers and duty time for the purpose of utilizing MyPerformance. All efforts will be made to avoid disadvantaging employees who do not regularly use a computer in their jobs. To the extent the Agency requires employees to use computers for the Performance Management System, those employees will receive any necessary training and assistance. C. Employees, and their union representatives, if requested, will be able to see the performance related information about themselves that is kept in the system and will have subject to	

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	regular work schedules and the right to enter into the system their own achievements and successes. The system will not allow anyone to change anything that was entered by another person (i.e., supervisors cannot change an employee's entries). Employees will be offered training in preparing self- assessments of their own performance. Those employees who do not write this type of document in the course of their normal duties will be given necessary assistance so as not to be disadvantaged. D. The Agency will ensure that the electronic performance management system complies with all privacy requirements.	mission requirements, a maximum of 1 hour per week during their regular work schedules and the right to enter into the system their own achievements and successes. The system will not allow anyone to change anything that was entered by another person (i.e., supervisors cannot change an employee's entries). Employees will be offered training in preparing self- assessments of their own performance. Those employees who do not write this type of document in the course of their normal duties will be given necessary assistance so as not to be disadvantaged. D. The Agency will ensure that the electronic performance management system complies with all privacy requirements.	
7.Article 18, Section 7	Local negotiations on this Article are not authorized	Local negotiations on this Article are not authorized.	

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Article 21 – Overtime

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 21, Section 1, General	S1.A. Payment for overtime worked or granting compensatory time off, in lieu thereof, shall be in accordance with applicable laws and Government-wide regulations.	S1.A. Payment for overtime worked or granting compensatory time off, in lieu thereof, shall be in accordance with applicable laws and Government-wide regulations.	
2. Art. 21, Section 2, Scheduling and Approval of Overtime	S2.A. Where possible, overtime work shall be scheduled in advance of and approved in writing prior to the date on which the overtime is to be worked. Where circumstances preclude advanced scheduling, overtime work may be approved orally and the oral approval reduced to writing prior to the submission of the Time and Attendance Report. S2.B: Overtime may be necessary to support mission needs. When the need for overtime arises, the Employer will solicit volunteers from qualified employees. Management has the sole and exclusive right to determine who meets the appropriate qualifications for overtime assignments. For example, physical requirements, medical restrictions, documented performance deficiencies, etc., may be considered in making qualifications determinations. [Agency note: Highlight in original.]	S2.A. Where possible, overtime work shall be scheduled in advance of and approved in writing prior to the date on which the overtime is to be worked. Where circumstances preclude advanced scheduling, overtime work may be approved orally and the oral approval reduced to writing prior to the submission of the Time and Attendance Report. S2.B: Overtime may be necessary to support mission needs. When the need for overtime arises, the Employer will solicit volunteers from qualified employees. Management has the sole and exclusive right to determine who meets the appropriate qualifications for overtime assignments. For example, physical requirements, medical restrictions, documented performance deficiencies, etc., may	

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		be considered in making qualifications determinations.	
3. Art. 21, Section 3, Overtime Procedures	S3.A. The parties agree that where overtime work can be directly identified as requiring specific skills or belonging to the job duties of an employee in a specific position, then management may direct that the overtime be granted to that specific employee. S3.B. If overtime work is available to more than one employee in the same pay plan, series, grade, and work area, then overtime may be solicited to those employees as a group. Overtime will be solicited first within the smallest work unit possible (e.g., 1st line supervisor's work area), where the overtime work is needed. S3.C: During each overtime solicitation, qualified volunteers will be selected for overtime in seniority order, with the most senior employee receiving the first offer. S3.D: In the event time is limited or an insufficient number of volunteers are available, employees may	S3.A. The parties agree that where overtime work can be directly identified as requiring specific skills or belonging to the job duties of an employee in a specific position, then management may direct that the overtime be granted to that specific employee. S3.B. If overtime work is available to more than one employee in the same pay plan, series, grade, and work area, then overtime may be solicited to those employees as a group. Overtime will be solicited first within the smallest work unit possible (e.g., 1st line supervisor's work area), where the overtime work is needed. S3.C: During each overtime solicitation, qualified volunteers will be selected for overtime in seniority order, with the most senior employee receiving the first offer. S3.D: In the event time is limited or an insufficient number of volunteers are	S3E: The Agency's proposal provides that, regarding schedule overtime that Management will attempt to provide sufficient work for the amount of overtime hours scheduled. The Union's proposal guarantees at least 2 hours of overtime pay regardless of whether there is sufficient work for that length of time, thus paying employees for time that wasn't worked. S3F: The Union's proposal also incorporates the Back Pay Act, which will require the Agency to pay overtime to an employee who missed an overtime opportunity, as opposed to giving the employee the next opportunity to work overtime.

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	be required to work mandatory overtime as mission needs require. Selection for mandatory overtime assignments will be done via inverse seniority of qualified individuals. The Employer will give due consideration to an employee's request to be excused based upon an unavoidable personal hardship (e.g., the need to retrieve a child from child care, etc.). S3.E: Refusal to work voluntary overtime will not lect unfavorably on an employee's good standing, rformance, promotion, loyalty or desirability to the ganization. S3.F: Overtime assignments shall not be made as a reward or punishment.	available, employees may be required to work mandatory overtime as mission needs require. Selection for mandatory overtime assignments will be done via inverse seniority of qualified individuals. The Employer will give due consideration to an employee's request to be excused based upon an unavoidable personal hardship (e.g., the need to retrieve a child from child care, etc.). S3.**E: Employees shall receive at least o (2) hours pay at the applicable ertime rate if they are scheduled to rk on an overtime basis outside of their heduled hours of work and cannot be lized for the full scheduled overtime urs.**E. Refusal to work voluntary ertime will not reflect unfavorably on an ployee's good standing, performance, omotion, loyalty or desirability to the ganization. **S3.F: In the case of violations the Article, the employee deprived of ertime will be paid overtime in cordance with the Back-Pay Act the me as if he had worked it, as a**	

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		olution or partial resolution to the evance. S3.G. Overtime assignments shall not be made as a reward or punishment.	
	S3.G. For those employees who do not have transportation to their home because of required overtime for which they had no opportunity to plan, the Employer will provide them an opportunity to secure transportation. The Employer will give due consideration to an employee's request to be excused based upon an unavoidable personal hardship (e.g., the need to retrieve a child from child care, etc.) S3.H: For overtime that occurs before or after a shift, , employees will be given a fifteen (15) minute break for each two-hour increment worked, subject to mission requirements. Where possible the break will be given in conjunction with normal shift change/set up meeting. Employees will be given a fifteen (15) minute break which includes personal cleanup time prior to the end of the regular shift when working overtime. A fifteen (15) minute break will be granted for every (2) hours worked thereafter. If an employee works one hour or less beyond the regular shift, the employee is not entitled to a	S3.H: For those employees who do not have transportation to their home because of required overtime for which they had no opportunity to plan, the Employer will provide them an opportunity to secure transportation. The Employer will give due consideration to an employee's request to be excused based upon an unavoidable personal hardship (e.g., the need to retrieve a child from child care, etc.)	

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	break. Employees working a full shift on overtime will follow the established break schedule for that shift (see Article 20, Hours of Duty). S3.I. Overtime procedures not specifically negotiated in this Article will be negotiated at each site.	S3.I. For overtime that occurs before or after a shift, , employees will be given a fifteen (15) minute break for each two-hour increment worked, subject to mission requirements. Where possible the break will be given in conjunction with normal shift change/set up meeting. Employees will be given a fifteen (15) minute break which includes personal cleanup time prior to the end of the regular shift when working overtime. A fifteen (15) minute break will be granted for every (2) hours worked thereafter. If an employee works one hour or less beyond the regular shift, the employee is not entitled to a break. Employees working a full shift on overtime will follow the established break schedule for that shift (see Article 20, Hours of Duty).	

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	S3.J. For scheduled overtime, management will attempt to provide the employee sufficient work to cover the anticipated number of hours of scheduled overtime. [Agency note: Highlight in original.]	S3.J. Overtime procedures not specifically negotiated in this Article will be negotiated at each site. S3.H. For scheduled overtime, management will attempt to provide the employee sufficient work to cover the anticipated number of hours of scheduled overtime.	
4. Article 21, Section 4, Rosters	S4.A. If an employee is detailed to a work unit (for a period of at least 30 days or more), they will be transferred to the overtime roster for the 1st line supervisor of their detailed work area, and for the duties they are performing. S4.B. Rostering procedures not specifically negotiated in this Article will be negotiated at each site.	S4.A. If an employee is detailed to a work unit (for a period of at least 30 days or more), they will be transferred to the overtime roster for the 1st line supervisor of their detailed work area, and for the duties they are performing. S4.B. Rostering procedures not specifically negotiated in this Article will be negotiated at each site.	
5. Art. 21, Section 5, Call-	S5.A. "Call-back overtime" is defined as irregular or occasional overtime work performed by an	S5.A "Call-back overtime" is defined as irregular or occasional overtime	

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Back Overtime Work	employee for which he/she is required to return to the place of employment to perform the work. S5.B. Employees shall be provided advance notice, to the maximum extent possible, of the requirement to perform call-back overtime work. S5.C. At least 2 hours overtime pay is guaranteed for call-back overtime work. S5.D. For those situations where an employee is directed to perform work without returning to the place of employment, the employee will be paid for the actual time spent performing work consistent with governing laws, regulations, and decisions of the Comptroller General.	work performed by an employee for which he/she is required to return to the place of employment to perform the work. S5.B. Employees shall be provided advance notice, to the maximum extent possible, of the requirement to perform call-back overtime work. S5.C. At least 2 hours overtime pay is guaranteed for call-back overtime work. S5.D. For those situations where an employee is directed to perform work without returning to the place of employment, the employee will be paid for the actual time spent performing work consistent with governing laws, regulations, and decisions of the Comptroller General.	
6. Art. 21, Section 6, On Call Overtime	An "on-call condition" is defined as those occasional situations when an employee is notified that he/she is subject to call during a specified period of time outside his/her normal tour of duty. Overtime shall be approved only for	An "on-call condition" is defined as those occasional situations when an employee is notified that he/she is subject to call during a specified period of time outside his/her normal	

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	the specified period of the “on call condition” which qualifies as "hours of work" as defined by governing laws, regulations, and decisions of the Comptroller General. Consistent with governing laws, regulations, and decisions of the Comptroller General, employees who are directed to work during the “on-call” condition, even if the work is performed outside the work site, will be paid for actual time spent performing the work.	tour of duty. Overtime shall be approved only for the specified period of the “on call condition” which qualifies as "hours of work" as defined by governing laws, regulations, and decisions of the Comptroller General. Consistent with governing laws, regulations, and decisions of the Comptroller General, employees who are directed to work during the “on-call” condition, even if the work is performed outside the work site, will be paid for actual time spent performing the work.	
7. Art. 21, Section 7, Overtime Absenteeism	If an employee is unexpectedly going to be absent due to either an illness or other emergency, then they must contact the appropriate overtime supervisor or the supervisor's designated representative within one (1) hour of the start of overtime. Employees who fail to report for their scheduled overtime, fail to follow established overtime procedures, or repeatedly call off will be temporarily removed from the overtime roster, the timeframe for which is subject to local negotiations. [Agency note: Highlight in original.]	If an employee is unexpectedly going to be absent due to either an illness or other emergency, then they must contact the appropriate overtime supervisor or the supervisor's designated representative within one (1) hour of the start of overtime. Employees who fail to report for their scheduled overtime, fail to follow established overtime procedures, or repeatedly call off will be temporarily removed from the overtime roster, the timeframe for which is subject to local negotiations.[i]	

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[i] Attempted to work with the union's track changes. Any deletions are inadvertent.

Article 29 – Workforce Reshaping

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 29, Section 1, General	S1.A. The Agency agrees to comply with applicable Government, DOD, and DLA rules and regulations, and the provisions of this Article, when conducting Reassignments, Details, Reorganizations, Reductions-In-Force (RIF), and Transfers of Function. S1.B. The Agency shall provide the appropriate Council 169 Local or National Council with not less than 30 calendar days' notice prior to effecting a reorganization, reduction in force, or transfer of function. S1.C. Seniority tie-breakers (Reassignments and Details) will utilize the following method: 1. Service Comp Date (Annual Leave); if same SCD then utilize (2). 2. Month and day of the birthday (not year) using the Julian Date, in ascending order.	S1.A:.The Agency agrees to comply with applicable Government, DOD, and DLA rules and regulations, and the provisions of this Article, when conducting Reassignments, Details, Reorganizations, Reductions-In-Force (RIF), and Transfers of Function. S1.B:. The Agency shall provide the appropriate Council 169 Local or National Council with not less than 30 calendar days' notice prior to effecting a reorganization, reduction in force, or transfer of function. S1.C. Seniority tie-breakers (Reassignments and Details) will utilize the following method: 1. Service Comp Date (Annual Leave); if same SCD then utilize (2). 2. Month and day of the birthday (not year) using the Julian Date, in ascending order.	
2. Art. 29, Section 2, Definitions	S2.A. Reassignment: Any change of an employee from one position to another without demotion or promotion within the Agency.	S2.A. Reassignment: Any change of an employee from one position to another without demotion or promotion within the Agency.	Unlike a detail, voluntary reassignment, or Management-directed reassignment, a "loan" of an employee is not a

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	S2.B. Detail: Any temporary assignment of an employee without change of Civil Service status or pay to a different position, other than his/her official position, for a specified period of time, with the employee returning to his/her regular duties at the end of the detail. S2.C. Reorganization: A planned elimination, addition or redistribution of significant functions or duties in an organization and/or organizational unit S2.D. Reduction-in-force: Occurs when the Agency releases an employee from his/her competitive level by separation, demotion, furlough for more than 30 days, or reassignment requiring displacement because of lack of work or funds, reorganization, change to lower grade based on reclassification of an employee's position due to erosion of duties when such action will take place after the Agency has formally announced a reduction-in-force in the employee's competitive area and when the reduction-in-force will take effect within 180 days, or when the need to make a place for a person exercising	S2.B. Detail: Any temporary assignment of an employee without change of Civil Service status or pay to a different position, other than his/her official position, for a specified period of time, with the employee returning to his/her regular duties at the end of the detail. S2.C. Reorganization: A planned elimination, addition or redistribution of significant functions or duties in an organization and/or organizational unit S2.D. Reduction-in-force: Occurs when the Agency releases an employee from his/her competitive level by separation, demotion, furlough for more than 30 days, or reassignment requiring displacement because of lack of work or funds, reorganization, change to lower grade based on reclassification of an employee's position due to erosion of duties when such action will take place after the Agency has formally announced a reduction-in-force in the employee's competitive area and	recognized personnel action in the Federal sector.

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	reemployment rights requires the Agency to release the employee. S2.E. Transfer of function: The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected, or the movement of the competitive area in which the function is performed to another commuting area S2.F. Commuting area: The area within which registrants can be reasonably expect to commute daily between their permanent residence and duty station, as determined by the registering activity. S2.G. No Agency proposal.	when the reduction-in-force will take effect within 180 days, or when the need to make a place for a person exercising reemployment rights requires the Agency to release the employee. S2.E. Transfer of function: The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected, or the movement of the competitive area in which the function is performed to another commuting area S2.F. Commuting area: The area within which registrants can be reasonably expect to commute daily between their permanent residence and duty station, as determined by the registering activity. S2.G. A "loan" is the short-term assignment (10 workdays or less) of	

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		an Employee (BUE) to another supervisor or organization to meet temporary or limited work situations where the position has the same grade, series and basic duties as his/her regularly assigned position. Loans are typically used in distribution depots. Assignments for more than 10 workdays will be considered to be details.	
2. Art. 29, Section 3, Reassignments	S3.A. Voluntary Reassignments: The Agency has the right to select employees for reassignment. In exercising this right, the Agency may ask for volunteers, post a vacancy announcement, direct a reassignment, or use other means of identifying candidates, should the Agency elect to solicit volunteers, the Agency has the right to (1) determine the area(s) from which volunteers will be sought and how many volunteers are required, (2) determine the knowledge, skills, abilities and other characteristics required for the position(s), and (3) assess the qualifications of the volunteers.	The Agency has the right to select employees for reassignment. In exercising this right, the Agency may ask for volunteers, post a vacancy announcement, direct a reassignment, or use other means of identifying candidates. 1. Voluntary Reassignments: should the Agency elect to solicit volunteers, the Agency has the right to (1) determine the area(s) from which volunteers will be sought and how many volunteers are required, (2) determine	The Union's proposal requires the Agency to do a full-blown KSA assessment and provide "necessary training" prior to a Management-directed reassignment. A KSA assessment is unnecessary and unduly burdensome. The Union's proposal also requires automatic Union presence at meetings between supervisors and employees regarding reassignment requests.

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		the knowledge, skills, abilities and other characteristics required for the position(s), and (3) assess the qualifications of the volunteers. Rosters will be utilized for each voluntary reassignment. 2. Management Directed Reassignment: Prior to a directed reassignment, the Employer will determine the knowledge, skills, abilities and other characteristics required for the position(s) and assess the qualifications of the employee. An Employee will be advised as soon as practical regarding a directed reassignment. Normally, an employee will be advised in writing at least 15 calendar days prior to an Employer directed reassignment. The Employer will provide necessary training for the new	

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		position, as determined by the Agency.	
	S3.B. Management Directed Reassignment: An Employee will be advised as soon as practical regarding a directed reassignment. Normally, an employee will be advised in writing at least 15 calendar days prior to an Employer directed reassignment. The Employer will provide necessary training for the new position, as determined by the Agency.	S3.B. Reassignments will not be used as a reward or punishment	
	S3.C. Reassignments will not be used as a reward or punishment.	S3.C. The Employer will consider a request for reassignment, or not to be reassigned, based upon an employee's personal hardship. These reasons will be discussed with the employee before the supervisor makes a final decision. The Council 169 Local/designee shall be given the opportunity to be present at meetings that involve consideration of a request for reassignment due to personal hardship presented by an employee. A copy of a hardship decision will be provided to the Council 169 Local/designee upon request.	

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		1. Employees should make every attempt to provide advance notification of their Hardship Request, including any available supporting documentation. 2. Upon receipt of Hardship Request, the Employer will normally respond within 5 working days with a decision.	
	S3.D. The Employer will consider a request for reassignment, or not to be reassigned, based upon an employee's personal hardship. These reasons will be discussed with the employee before the supervisor makes a final decision. To the extent the meeting is a formal discussion under the Statute, the Union shall be given the opportunity to be present at meetings that involve consideration of a request for reassignment due to personal hardship presented by an employee. A copy of a hardship decision will be provided to the Union upon request. 1. Employees should make every attempt to provide advance notification of their Hardship		

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	Request, including any available supporting documentation. 2. Upon receipt of Hardship Request, the Employer will normally respond within 5 working days with a decision. S3.E. If a known likely RIF situation exists, employee will not be reassigned to positions that the Employer knows will adversely or positively affect their RIF placement rights.	S3.E. If a known likely RIF situation exists, employee will not be reassigned to positions that the Employer knows will adversely or positively affect their RIF placement rights.	
3. Art. 29, Section 4, Details	S4.A. For any detail over 30 days, the Agency shall file a copy of the Request for Personnel Action (SF-52), including a written statement of duties and responsibilities, as a permanent part of the employee's Electronic Official Personnel Folder (EOPF).	**<u>Union's Section 4 -- Loans</u>** A. The following rotational procedures will be used in determining which employees will be loaned: 1. A roster, (see appendix) will be established and maintained for each work supervisor which will include the names of each area employee in seniority order according to service computation date (SCD), title, series, and grade. Employees	The Agency's time periods for details, eligibility for temporary promotions, and repetition of details are longer and, as such, provide the Agency with the flexibility it needs in this area. Additionally, the Union's proposal deals with "loans", which are not a recognized personnel action in the Federal sector. **The Agency proposes to remove loans and only have details in this article; whereas, the Union proposes to keep loans and details.**

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		and Council 169 Local/designee representatives will be allowed to review these rosters upon request. 2. Every qualified employee will be given the opportunity to volunteer in seniority order from most senior to least senior 3. In the event there are insufficient volunteers for a loan, employees will be loaned by inverse seniority in rotation according to the roster, least senior employee first. 4. When bargaining unit employees are involuntarily assigned to another bargaining unit, the Employee agrees to notify the Council 169 Local/designee in advance when possible.	

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	S4.B. In addition to helping meet mission needs, details are a way of broadening experience and demonstrating ability to perform at a higher level. Employee with disabilities who are serving under excepted appointments may be considered for details. The Employer will provide necessary training as determined by the Agency. S4.C. An official record shall be made by the Employer of any detail of more than 30 calendar days. The Employer shall file a copy of the Request for Personnel Action, including a written statement of duties and responsibilities, as a permanent part of the employee's Electronic Official Personnel Folder (EOPF). Upon request, an employee may have a detail of fewer than 31 days but greater than 14 calendar days made a matter of record in his/her EOPF.	5. When loaning a Council 169 Local/designee representative, the Employer will allow the Council 169 Local/designee representative to call the Council 169 Local/designee prior to going to the new work site. **<u>Union's Section 5 -- Details</u>** A. In addition to helping meet mission needs, details are a way of broadening experience and demonstrating ability to perform at a higher level. Employee with disabilities who are serving under excepted appointments may be considered for details. The Employer will provide necessary training as determined by the Agency. B. An official record shall be made by the Employer of any detail of more than 10 workdays days. The Employer	

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	S4.D. Details will be used judiciously and will be terminated as soon as the Employer determines the need for the detail no longer exists. Nothing in this agreement will preclude the Employer from assigning work, as needed, to meet mission requirements. When an employee is to be detailed to a higher graded position for more than 45 calendar days, he/she shall be temporarily promoted and paid at the higher rate. S4.E. The Employer will not repeatedly detail an employee for 45 calendar days or less solely to avoid temporarily promoting employee performing higher graded duties. S4.F. Employees will be given as much advance notice as practicable for details. S4.G. The following procedures shall be used for details expected to last 30 or more calendar days. Supervisors shall list their employees in descending seniority order using Service Computation Date (SCD)-Leave. Supervisors will solicit volunteers from among available	shall file a copy of the Request for Personnel Action, including a written statement of duties and responsibilities, as a permanent part of the employee's Electronic Official Personnel Folder (EOPF). C. Details will be used judiciously and will be terminated as soon as the Employer determines the need for the detail no longer exists. When an employee is to be detailed to a higher graded position for more than 30 calendar days, he/she shall be temporarily promoted and paid at the higher rate. D. The Employer will not repeatedly detail an employee for thirty (30) calendar days or less solely to avoid temporarily promoting employee performing higher graded duties. E. Employees will be given as much advance notice as practicable for details.	

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	employees with the requisite skills and qualifications before involuntary selection. 1. If there are more volunteers than needed for the detail, the supervisor will select the most senior volunteer(s) to meet the requirement. 2. If there are fewer volunteers than needed for the detail, the supervisor will accept any volunteers then select the least senior employee(s). S4.H. The Employer shall establish rosters available to the Union to implement the requirements of this Article. S4.I. Exceptions to this procedure may be made in situations that require immediate response to satisfy mission requirements. S4.J. The Employer recognizes the need to afford employees the opportunity to develop additional skills when there are recurring needs for those skills. There may be opportunities to develop skills through the use of details when there are recurring needs for those skills. However, skills	Employee will normally be given at least seven calendar days advance notice of a detail which is expected to last from one work week up to thirty (30) calendar days. F. Supervisors shall list their employees in descending seniority order using Service Computation Date (SCD)-Leave. Supervisors will solicit volunteers from among available employees with the requisite skills and qualifications before involuntary selection. G. A roster will be established and maintained for each work unit/center. Rosters will include the name of each area employee in seniority order according to service computation date (SCD), title, series, and grade. The roster will be posted in clear view, so employees and the Council 169 Local/designee representatives will be allowed to review these	

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	development is not the primary purpose of details.	rosters upon request. A separate roster will be done for mandatory/voluntary H. Exceptions to this procedure will be made in situations that require immediate response to satisfy mission essential requirements. Upon Council 169 Local/designee's request the employer will provide written justification to the essential requirement. I. The Employer recognizes the need to afford employees the opportunity to develop additional skills when there are recurring needs for those skills. There may be opportunities to develop skills through the use of details when there are recurring needs for those skills. However, skills development is not the primary purpose of details.	
4. Art. 29, Section 5, Reorganizations	S5.A. For reorganizations that change working conditions (e.g., substantive changes to position descriptions, reassignments of bargaining unit	**<u>Union's section 6</u>**	

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	employees to different positions, and physical relocation of employees), the Employer shall provide the union with at least 30 calendar days' notice prior to effecting the reorganization. To the extent bargaining obligations must be satisfied, bargaining authority may be delegated by DLA Headquarters and Council 169. Notification will include the final organization structure ("wiring diagram"), the numbers, job titles and grades of positions involved, and a DCPDS listing of current Employee (as of the date the list is generated) in the affected organizations. The listing will include names, pay plan, series, grade, title, and organization code. Subsequent to notification, the Council 169/designee will be advised if there are changes to the proposed new organizations or positions, but minor changes will not necessitate a new 30 day notice period. If a reorganization requires the application of adverse action, reduction-in-force, or transfer of function procedures, the notice period specified in the appropriate Section shall apply. S5.B. Because Employees who are detailed or loaned are still assigned to their positions of record, such assignments have no effect on retention standing or placement rights and may be processed at any time during a reorganization.	A. For reorganizations that change working conditions (e.g., substantive changes to position descriptions, reassignments of bargaining unit employees to different positions, and physical relocation of employees), the Employer shall provide the appropriate Council 169 /designee with at least 30 calendar days notice prior to effecting the reorganization. To the extent bargaining obligations must be satisfied, bargaining authority may be delegated by DLA Headquarters and Council 169. Notification will include the final organization structure ("wiring diagram"), the numbers, job titles and grades of positions involved, and a DCPDS listing of current Employee (as of the date the list is generated) in the affected organizations. The listing will include names, pay plan, series, grade, title and	

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	However, if the Employer determines that it will reassign Employees out of an organization that will be directly affected by an announced reorganization, the Employer agrees to notify the appropriate Council 169/designee local prior to effecting the reassignment. In the event a reorganization leads to use of RIF procedures, placement actions will be based upon an Employee's position and organization of record. S5.C. In the event any shift realignment is necessary and changes conditions of employment due to a reorganization, the union will be provided advance notice consistent with Section 5.A.	organization code. Subsequent to notification, the Council 169/designee will be advised if there are changes to the proposed new organizations or positions, but minor changes will not necessitate a new 30 day notice period. If a reorganization requires the application of adverse action, reduction-in-force, or transfer of function procedures, the notice period specified in the appropriate Section shall apply. B. Because Employees who are detailed or loaned are still assigned to their positions of record, such assignments have no effect on retention standing or placement rights and may be processed at any time during a reorganization. However, if the Employer determines that it will reassign Employees out of an organization that will be	

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		directly affected by an announced reorganization, the Employer agrees to notify the appropriate Council 169 Local/designee prior to effecting the reassignment. In the event a reorganization leads to use of RIF procedures, placement actions will be based upon an Employee's position and organization of record. C. In the event any shift realignment is necessary and changes conditions of employment due to a reorganization, the Council 169 Local/designee will be provided advance notice consistent with Section 5.A.	

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6. Art. 29, Section 6, Reduction in Force	S6.A. The Agency and Council 169 share a mutual interest in assisting employees who are adversely affected by RIF.	**Union section 7** A .The Agency and Council 169 share a mutual interest in assisting employees who are adversely affected by RIF. B.The Agency will support employee job search efforts and may approve employee use of annual leave for this purpose unless work requirements do not permit the employee's release. A. To the extent practicable, the Agency will provide job education and re-training programs such as resume counseling, lectures, professional conferences, and workshops, etc., during duty	

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		hours. The Agency will give consideration to reasonable amounts of duty time for resume preparation, job interviews, etc. The Agency may contact appropriate state employment service for job placement and re-training services. The amounts of such time and the procedures for using it will be negotiated at the either at the local level or national level depending on the bargaining unit employees impacted by the RIF.	
	S6.B. The Agency will support employee job search efforts and may approve employee use of annual leave for this purpose unless work requirements do not permit the employee's release.		

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	S6.C. To the extent practicable, the Agency will provide job education and re-training programs such as resume counseling, lectures, professional conferences, and workshops, etc., during duty hours. The Agency will give consideration to reasonable amounts of duty time for resume preparation, job interviews, etc. The Agency may contact appropriate state employment service for job placement and re-training services. The amounts of such time and the procedures for using it will be negotiated at the either at the local level or national level depending on the bargaining unit employees impacted by the RIF. S6.C (should be 6.D). When the Agency becomes aware of the possible necessity to conduct a		

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	reduction-in force, it will attempt to minimize the adverse effect on bargaining unit employees through such means as reassignments, attrition, voluntary separation incentive payments (VSIP), early retirement (VERA), use of vacant positions for placement and other positive placement efforts. S6.D (should be 6.E). The Agency will notify the Union of any pending RIF 30 days prior to the notification to the affected employees unless a shorter notice period has been authorized by OPM. The notice will be in writing and include the reasons for the RIF, the types and estimated number of positions to be abolished, and the proposed effective date Additional bargaining on procedures or appropriate arrangements may only be conducted at the approval of DLA Headquarters and Council 169. S6.E (should be 6.F). Affected employees will be notified not less than 60 calendar days prior to the effective date. To the extent practicable, RIF notices will be delivered in person. The notice shall state specifically what action is being taken, the effective date of the action, the employee's total credit for retention, extra retention credit for performance, the competitive level, and competitive area. It shall state why any lower	D. When the Agency becomes aware of the possible necessity to conduct a reduction-in force, it will attempt to minimize the adverse effect on bargaining unit employees through such means as reassignments, attrition, voluntary separation incentive payments (VSIP), early retirement (VERA), use of vacant positions for placement and other positive placement efforts. E. The Agency will notify the Council 169/designee of any pending RIF 30 days prior to the notification to the affected employees unless a shorter notice period has been authorized by OPM. The notice will be in writing and include the reasons for the RIF, the types and estimated number of positions to be abolished, and the proposed effective date Additional	

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	standing employee is retained in his/her competitive level. S6.F (should be 6.G). The Agency shall make a best offer of employment to each employee adversely affected by the reduction-in-force. An offer, if made, shall be to a position with either no reduction in grade or pay, or with the least reduction possible in consideration of positions available, employee qualifications, and the retention standing of other competing employees. S6.G (should be 6.H). Employees shall respond to an offer of employment in another position in writing within 10 calendar days after receipt of a written offer. Failure to respond within the specified time period shall be considered a rejection of the offer. S6.H (should be 6.I). Affected employees have the right to review competitive levels and retention registers as applicable to the employee. S6.I (should be 6J). The Agency will make reasonable efforts to find employment in other Federal agencies within the commuting area for employees who are identified for separation through reduction-in-force. Employees for whom no positions are found may be counseled on the	bargaining on procedures or appropriate arrangements may only be conducted at the approval of DLA Headquarters and Council 169. F. Affected employees will be notified not less than 60 calendar days prior to the effective date. To the extent practicable, RIF notices will be delivered in person. The notice shall state specifically what action is being taken, the effective date of the action, the employee's total credit for retention, extra retention credit for performance, the competitive level, and competitive area. It shall state why any lower standing employee is retained in his/her competitive level. G. The Agency shall make a best offer of employment to each employee adversely affected by the reduction-in-force. An offer, if made, shall be to a position with either no reduction in grade or pay, or with the least reduction possible in consideration of positions available, employee qualifications, and the retention standing of other competing employees.	

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	benefits to which they may be entitled, including information concerning discontinued service retirement, where applicable. Reemployment lists as prescribed by OPM shall be established for employees who cannot be retained. S6.J (should be 6.K). The competitive areas will be established in accordance with applicable laws, rules, and regulations. Descriptions of competitive areas must be established 90 days before the effective date of a RIF. S6.K (should be 6.L). In connection with a RIF and where applicable, the Agency agrees to pay relocation expenses as provided by appropriate regulations. S6.L (should be 6.M). Local commuting area means "the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment."	H. Employees shall respond to an offer of employment in another position in writing within 10 calendar days after receipt of a written offer. Failure to respond within the specified time period shall be considered a rejection of the offer. Ii. Affected employees have the right to review competitive levels and retention registers as applicable to the employee. J. The Agency will make reasonable efforts to find employment in other Federal agencies within the commuting area for employees who are identified for separation through reduction-in-force. Employees for whom no positions are found may be counseled on the benefits to which they may be entitled, including information concerning discontinued service retirement, where applicable. Reemployment lists as prescribed by OPM shall be established for employees who cannot be retained. K. The competitive areas will be established in accordance with applicable laws, rules, and regulations. Descriptions of	

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		competitive areas must be established 90 days before the effective date of a RIF. L. In connection with a RIF and where applicable, the Agency agrees to pay relocation expenses as provided by appropriate regulations. M. Local commuting area means "the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment."	
7. Art. 29, Section 7, Transfer of Function	PROCEDURES In transfers of function within DLA: S7.A. The Employer will provide notification to the appropriate Council 169 Local(s) not less than 60	**Union's section 8** PROCEDURES In transfers of function within DLA:	

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	calendar days prior to the effective date of any approved transfer of function. The Local(s) may waive this notification period. S7.B. Transfers of function within commuting areas will require a minimum notice (not necessarily in writing) of 14 calendar days. S7.C. Where Employee (BUE) are being relocated to a different commuting area, the losing Employer will: 1. Provide the appropriate Council 169 Local(s) with the maximum notice possible but not less than 60 calendar days' notice prior to the effective date of any approved transfer of function in order to negotiate the impact and procedures for the implementation of the transfer of function. 2. Assist and counsel the affected Employees in seeking placement opportunities with other Federal	A. The Employer will provide notification to the appropriate Council 169 Local(s) not less than 60 calendar days prior to the effective date of any approved transfer of function. The Local(s) may waive this notification period. B. Transfers of function within commuting areas will require a minimum notice (not necessarily in writing) of 14 calendar days. C. Where Employee (BUE) are being relocated to a different commuting area, the losing Employer will: 1. Provide the appropriate Council 169 Local(s) with	

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	agencies elsewhere in the commuting area. 3. Counsel the Employees on individual rights relating to retirement and severance pay and placement potential. 4. Give any Employees affected by a transfer of function outside the commuting area, causing physical move, not less than 60 calendar days' notice in writing of the transfer of function which provides for at least 30 calendar days for the Employee (BUE) to respond as to whether he/she is willing to accompany the function. 5. The Employer will provide affected Employee (BUE) with 30 calendar days to respond to a specific job offer. 6. When the Employer becomes aware that a transfer of function may result in Employee (BUE) being separated, it will attempt to minimize the adverse effect on bargaining unit Employee (BUE)	the maximum notice possible but not less than 60 calendar days' notice prior to the effective date of any approved transfer of function in order to negotiate the impact and procedures for the implementation of the transfer of function. 2. Assist and counsel the affected Employees in seeking placement opportunities with other Federal agencies elsewhere in the commuting area. 3. Counsel the Employees on individual rights relating to retirement and severance pay and placement potential.	

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	through appropriate means such as reassignment, voluntary separation incentive payments (VSIP), early retirement (VERA), attrition, use of vacant positions for placement, filling positions at the full performance level, waiver or modification of qualification requirements, and positive placement efforts. The Employer will contact and aid the appropriate state employment service concerning all affected Employee (BUE) for job placement and re-training services. DOCUMENTATION Following notification of a transfer of function, the Employer shall furnish the Council 169 Local, upon request, any relevant and available documentation or information concerning the transfer of function, subject to any Privacy Act limitations**.**	4. Give any Employees affected by a transfer of function outside the commuting area, causing physical move, not less than 60 calendar days' notice in writing of the transfer of function which provides for at least 30 calendar days for the Employee (BUE) to respond as to whether he/she is willing to accompany the function. 5. The Employer will provide affected Employee (BUE) with 30 calendar days to respond to a specific job offer. 6. When the Employer becomes aware that a transfer of function may result in Employee (BUE)	

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		being separated, it will attempt to minimize the adverse effect on bargaining unit Employee (BUE) through appropriate means such as reassignment, voluntary separation incentive payments (VSIP), early retirement (VERA), attrition, use of vacant positions for placement, filling positions at the full performance level, waiver or modification of qualification requirements, and positive placement efforts. The Employer will contact and aid the appropriate state employment service concerning all affected Employee (BUE) for job placement and re-training services.	

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		DOCUMENTATION Following notification of a transfer of function, the Employer shall furnish the Council 169 Local, upon request, any relevant and available documentation or information concerning the transfer of function, subject to any Privacy Act limitations**.**	
8. Art. 29, Section 8, Emergency Furloughs	S8.A. The Agency will determine positions that are designated "excepted" in the event of a furlough 1. In instances where more than one employee performs identical functions, employees will be excepted based on seniority using the employees' Reduction-In-Force Service Computation Date. The more senior will perform the excepted functions. 2. If a less senior employee's unique skill set is required, the less senior employee may be selected. The Agency will document the basis for the selection in a Memorandum for the Record.	**Union Section 9** A. The Agency will determine positions that are designated "excepted" in the event of a furlough. In instances where more than one employee performs identical functions, employees will be excepted based on seniority using the employees' Reduction-In-Force Service Computation Date. The more senior will perform the excepted functions.	The Agency's proposal allows for less senior employees to perform work in the event of an emergency furlough, which occurs when there is no funding for Federal agencies to operate and shutdown is immediate. Thus, the Agency's proposal allows it to operate at a minimum staffing level based on need and mission requirements. The Union's proposal does not allow for such agility. Additionally, the Agency's proposal addresses emergency

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	S8.B. Employees will receive a written notice of the emergency furlough. When practicable, the written notice will be given in advance. S8.C. The Agency will provide employees with a copy of SF-8 (Unemployment Compensation Notice).	B. Employees will receive a written notice of the emergency furlough. When practicable, the written notice will be given in advance. C. The Agency will provide employees with a copy of SF-8 (Unemployment Compensation Notice). D. Supervisors will attempt to contact employees on leave or TDY. E. All leave will be cancelled. F. Employees will be notified of when to return to duty via public media and by the supervisors contacting the employees via email and telephone. G. As soon as practicable and after approval by the	furloughs; the Union's proposal addresses transfer of function.

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		appropriate authorities, the Agency will furnish the respective Council 169 Local/designee (with a copy to the Council President) a copy of the list of "excepted" bargaining unit positions and the bargaining unit employees who have been designated to be retained in those "excepted" positions in accordance with paragraph A. The list will be used for official representation purposes only. H. Time frames for grievances and ADR will be extended for the length of the furlough. I. All provisions of the Master Labor Agreement will e applicable under the furlough except those that re in conflict with law related to furlough actions.	

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		J. Employees on an approved telework agreement who are not furloughed on their scheduled telework day may continue to telework. Those employees who are furloughed on their telework day may request to change their telework day during the furlough period.	

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	S8.D. Supervisors will attempt to contact employees on leave or TDY. All leave will be cancelled.		

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	S8.E. Employees will be notified of when to return to duty via public media and by the supervisors contacting the employees via email and telephone.		
9. Art. 29, Section 9, Administrative Furloughs	S9.A. The Agency will determine positions that are designed "excepted" in the event of a furlough. 1. In instances where more than one employee performs identical functions, employees will be excepted based on seniority using the employees' Reduction-In-Force Service Computation Date. The more senior will perform the excepted functions. 2. If a less senior employee's unique skill set is required, the less senior employee may be selected. The Agency will document the basis for the selection in a Memorandum for the Record. S9.B. Employees will receive a written notice of the furlough in accordance with Adverse Action procedures as stated in Article 34. S9.C. The Agency will provide employees with a copy of SF-8 (Unemployment Compensation Notice).	**Union Section 10** A. The Agency will determine positions that are designated "excepted" in the event of a furlough. In instances where more than one employee performs identical functions, employees will be excepted based on seniority using the employees' Reduction-In-Force Service Computation Date. The more senior will perform the excepted functions. B. Employees will receive a written notice of the furlough in accordance with Adverse Action procedures as stated in Article XX. C. The Agency will provide employees with a copy of SF-8 (Unemployment Compensation Notice). D. All leave will be cancelled. E. Employees will be notified of when to return to duty by the supervisors contacting the employees via email and telephone.	The Agency's proposal allows for less senior employees to perform work in the event of an administrative furlough. The Agency's proposal allows it to operate based on needs and mission requirements. Additionally, the Agency's proposal addresses administrative furloughs; the Union's proposal addresses emergency furloughs.

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	S9.D. All leave will be cancelled. S9.E. Employees will be notified of when to return to duty by the supervisors contacting the employees via email and telephone. S9.F. Employees subject to furlough will be placed on a five (5) day, eight (8) hour work week, with flexible start/end time. S9.G. Furloughs, if discontinuous, furlough days will either the first or last day of the work week. Employees will submit their desired furlough day (first or last day of their work week) to their immediate-supervisor. In those instances where there is conflict from multiple employees requesting the same furlough day and all requests cannot be accommodated, ties will be broken by the supervisor applying the RIF SCD. For furlough days that fall on a holiday, the next business day will serve as the furlough day.	F. Employees subject to furlough will be placed on a five (5) day, eight (8) hour work week, with flexible start/end time. G. Furloughs, if discontinuous, furlough days will either the first or last day of the work week. Employees will submit their desired furlough day (first or last day of their work week) to their immediate-supervisor. In those instances where there is conflict from multiple employees requesting the same furlough day and all requests cannot be accommodated, ties will be broken by the supervisor applying the RIF SCD. For furlough days that fall on a holiday, the next business day will serve as the furlough day. H. Employees who were working any type of alternative work schedule will return to such work schedule effective the first full pay period following the end of the furlough period. I. Supervisors will work with part-time employees to define a set schedule for duration of the furlough period. Based on this established schedule,	

Article 29 – Workforce Reshaping

Article/Section	Agency Proposal	Union Proposal	Key Differences
	S9.H. Employees who were working any type of alternative work schedule will return to such work schedule effective the first full pay period following the end of the furlough period. S9.I. Supervisors will work with part-time employees to define a set schedule for duration of the furlough period. Based on this established schedule, supervisors will compute a pro-rated number of furlough hours per pay period commensurate with that part-time schedule. S9.J. Employees who are hired or transferred into the bargaining unit after the furloughs begin will serve a proportionate number of days on furlough. S9.K. For the purposes of timeframes for grievances and ADR, furlough days will be treated as nonwork days. S9.L. Should the Agency's situation change so that furloughs can be shortened, the Agency will act promptly to cancel additional furlough days. The	supervisors will compute a pro-rated number of furlough hours per pay period commensurate with that part-time schedule. J. Employees who are hired or transferred into the bargaining unit after the furloughs begin will serve a proportionate number of days on furlough. K. For the purposes of timeframes for grievances and ADR, furlough days will be treated as nonwork days. L. Should the Agency's situation change so that furloughs can be shortened, the Agency will act promptly to cancel additional furlough days. The AFGE Council 169 President will be notified immediately. Employees will be notified of the cancellation of furlough days as soon as practicable. This will include multiple communication vehicles. M. Employees on an approved telework agreement who are not furloughed on their scheduled telework day may continue to telework. Those employees who are furloughed on their telework day may	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	AFGE Council 169 President will be notified immediately. Employees will be notified of the cancellation of furlough days as soon as practicable. This will include multiple communication vehicles. S9.M. Employees on an approved telework agreement who are not furloughed on their scheduled telework day may continue to telework. Those employees who are furloughed on their telework day may request to change their telework day during the furlough period. S9.N. Employees are entitled to benefits outlined in guidance issued by the Office of Personnel Management related to non-emergency furloughs.	request to change their telework day during the furlough period. N. Employees are entitled to benefits outlined in guidance issued by the Office of Personnel Management related to non-emergency furloughs.	

Agency Document – 20 FSIP 041
Complete proposals
Note: Track changes in Union original

Article 34 – Disciplinary and Adverse Actions

Article/Section	Agency Proposal	Union Proposal	Key Differences
Article 34, Section 1, General	S1.A. The parties agree it is critical to maintain high standards of integrity and conduct within the agency. Disciplinary measures are taken to correct employee misconduct that adversely affects the efficiency of the service and to encourage employee conduct in compliance with applicable policies, procedures, and regulations.	A. The parties agree it is critical to maintain high standards of integrity and conduct within the agency. Disciplinary measures are taken to correct employee misconduct that adversely affects the efficiency of the service and to encourage employee conduct in compliance with applicable policies, procedures, and regulations.	The Agency's proposal does not unduly delay the investigatory process. The Union's proposal would delay the investigatory process indefinitely. The Union's proposal also forecloses the Agency from disciplining an employee who engages in the same offense repeatedly more than once.
	S1.B. An "adverse action" is defined as a suspension, removal, furlough of 30 days or less, or a reduction in grade and/or pay taken for cause. Adverse actions will be taken for just cause and in accordance with applicable laws and regulations.	B. An "adverse action" is defined as a suspension, removal, furlough of 30 days or less, or a reduction in grade and/or pay taken for cause. Adverse actions will be taken for just cause and in accordance with applicable laws and regulations.	
	S1.C. For purposes of this Article, the term "adverse action" does not apply to the separation of an employee serving a probationary or trial period under an initial appointment pursuant to 5 U.S.C. §7511(a)(1)(A), a suspension or removal taken in the interest of national security, an action	C. For purposes of this Article, the term "adverse action" does not apply to the separation of an employee serving a probationary or trial period under an initial	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	taken under reduction-in-force procedures, return to the grade formerly held by a supervisor or manager who has not satisfactorily completed his/her supervisory/managerial probationary period, or the reduction in grade or removal of employees based on unacceptable performance pursuant to 5 U.S.C. §4303.	appointment pursuant to 5 U.S.C. §7511(a)(1)(A), a suspension or removal taken in the interest of national security, an action taken under reduction-in-force procedures, return to the grade formerly held by a supervisor or manager who has not satisfactorily completed his/her supervisory/managerial probationary period, or the reduction in grade or removal of employees based on unacceptable performance pursuant to 5 U.S.C. §4303.	
	S1.D. Other forms of corrective measures may include counseling, oral admonishment, letters of instruction, or letters of warning.	D. Other forms of corrective measures may include counseling, oral admonishment, letters of instruction, or letters of warning.	
	S1.E. At any meeting initiated by the Agency between an employee and an Agency official which the employee reasonably believes may result in an adverse action, a DLA Council Local	E. At any meeting initiated by the Agency between an employee and an Agency official which the employee	

Article 34 – Disciplinary and Adverse Actions

Article/Section	Agency Proposal	Union Proposal	Key Differences
	representative shall be given the opportunity to be present upon the employee's request in accordance with Article 4 of this MLA. If representation is requested, the meeting will not be delayed beyond one business day (Monday through Friday) without mutual agreement of the parties.	reasonably believes may result in an adverse action, a DLA Council Local representative shall be given the opportunity to be present upon the employee's request in accordance with Article 4 of this MLA. If representation is requested, the meeting will ~~not~~ be delayed until a union representative is assigned by the union. ~~beyond one business day (Monday through Friday) without mutual agreement of the parties.~~	
	S1.F. The Employer reserves the right to cancel the investigatory interview once the employee has requested Union representation. A decision by management to cancel an interview on this basis need not be justified in any way, and the Employer may proceed with its investigation and/or adverse action on the basis of information from other sources. The inquiry shall be conducted in such a manner as to avoid personal embarrassment to the affected employee.	F. The Employer reserves the right to cancel the investigatory interview once the employee has requested Union representation. A decision by management to cancel an interview on this basis need not be justified in any way, and the Employer may proceed with its investigation and/or adverse action on the basis of information from other	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		sources. The inquiry shall be conducted in such a manner as to avoid personal embarrassment to the affected employee.	
	S1.G. In exercising its right to discipline employees, for proposed adverse actions of 15 days or more, the Employer will consider the relevant Douglas Factors. In considering the penalty for adverse actions, the Agency may take into account those adverse actions taken any time prior to the effective date of the proposed current action.	G. In exercising its right to discipline employees, for proposed adverse actions of 15 days or more, the Employer will consider the relevant Douglas Factors. In considering the penalty for adverse actions, the Agency may take into account those adverse actions taken any time prior to the effective date of the proposed current action. H. Discipline may not be imposed twice for the same misconduct. Where an agency has imposed disciplinary or adverse action because of an employee's misconduct, it is barred from subsequently taking another	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		adverse action for the same reason.	
2. Art. 34 Section 2, Informal Corrective Actions	S2.a. Supervisors may use informal measures for corrective action or to provide instructions regarding appropriate workplace behavior or compliance with procedures. These informal corrective actions are not disciplinary in nature, but are intended to make employees aware of, and bring them into compliance with, workplace policies and procedures. S2.b. Oral Counseling or admonishment is a verbal instruction to the employee concerning a proper process or procedure or to address misconduct, and will generally be a discussion between the employee and his/her supervisor.	a. Supervisors may use informal measures for corrective action or to provide instructions regarding appropriate workplace behavior or compliance with procedures. These informal corrective actions are not disciplinary in nature, but are intended to make employees aware of, and bring them into compliance with, workplace policies and procedures. b. Oral Counseling or admonishment is a verbal instruction to the employee concerning a proper process or procedure	2(e) Informal corrective actions (e.g., oral counselings, letters of instruction, letters of warning, etc.) are, by their nature, not actions to be placed in an employee's OPF. Additionally, the Union's proposal that these informal actions may be reviewed subsequently to see if they were warranted disregards the informal, corrective nature of such actions.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		or to address misconduct, and will generally be a discussion between the employee and his/her supervisor.	
	S2.c. A Letter of Warning is issued to an employee concerning unacceptable conduct. It places the employee on notice that formal disciplinary action may be imposed if the conduct does not improve.	c. A Letter of Warning is issued to an employee concerning unacceptable conduct. It places the employee on notice that formal disciplinary action may be imposed if the conduct does not improve.	
	S2.d. A Letter of Instruction is issued to an employee to document standards of conduct or work instructions, clarify procedures, or impose certain requirements.	d. A Letter of Instruction is issued to an employee to document standards of conduct or work instructions, clarify procedures, or impose certain requirements.	

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	S2.e. A letter issued to implement a performance improvement plan (PIP) is not a disciplinary action, and is addressed in Article 18.	e. Informal corrective actions will not be placed in the Official Personnel Folder and the Employee (BUE) will be so notified. Information concerning the informal corrective action shall not be retained more than 12 months. At any time after the issuance of the informal corrective action, the Employee (BUE)'s conduct and/or performance will be reviewed to determine whether there has been sufficient improvement to warrant destruction of the informal corrective action.	
	S2.f. No Agency proposal.	f. A letter issued to implement a performance	

Article 34 – Disciplinary and Adverse Actions

Article/Section	Agency Proposal	Union Proposal	Key Differences
		improvement plan (PIP) is not a disciplinary action, and is addressed in Article 18.	
3. Art.34, Section 3, Letters of Reprimand	A Letter of Reprimand is the lowest formal disciplinary action issued to correct an employee's delinquency or misconduct. It contains a detailed account of the offense(s) and is effective upon issuance. Letters of Reprimand will be retained in the eOPF for 2 years, until the employee leaves the agency, or until the supervisor determines the letter has served its purpose.	A Letter of reprimand will be placed in the Employee (BUE)'s Official Personnel Folder for not more than 12 months unless the Employee (BUE) receives another disciplinary or adverse action for a similar or related offense within the 12 month period. If this occurs it will serve to extend the retention of the former reprimand(s) for another 12 months. In no case, however, will a reprimand remain in an Employee (BUE)'s Official Personnel Folder for more than 24 months. ~~A Letter of Reprimand is the lowest formal disciplinary action issued to correct an employee's delinquency or misconduct. It contains a detailed account of the offense(s) and is effective upon issuance. Letters of Reprimand will be retained in the eOPF for 2 years, until the employee~~	The Agency's proposal requires the letter of reprimand to be in an employee's eOPF for 2 years, but could be removed sooner. The Union's proposal has a ceiling of 12 months and any additional retention period would be based on whether the employee engaged in the same or similar misconduct which, arguably, sends the wrong message regarding correcting employee misconduct.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		~~leaves the agency, or until the supervisor determines the letter has served its purpose~~.	
4. Art. 34, Section 4, Procedures for Suspensions of 14 Calendar Days or Less	S4.A. When the Agency proposes to suspend an employee for 14 calendar days or less, the following procedures will apply: 1. The Agency will give the employee at least seven (7) calendar days written notice of the proposed action. 2. Notices will state the nature and specific reason(s) for the proposed action. 3. The Agency will give the employee at least seven (7) calendar days to respond orally and/or in writing and to furnish materials to support the reply. 4. Notices will inform the employee of his/her right to contact a member of the servicing DHRS Office staff regarding the process. 5. Notices will inform the employee of his/her right to representation. 6. Notices will inform the employee that any request for extension of time to reply must be submitted	A. When the Agency proposes to reprimand or suspend an employee for 14 calendar days or less, the following procedures will apply: 8. The Agency will give the employee at least seven (7) calendar days written notice of the proposed action. 9. Notices will state the nature and specific reason(s) for the proposed action. 10. The Agency will give the employee at least seven (7) calendar days to respond orally and/or in writing and to furnish materials to support the reply. 11. Notices will inform the employee of	The Agency's proposal is consistent with Government-wide regulations and provides the Agency the flexibility it needs to gather information prior to issuing a final decision. S4B the union proposal places an absolute requirement for management to issue a decision within 15 days.

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	in writing prior to the expiration of the time period that he/she was given to reply. 7. The Employer will provide the employee copies of documentation used to support the action. Any material/evidence that is not disclosed to the employee may not be used in support of an action against the employee.	his/her right to contact a member of the servicing DHRS Office staff regarding the process. 12. Notices will inform the employee of his/her right to representation. 13. Notices will inform the employee that any request for extension of time to reply must be submitted in writing prior to the expiration of the time period that he/she was given to reply. 14. The Employer will provide the employee copies of documentation used to support the action. Any material/evidence that is not disclosed to the employee may not be used in support of an action	

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		against the employee. B. After the time for the employee's reply has elapsed, the Agency will issue a written final decision to the employee. To the extent practicable, Management will issue the decision ~~in a timely manner~~ within 15 work days. The decision notice will: 4. Indicate whether the proposed action will be effected, modified, or withdrawn... In no case will the action taken be more severe than that proposed in the advance notice. 5. State the findings with respect to each reason(s) stated in the notice of proposed action. 6. Inform the employee of his/her grievance rights in accordance	
	S4.B. After the time for the employee's reply has elapsed, the Agency will issue a written final decision to the employee. To the extent practicable, Management will issue the decision in a timely manner. The decision notice will: 1. Indicate whether the proposed action will be effected, modified, or withdrawn... In no case will the action taken be more severe than that proposed in the advance notice. 2. State the findings with respect to each reason(s) stated in the notice of proposed action. 3. Inform the employee of his/her grievance rights in accordance with Section 6 of this Article.		

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		with Section 6 of this Article.	
5. Art. 34, Section 5, Procedures for Removal, Suspensions of more than 14 Calendar Days, and Reduction in Grade and or Pay	S5.A. All of the procedural requirements in Section 4 A and B apply except that the advance period will be not less than 30 calendar days, and the employee will be given at least 10 calendar days to respond orally and/or in writing and furnish materials in support of the reply to the proposed action. The response may include written statements of persons having relevant information and/or other supportive documents. S5.B. The 30 calendar day advance written notice period is not required for a removal or an indefinite suspension when there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. In such cases, the advance notice period will be not less than seven (7) calendar days and the reply period will be not less than seven (7) calendar days. When circumstances	A. All of the procedural requirements in Section 4 A and B apply except that the advance period will be not less than 30 calendar days, and the employee will be given at least 10 calendar days to respond orally and/or in writing and furnish materials in support of the reply to the proposed action. The response may include written statements of persons having relevant information and/or other supportive documents. B. The 30 calendar day advance written notice period is not required for a removal or an indefinite suspension when there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. In such	No substantive differences

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	require, the employee may be placed in a non-duty status with pay not to exceed seven (7) calendar days during the notice period. Such actions under this provision are taken pursuant to 5 U.S.C. 7513(b).	cases, the advance notice period will be not less than seven (7) calendar days and the reply period will be not less than seven (7) calendar days. When circumstances require, the employee may be placed in a non-duty status with pay not to exceed seven (7) calendar days during the notice period. Such actions under this provision are taken pursuant to 5 U.S.C. 7513(b).	
6. Art. 34, Section 7, Grievance/Appeal Rights (Misnumbered – should be Section 6)	S7.A. An employee who is dissatisfied with the Agency's decision to effect an adverse action of a suspension of 15 days or more, removal, furlough of 30 days or less, or reduction in grade and/or pay may elect to either appeal the decision in accordance with 5 U.S.C. 7701 or 7702 as applicable, or use the parties' negotiated grievance procedure. An employee who is dissatisfied with the Agency's decision to effect a suspension of 14 days or fewer may elect to grieve the decision in accordance with the negotiated grievance procedure (Article 36).	A. An employee who is dissatisfied with the ~~Agency's~~ Employer's decision to effect an adverse action of a suspension of 15 days or more, removal, furlough of 30 days or less, or reduction in grade and/or pay may elect to either appeal the decision in accordance with 5 U.S.C. 7701 or 7702 as applicable. An employee who is dissatisfied with the Agency's decision to effect a suspension of 14 days or	The Agency addresses what actions can be grieved in the grievance procedure article (Article 36).

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		fewer may elect to grieve the decision in accordance with the negotiated grievance procedure (Article 36). B. An Employer's decision to reprimand, the Employee may elect to grieve the decision.	
7. Art. 34, Section 8, Actions Based on Security Clearance Investigations (Misnumbered – Should be Section 7)	Security clearance investigations are conducted to determine eligibility for security clearances and not as a form of reprisal. Employees affected by security clearance decisions will be provided a written description of their due process rights. If an employee is indefinitely suspended due to the loss of a security clearance, they may request to exhaust their accrued annual leave prior to the effective date of the indefinite suspension. This provision does not apply to those employees who lose their security clearance due to the reasonable belief the employee has committed a crime for which a sentence of imprisonment may be imposed or when the loss of a security clearance is related to a national security issue.	Security clearance investigations are conducted to determine eligibility for security clearances and not as a form of reprisal. Employees affected by security clearance decisions will be provided a written description of their due process rights. If an employee is indefinitely suspended due to the loss of a security clearance, they may request to exhaust their accrued annual leave prior to the effective date of the indefinite suspension. This provision does not apply to those employees who lose their security clearance due to the reasonable belief the employee has committed a crime for which a sentence of imprisonment may be imposed or when the loss of a	No substantive diference

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		security clearance is related to a national security issue.	
8. Art. 34, Section 9, Investigations (Misnumbered – should be Section 8)	No Agency proposal.	A. If an Employee (BUE) is interviewed regarding potential misconduct, the following information will be provided: 1.The general subject of the interview or allegation; 2. That he or she is the subject of the investigations; or 3. Whether he or she is being interviewed as a witness. Note: Weingarten Rights provide for a Union representative to be present at any Employer representative's examination of a bargaining unit Employee (BUE) if "the Employee (BUE) reasonably believes that the examination may result in disciplinary action" and "the Employee (BUE) requests representation."	The Union's proposal that the Agency give Kalkines, Garrity, and Miranda warnings is unnecessary.

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		B. When bargaining unit Employee (BUE) are interviewed as witnesses in a matter being grieved/arbitrated or charged as an unfair labor practice, the Employer will notify the Union and afford it the opportunity to be present. C. When management interviews a BUE who is a potential witness in a ULP or Arbitration hearing, the Employee (BUE) must be assured by management that no reprisal (discipline) will be taken if the Employee (BUE) declines to be interviewed. Employee (BUE) who decline to be interviewed must not be coerced otherwise. D. If the matter being investigated concerns potential criminal misconduct, the following warnings will be provided to Employee (BUE), as appropriate: 1. Miranda: Given when an individual is being interrogated concerning his or her own potentially criminal misconduct and is	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		taken into custody or deprived of freedom in a significant way. This warning advises that the individual, among other things, is entitled to remain silent or otherwise not incriminate himself or herself and to the assistance of an attorney. 2. Garrity: Informs federal Employee (BUE) who are subjects of investigations, that although they would normally be expected to answer questions regarding their official duties, refusal to answer on the ground that the answers may tend to incriminate them will not subject them to disciplinary action. 3. Kalkines: Advises that the possibility of criminal prosecution has been removed, usually by a declination to prosecute by the Department of Justice, and that the Employee (BUE) is required to answer questions relating to the	

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Article/Section	Agency Proposal	Union Proposal	Key Differences
		performance of his or her official duties or be subject to disciplinary action.	

Article 36 – Grievance Procedure

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 36, Section 1, General	The purpose of this Article is to provide a method for prompt and equitable settlement of grievances between the parties to this Agreement. For purposes of this Article, employees filing a grievance will not be subject to reprisal or retaliation in accordance with 5 U.S.C. §2301.	The purpose of this Article is to provide a method for prompt and equitable settlement of grievances between the parties to this Agreement (5 USC 7121). For purposes of this Article, employees filing a grievance will not be subject to reprisal or retaliation in accordance with 5 U.S.C. §2301.	No substantive difference
2. Art. 36, Section 2, Coverage and Scope	A. This Article constitutes the sole and exclusive procedure available to the Employer, Union, and bargaining unit employees for resolution of grievances applicable to any matter involving the interpretation, application, or violation of this Agreement, Local Agreements, or matters involving the interpretation of laws, policies, regulations, and practices of the Employer not specifically covered by this Agreement. B. Employee(s) Grievance. A grievance by a bargaining unit employee(s) is a request for personal relief in any matter of concern or dissatisfaction to the employee or group of employees concerning the interpretation,	A. This Article constitutes the sole and exclusive procedure available to the Employer, Union, and bargaining unit employees for resolution of grievances applicable to any matter involving the interpretation, application, or violation of this Agreement, Local Agreements, or matters involving the interpretation of laws, policies, regulations, and practices of the Employer not specifically covered by this Agreement.	No substantial difference

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	application, and/or violation of this Agreement or the Local Agreement under which the employee(s) is/are covered, or the interpretation or application of any law, rule, or regulation with respect to personnel policies, practices, and any other matters affecting conditions of employment. Grievances involving employees in more than one local must be submitted and processed individually at each location; such grievances may not be joined. C. Council 169 Local or Local Employer Grievance. A grievance by a Council 169 Local or local Employer organization is a request for relief over the local interpretation or application of this Agreement or its Local Agreement(s) covering the parties, or the local interpretation or application of Employer regulations covering personnel policies, practices, and other matters affecting conditions of employment. Grievances involving more than one local must be submitted and processed individually at each location; such grievances may not be joined.	B. Employee(s) Grievance. A grievance by a bargaining unit employee(s) is a request for personal relief in any matter of concern or dissatisfaction to the employee or group of employees concerning the interpretation, application, and/or violation of this Agreement or the Local Agreement under which the employee(s) is/are covered, or the interpretation or application of any law, rule, or regulation with respect to personnel policies, practices, and any other matters affecting conditions of employment. Grievances involving employees in more than one local must be submitted and processed individually at each location; such grievances may not be joined. C. Council 169 Local or Local Employer Grievance. A	

Article 36 – Grievance Procedure

Article/Section	Agency Proposal	Union Proposal	Key Differences
	D. Executive Board of Council 169 or DLA Grievance. A grievance by the Executive Board of Council 169 or DLA officials is a request for relief covering disputes between the parties over actions taken or alleged failure to take appropriate action involving the interpretation and application of this Agreement, or an Executive Board of Council 169 or DLA interpretation of any rule or regulation covering personnel policies, practices, and other matters affecting conditions of employment	grievance by a Council 169 Local or local Employer organization is a request for relief over the local interpretation or application of this Agreement or its Local Agreement(s) covering the parties, or the local interpretation or application of Employer regulations covering personnel policies, practices, and other matters affecting conditions of employment. Grievances involving more than one local must be submitted and processed individually at each location; such grievances may not be joined. D. Executive Board of Council 169 or DLA Grievance. A grievance by the Executive Board of Council 169 or DLA officials is a request for relief covering disputes between the parties over actions taken or alleged	

Article 36 – Grievance Procedure

Article/Section	Agency Proposal	Union Proposal	Key Differences
		failure to take appropriate action involving the interpretation and application of this Agreement, or an Executive Board of Council 169 or DLA interpretation of any rule or regulation covering personnel policies, practices, and other matters affecting conditions of employment	
3.Article 36, Section 3, Matters Excluded	Excluded from the grievance procedure are: A. Any claimed violation of subchapter III of chapter 73 of title 5, U.S.C. (relating to prohibited political activities; B. Retirement, life insurance, or health insurance; C. A suspension or removal under section 7532 of title 5, U.S.C. (relating to national security; D. Any examination, certification, or appointment;	Excluded from the grievance procedure are: A. Any claimed violation of subchapter III of chapter 73 of title 5, U.S.C. (relating to prohibited political activities; B. Retirement, life insurance, or health insurance; C. A suspension or removal under section 7532 of title	The Agency's proposal excludes informal, corrective actions from the grievance procedure in the interest of efficiency and effective operations. Removals may be grieved through the appropriate statutory procedure. Exclusions from grievance procedure: oral counselings; letters of instruction; letters of

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Article/Section	Agency Proposal	Union Proposal	Key Differences
	E. The classification of any position which does not result in the reduction in grade or pay of an employee; F. Mere non-selection for promotion from a group of properly ranked or certified candidates. This does not apply to the right to grieve over improper procedures used during the selection process; G. Termination of temporary promotion; H. Termination while serving under a time-limited appointment; I. Non-adoption of a suggestion; J. Preliminary notice of a proposed action which, if effected, would be covered by this Article or excluded by items A through E above. K. Any incentive pay, honorary, or discretionary awards, including quality step increases; L. The reassignment or promotion of an employee to a non-supervisory position during the probationary period served by new supervisors; M. Separation of probationary employees during their probationary period; N. Reduction-in-Force; O. Matters beyond the control of the Employer; P. ~~Oral counselings~~;	5, U.S.C. (relating to national security; D. Any examination, certification, or appointment; E. The classification of any position which does not result in the reduction in grade or pay of an employee; F. Mere non-selection for promotion from a group of properly ranked or certified candidates. This does not apply to the right to grieve over improper procedures used during the selection process; G. Termination of temporary promotion; H. Termination while serving under a time-limited appointment; I. Non-adoption of a suggestion; J. Preliminary notice of a proposed action which, if effected, would be covered by this Article or excluded	counseling; letters of warning; leave restriction letters; performance improvement plans; and removals. Also, if an employee leaves the bargaining unit, the grievance would be abandoned.

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	~~Q. Letters of Instruction;~~ ~~R. Letters of Counseling;~~ ~~S. Letters of Warning;~~ ~~T. Leave Restriction Letters;~~ ~~U. Performance Improvement Plans (PIPs);~~ V. Determination of telework eligibility (eligibility of the position or person); W. X. Y. ~~Removal;~~ BB. CC. DD. EE. FF. GG. Any performance rating; HH. II. JJ. KK. LL. MM. NN. OO. PP. QQ. ; or RR. Recruitment, Relocation, and Retention Incentives (this shall not be construed to extinguish or lessen any right or	by items A through E above. K. Any incentive pay, honorary, or discretionary awards, including quality step increases; L. The reassignment or promotion of an employee to a non-supervisory position during the probationary period served by new supervisors; M. Separation of probationary employees during their probationary period; N. Reduction-in-Force; O. Matters beyond the control of the Employer; ~~P. Oral counselings;~~ ~~Q. Letters of Instruction;~~ ~~R. Letters of Counseling;~~ ~~S. Letters of Warning;~~ ~~T. Leave Restriction Letters;~~ ~~U. Performance Improvement Plans (PIPs);~~ V. Determination of telework eligibility (eligibility of the position or person); W. X.	

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	remedy under sub-chapter 12 of title 5, United States Code, or any of the laws referred to in 5 U.S.C. § 2302(d)). ~~In the event an employee leaves the bargaining unit while a grievance is pending, the grievance will be considered abandoned.~~	BB. CC. DD. EE. FF. GG. Any performance rating; HH. II. JJ. KK. LL. MM. NN. OO. PP. QQ. ; or RR. Recruitment, Relocation, and Retention Incentives (this shall not be construed to extinguish or lessen any right or remedy under sub-chapter 12 of title 5, United States Code, or any of the laws referred to in 5 U.S.C. § 2302(d)).	
4. Art. 36, Section 4, Appeal or Grievance Option	An employee alleging discrimination or affected by a removal or reduction in grade based on unacceptable performance, or an	An employee alleging discrimination or affected by a removal or reduction in grade	

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	adverse action consisting of a suspension of 15 days or more, or a furlough of 30 days or less, or a reduction in grade and/or pay, may, at his or her option, raise the matter under the appropriate statutory appellate procedure or this Article, but not both. For purposes of this Section and pursuant to 5 U.S.C. §§ 7121(d) and (e) (1), an employee shall be deemed to have exercised his/her option under this Section at such time the employee timely files a notice of appeal under the applicable procedure or timely files a grievance in writing in accordance with the provisions of this Article, whichever occurs first.	based on unacceptable performance, or an adverse action consisting of a suspension of 15 days or more, or a furlough of 30 days or less, or a reduction in grade and/or pay, may, at his or her option, raise the matter under the appropriate statutory appellate procedure or this Article, but not both. For purposes of this Section and pursuant to 5 U.S.C. §§ 7121(d) and (e) (1), an employee shall be deemed to have exercised his/her option under this Section at such time the employee timely files a notice of appeal under the applicable procedure or timely files a grievance in writing in accordance with the provisions of this Article, whichever occurs first.	
5. Art. 36, Section 5, Representation	A. An employee who files a grievance under this procedure may be represented only by an individual designated by the Council 169 Local. The provisions of Article 1, Section 3 apply as appropriate. B. An employee or group of employees may present a grievance under this	A. An employee who files a grievance under this procedure may be represented only by an individual designated by the Council 169 Local. The provisions of Article 1, Section 3 apply as appropriate.	The Agency's proposal properly places the responsibility for Union-called witnesses on the Union and the Agency is not subsidizing the Union's litigation.

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	procedure without representation as long as the resolution of the grievance is not inconsistent with the terms of this Agreement and providing that a Council 169 Local representative is given an opportunity to be present at the grievance proceeding. C. In the interest of expeditious and economical processing of grievances, the Council 169 Local will designate a representative from within the employee's geographic area. When it is not possible to designate a representative from the employee's geographic area, the Council 169 Local will pay travel and per diem for the Council 169 Local representative for representational functions associated with the formal step of the grievance procedure specified in Section 6 of this Article. In no case will the Employer grant official time or bear the costs of travel and per diem for such representational functions for a representative who is not an employee of DLA.	B. An employee or group of employees may present a grievance under this procedure without representation as long as the resolution of the grievance is not inconsistent with the terms of this Agreement and providing that a Council 169 Local representative is given an opportunity to be present at the grievance proceeding. C. A Council 169 Local representative will be on official time when performing representational functions under this Article during normal duty hours. In the interest of expeditious and economical processing of grievances, the Council 169 Local will designate a representative from within the Employee (BUE)'s geographic area. When it is not possible to	S5.C: For grievances, the appointed Union representative will be in the geographical area. If this is not possible, then the Union will pay travel and per diem for the representative. Also, the union's proposal provides for official time.

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		designate a representative from the Employee (BUE)'s geographic area and the grievance involves a suspension of 30 days or more, a demotion or a removal for cause, the Agency will pay for a reasonable amount of travel and per diem, as applicable, for the Council 169 Local representative for representational functions associated with the formal step of the grievance procedure specified in Section 8 of this Article. Authorization for such payment will be subject to the Official Travel provisions of this Agreement. In no case will the Employer grant official time or bear the costs of travel and per diem for such representational functions for a representative who is not an Employee (BUE) of	

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		DLA, unless mutually agreed otherwise.	
6. Art. 36, Section 6, Grievance Procedure	This Section describes procedures for grievances submitted by the parties described in Sections 2.B, C, and D above. The specified time frames may be extended by mutual agreement. A. All formal disciplinary actions, to include suspensions and, demotions, may be grieved within 10 workdays from the date of the notice of decision. Grievances are submitted to the field activity Commander or Director, or the Headquarters J-Code Director or equivalent that may designate a representative to address the issue. When the supervisor, union representative, and/or grievant is not in the same geographic location, the parties shall use electronic means (e.g., telephone, VTC) if the employee requests a face-to-face meeting. All formal disciplinary actions, to include suspensions and demotions. must be submitted as formal grievances. B. Informal Grievance Process: 1. It is the intent of the parties to resolve grievances at the lowest	This Section describes procedures for grievances submitted by the parties described in Sections 2.B and C, ~~and D above~~. The specified time frames may be extended by mutual agreement. A. All formal disciplinary actions, to include suspensions, demotions, and removals, may be grieved within 10 workdays from the date of the notice of decision. Grievances are submitted to the field activity Commander or Director, or the Headquarters J-Code Director or equivalent that may designate a representative to address the issue. When the supervisor, union representative, and/or grievant is not in the same geographic location, the parties shall use electronic means (e.g., telephone,	The Agency's proposal streamlines the grievance procedure by not including informal corrective actions (e.g., oral warnings, letters of warning, etc.) in its coverage, and reducing various timelines. The Agency's proposal also requires the grievance to be signed by the grievant to ensure that any resulting remedy is properly ascribed. Finally, the Agency's proposal forces the parties to invoke arbitration timely.

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	possible level and that grievances follow the reporting chain of the employee. The intent to follow the reporting chain does not preclude a Commander/Director/J-Code Director or equivalent from designating an official outside the chain of command as his/her representative to address the issue. a. The grievance may be taken up orally or in writing by the grievant(s) and the Council 169 Local representative with the immediate supervisor. The informal grievance must be initiated within 10 workdays from the date the grievant became aware of the act or occurrence that gave rise to the grievance. The first-level supervisor will advise the employee and representative if s/he does not have the authority to grant the requested relief and within five (5) workdays will refer the grievance to the management official who	VTC) if the employee requests a face-to-face meeting. All formal disciplinary actions, to include suspensions, demotions, and removals, must be submitted as formal grievances. B. Informal Grievance Process: 1. It is the intent of the parties to resolve grievances at the lowest possible level and that grievances follow the reporting chain of the employee. The intent to follow the reporting chain does not preclude a Commander/Director/J-Code Director or equivalent from designating an official outside the chain of command as his/her representative to address the issue.	B (1) (a) grievance must be initiated within 10 workdays v. 20 in the union proposal. Additionally, the union proposal dictates the role of management officials

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	has the authority to address the grievance. The management official hearing the informal grievance will provide a written or oral response within five (5) workdays after presentation of the grievance. Informal grievances that are submitted in writing will be responded to in writing. b. If the matter is not satisfactorily resolved at the informal grievance step, then the grievant may, within 10 workdays of the grievance response, submit the grievance in writing through the formal grievance process. C. Formal Grievance Process: 1. Formal grievances are submitted to the Commander/Director or Headquarters J-Code Director or equivalent in the employee's chain of command. The official receiving the grievance or his/her	a. The grievance may be taken up orally or in writing by the grievant(s) and the Council 169 Local representative with the immediate supervisor. The informal grievance must be initiated within 20 workdays from the date the grievant became aware of the act or occurrence that gave rise to the grievance. The first-level supervisor will advise the employee and representative if s/he does not have the authority to grant the requested relief and within five (5) workdays will refer the grievance to the management official who has the	during the grievance process. S6.A: Procedure for formal disciplinary actions; does not include removals. S6.B: Informal grievances to be initiated within 10 workdays. S6.C1: Procedure for formal grievances and issuance of final Agency decision.

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	designated representative will meet with the grievant to discuss the grievance within 10 workdays of receipt of the formal grievance. Such meetings may be conducted via telephone or VTC when the supervisor, union representative, and/or grievant are not in the same location. Within 10 workdays after the grievance meeting, the Commander/Director/J-Code Director or equivalent, or designee, will issue a written decision to the grievant and the Council 169 Local representative. The decision will contain specific rationale and constitutes the final Agency decision. Adverse actions appealable through this process will not be stayed pending the resolution, if any, of the grievance. 2. Formal grievances must be signed by the grievant(s) and must contain the following data: a. The aggrieved employee(s)' name, position title, grade, and organization; b. A description of the basis for the grievance including, where appropriate, facts	authority to address the grievance. The supervisor/manager with the authority will be the employer's person required to discuss the issue. Any Employer adviser (HR/Attorney) will that doesn't have authority to make a decision will not interfere with the discussion. Any supervisor unless mutually agreed upon will not have any other person in the meeting unless the Union is allowed another Representative, one for one. The management official hearing the informal grievance will provide a written or oral response within five	S6.C2: Mandatory requirements for what a formal grievance must contain. Grievance must be signed by grievant. Failure to provide information will result in the grievance being dismissed with prejudice. S6.D: Grievance filed by the Employer and Council

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	such as times, dates, names, and similar pertinent data and the article of the MLA or local agreement, if applicable, at issue. Failure to cite the specific MLA articles/provisions or local agreement articles/provisions at issue will result in dismissal of the grievance with prejudice; c. A brief statement of the step(s) taken to resolve the grievance informally; d. The personal remedy (corrective, not punitive action) that is being sought; e. A statement that discrimination based on race, color, religion, age, sex, or national origin is or is not an issue in the grievance; and f. Identification of the employee(s)' representative. Failure to meet any of these requirements will result in the	(5) workdays after presentation of the grievance. Informal grievances that are submitted in writing will be responded to in writing. b. If the matter is not satisfactorily resolved at the informal grievance step, then the grievant may, within 10 workdays of the grievance response, submit the grievance in writing through the formal grievance process. C. Formal Grievance Process: Formal grievances are submitted to the Commander/Director or Headquarters J-Code Director or equivalent in the employee's chain of command. The official receiving the grievance or his/her designated representative will meet with the grievant to discuss the	169 Local must be filed within 10 workdays of the date the party knew or should have known of issue being grieved. Failure to meet requirements will result in the grievance being dismissed with prejudice. S6.E: If Employer or Council 169 Local is not satisfied with the decision, then the grievance can be advanced to arbitration within 10 workdays of receipt of grievance decision. Failure to timely invoke arbitration will render the grievance decision final

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	grievance being dismissed with prejudice. D. Grievances filed by the Employer will be submitted to the Council 169 Local President. Grievances filed by the Council 169 Local will be submitted to the Commander/Director/J-Code Director or equivalent. Such grievances must be submitted in writing within 10 workdays from the date the grieving party knew or should have known of the act or occurrence that gave rise to the grievance. The grievance will include a description of the basis for the grievance including, where appropriate, facts such as times, dates, names, and similar pertinent data, the MLA articles/provisions or local agreement articles/provisions at issue, and the specific requested relief. Failure to meet any of these requirements will result in the grievance being dismissed with prejudice. The parties will meet within 10 workdays to discuss the matter. The party receiving the grievance will provide a written response within 10 workdays following the grievance meeting.	grievance within 10 workdays of receipt of the formal grievance. Such meetings may be conducted via telephone or VTC when the supervisor, union representative, and/or grievant are not in the same location. Within 10 workdays after the grievance meeting, the Commander/Director/J-Code Director or equivalent, or designee, will issue a written decision to the grievant and the Council 169 Local representative. **If the Grievant/Representative is not satisfied with the grievance decision, then the Union may advance the grievance to arbitration in accordance with Article 37 of this Agreement** **~~1.~~ Suspensions, demotions, removals, and unsatisfactory performance ratings will not be affected, and letters of reprimand will not be placed in the eOPF until a final Agency decision on the**	

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	E. If the local Employer Organization or the Council 169 Local representative is not satisfied with the grievance decision, then that party may advance the grievance to arbitration in accordance with Article 37 of this Agreement. Such request must be made within 10 workdays after receipt of the grievance decision. Failure to timely invoke arbitration will render the grievance decision final. F. Grievances over the interpretation and/or application of this Agreement which are resolved through local grievance or arbitration procedures will not be construed as establishing controlling precedent over that portion of the Agreement that was at issue and will be binding only on the Council 169 Local and the local Employer Organization involved.	**grievance is made** .The decision will contain specific rationale and constitutes the final Agency decision~~.~~ ~~Adverse actions appealable through this process will not be stayed pending the resolution, if any, of the grievance.~~ **2.** Formal grievances ~~must~~ should be signed by the grievant(s) and ~~must~~ contain the following data: a. The aggrieved employee(s)' name, position title, grade, and organization; b. A description of the basis for the grievance including, where appropriate, facts such as times, dates, names, and similar pertinent data and the article of the MLA or local agreement, if	

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	.	applicable, at issue. Failure to cite the specific MLA articles/provisions or local agreement articles/provisions at issue will result in dismissal of the grievance with prejudice; c. A brief statement of the step(s) taken to resolve the grievance informally; d. The personal remedy (corrective, not punitive action) that is being sought; e. A statement that discrimination based on race, color, religion, age, sex, or national origin is or is not an issue in the grievance; and f. Identification of the employee(s)' representative.	

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		~~Failure to meet any of these requirements will result in the grievance being dismissed with prejudice.~~ D. Grievances filed by the Employer will be submitted to the Council 169 Local President. Grievances filed by the Council 169 Local will be submitted to the Commander/Director/J-Code Director or equivalent. Such grievances must be submitted in writing within 20 workdays from the date the grieving party knew or should have known of the act or occurrence that gave rise to the grievance. The grievance will include a description of the basis for the grievance including, where appropriate, facts such as times, dates, names, and similar pertinent data, the MLA	

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		articles/provisions or local agreement articles/provisions at issue, and the specific requested relief. ~~Failure to meet any of these requirements will result in the grievance being dismissed with prejudice.~~ The parties will meet within 10 workdays to discuss the matter~~.~~ The party receiving the grievance will provide a written response within 10 workdays following the grievance meeting. ~~E.~~ If the local Employer Organization or the Council 169 Local representative is not satisfied with the grievance decision, then that party may advance the grievance to arbitration in accordance with Article 37 of this Agreement. Such request must be made within 10 workdays after receipt of the grievance decision. ~~Failure to timely~~	

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		~~invoke arbitration will render the grievance decision final.~~ F. Grievances over the interpretation and/or application of this Agreement which are resolved through local grievance or arbitration procedures will not be construed as establishing controlling precedent over that portion of the Agreement that was at issue and will be binding only on the Council 169 Local and the local Employer Organization involved.	
7. Art. 36, Section 7, Disputes between the Executive Board of	A. This Section covers disputes over action taken (or alleged failure to take appropriate action) by the Executive Board of AFGE Council 169 or DLA officials which involve the	A. This Section covers disputes over action taken (or alleged failure to take appropriate action) by the Executive Board of AFGE	No substantive difference

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Council 169 and DLA	interpretation and/or application of this Agreement. When the Executive Board of AFGE Council 169 files a grievance which raises the same issue as that filed by a local or an employee, the local or employee grievance(s) will be incorporated into the grievance submitted by the Executive Board of AFGE Council 169. No further processing of the local grievance will occur once the grievance has been incorporated into the Council 169 grievance. This same limitation applies to grievances submitted by a Field Activity when the Agency files a grievance on the same issue. B. Council 169 and the Employer agree to exert efforts to resolve matters raised under this procedure informally and as expeditiously as possible. To facilitate informal resolution: 1. Council 169 and the Employer will fully inform the other party of the matter at issue at the earliest opportunity. 2. Informal resolution will not be construed as establishing binding precedent on a particular practice or on the interpretation of this Agreement.	Council 169 or DLA officials which involve the interpretation and/or application of this Agreement. When the Executive Board of AFGE Council 169 files a grievance which raises the same issue as that filed by a local or an employee, the local or employee grievance(s) will be incorporated into the grievance submitted by the Executive Board of AFGE Council 169. No further processing of the local grievance will occur once the grievance has been incorporated into the Council 169 grievance. This same limitation applies to grievances submitted by a Field Activity when the Agency files a grievance on the same issue. B. Council 169 and the Employer agree to exert	

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	C. If the matter is not resolved informally, then: 1. The Council 169 President or Director DLA (or designee), whichever is the grieving party, will communicate in writing to the other party, stating the precise nature of the grievance, a description of the full background and/or circumstances leading to the grievance, applicable records and/or support documents, a specific citation to the articles/provisions of the MLA applicable to the grievance along with a statement explaining why or in what manner it is believed that the particular portion(s) in/are being misinterpreted or misapplied, the specific relief or adjustment sought, and a description of efforts taken to resolve the matter informally and why the offered informal resolution, if any, was considered unsatisfactory. 2. The Council 169 President or Director DLA (or designee), whichever is the responding party, will prepare a final written	efforts to resolve matters raised under this procedure informally and as expeditiously as possible. To facilitate informal resolution: 1. Council 169 and the Employer will fully inform the other party of the matter at issue at the earliest opportunity. 2. Informal resolution will not be construed as establishing binding precedent on a particular practice or on the interpretation of this Agreement. C. If the matter is not resolved informally, then: 1. The Council 169 President or Director DLA (or designee), whichever is the grieving party, will communicate in writing to the other party, stating the precise nature of the grievance,	

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	response to the written grievance within 10 workdays following receipt of the grievance. 3. The grieving party will notify the respondent of its acceptance of the final written response or its intent to invoke arbitration within 10 workdays following receipt of the response.	a description of the full background and/or circumstances leading to the grievance, applicable records and/or support documents, a specific citation to the articles/provisions of the MLA applicable to the grievance along with a statement explaining why or in what manner it is believed that the particular portion(s) in/are being misinterpreted or misapplied, the specific relief or adjustment sought, and a description of efforts taken to resolve the matter informally and why the offered informal resolution, if any, was considered unsatisfactory. 2. The Council 169 President or Director	

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		DLA (or designee), whichever is the responding party, will prepare a final written response to the written grievance within 10 workdays following receipt of the grievance. 3. The grieving party will notify the respondent of its acceptance of the final written response or its intent to invoke arbitration within 10 workdays following receipt of the response.	
8. Art. 36, Section 8, Failure to meet Time Requirements	Time limits at any step of the grievance procedure may be extended by mutual consent of the parties. Failure of the Employer to meet any of the prescribed time limits of this procedure without mutual consent to extend the same will permit the grievant or the Union to elevate the grievance immediately to the next step of the process. Failure of the ~~Union~~ parties to meet any of the prescribed time limits without mutual consent to extend the	Time limits at any step of the grievance procedure may be extended by mutual consent of the parties. Failure ~~of the Employer~~ to meet any of the prescribed time limits of this procedure without mutual consent to extend the same will permit the grievant or the Union to elevate the grievance immediately to the next step of the process.	The Agency's proposal forces the parties to abide by the applicable time limits. Failure of the Employer to be timely will allow the Union to advance grievance to the next step. Failure of the Union to be timely will result in dismissal of the grievance with prejudice.

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	same will result in the dismissal of the grievance with prejudice	Failure to meet time limits will allow grievance to be elevated to the next step.	
9. Art. 36, Section 9, Witnesses	In the event either party needs a witness(s) during a grievance meeting, DLA employee(s) who are called by the parties will be in a duty status if otherwise in a duty status. The Employer will not prevent reasonable access to witnesses in advance of grievance meetings. Witness testimony may be provided via telephone, sworn statement, declaration, or VTC. In the event a party requires in-person testimony of a witness who is not local, travel and per diem expenses will be paid by the person calling such witness. Witness participation is voluntary.	In the event either party needs a witness(s) during a grievance meeting, DLA employee(s) who are called by the parties will be in a duty status if otherwise in a duty status. The Employer will not prevent reasonable access to witnesses in advance of grievance meetings. Witness testimony may be provided via telephone, sworn statement, declaration, or VTC. In the event a party requires in-person testimony of a witness who is not local, travel and per diem expenses will be paid by the Agency	The Agency's proposal properly assigns responsibility for paying travel and per diem on the party calling the witness; neither party should be forced to subsidize the other party's litigation.
10. Art. 36, Section 10, Records and Documents	The Employer will, upon request and receipt of a statement articulating a particularized need, furnish the grievant(s) and the Union with pertinent records regarding a grievance filed pursuant to this Article, subject to applicable laws and regulations.	The Employer will, upon request furnish the grievant(s) and the Union with pertinent records regarding a grievance filed pursuant to this Article, subject to applicable laws and regulations.	The Agency's proposal requires the Union to meet its obligations under the Statute, and will foreclose any unnecessary or unwarranted document production. Documents

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		.	will be provided by the Employer based on receipt of statement of particularized need by Union. The union would have documents provided at their request.

Article 37 – Arbitration

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 37, Section 1, General	A. This Article establishes procedures for the arbitration of disputes between the Union (i.e., the Executive Board of Council 169 or a Council 169 Local) and the Agency which are not satisfactorily resolved by the negotiated grievance procedure contained in Article 36 of this Agreement. B. The party moving for arbitration must follow the procedures set forth in this Article. Failure or refusal to follow any of these steps within the prescribed time limits constitutes an abandonment of the arbitration request with prejudice and renders the grievance decision final. C. Failure to request arbitration within the time period set forth in Article 36 constitutes an abandonment of the arbitration request with prejudice and renders the grievance decision final. D. The non-moving party for arbitration must follow the procedures set forth in this Article. Failure by the non-moving party to follow any of these steps within the prescribed time limits will	This Article establishes procedures for the arbitration of disputes between the DLA Council and the Employer which are not satisfactorily resolved by the negotiated grievance procedure contained in Articles 13 and 36 of this Master Labor Agreement.	The Agency's proposal requires the parties to follow the procedures for arbitration, ensuing that the process for the same moves forward in a timely manner. S1.B: Moving party must follow the procedures in the Article. Failure to do so constitutes an abandonment of the arbitration with prejudice and the grievance decision will be final. S1.B: No Union proposal S1.C: Failure to timely request arbitration constitutes an abandonment of the arbitration request with prejudice and the grievance decision will be final. S1.C: No Union proposal S1.D: The non-moving party must follow the procedures in this Article. Failure to do so will result in payment of

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	result in full payment of fees and expenses of the arbitration by the non-moving party, notwithstanding Section 4 of this Article.		arbitration fees and expenses, regardless of Section 4 (who prevails). . S1.D: No Union proposal.
2. Art. 37, Section 2, Selection of Arbitrator	A. If the Union and the Agency fail to settle any grievance processed under Article 36 of this MLA, either party may, within the time limits specific in the negotiated grievance procedure, notify the other in writing of its intention to submit the matter to arbitration. Within five (5) workdays from the date of that notification, the party requesting arbitration will request the Federal Mediation and Conciliation Service (FMCS) provide a list of seven (7) impartial persons qualified to act as arbitrators. The request to FMCS will be made using the form on the FMCS website. The party requesting	A. If the DLA Council and the Agency fail to settle any grievance processed under Article 36 of this Agreement, either party may, within the time limits specified in the negotiated grievance procedure, notify the other in writing of its intention to submit the matter to arbitration. Within 5 working days from receipt of the request for arbitration, the parties shall jointly request the Federal Mediation and Conciliation Service (FMCS) to provide a list of five impartial persons qualified to act as arbitrators. The request to	S2.A: The party requesting arbitration must pay for and request panel from FMCS. Failure to do so will result in abandonment of the arbitration request with prejudice and render the grievance decision final. Once the arbitrator has been selected, failure to schedule or attempt to schedule a hearing will constitute an abandonment of the arbitration with prejudice. S2.B: Selection of arbitrator within 5 workdays of receipt

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	arbitration is solely responsible for paying for the list of arbitrators. Failure of the moving party to request the list of arbitrators from FMCS within the specified time frame constitutes and abandonment of the arbitration request with prejudice and renders the grievance decision final. Failure of the requesting party to simultaneously remit the fee charged by FMCS with the request to obtain the list of arbitrators will constitute an abandonment of the arbitration with prejudice and the grievance decision will be final. Once an arbitrator has been selected, failure to schedule or attempt to schedule a hearing within 90 calendar days of selection will constitute an abandonment of the arbitration with prejudice. B. Within five (5) workdays from receipt of the list, the parties will confer, as appropriate, to select an arbitrator. If they cannot mutually agree on one name from the list, then the parties will alternately strike one name from the list until only one name remains. Which party strikes first will be determined by coin toss. The	FMCS will include a brief statement of the issue(s) in dispute. If the parties cannot mutually agree on the statement to be provided, each party may submit a separate statement. B. Within 5 working days from receipt of the list, the parties will confer, as appropriate, to choose an arbitrator. If they cannot mutually agree on one name from the list, the parties will alternately strike one name from the list until only one name remains. The remaining name on the list shall be the duly selected arbitrator. The FMCS shall be immediately notified of the selection. C. The FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event: (1) either party refused to participate in the selection of an arbitrator, and/or (2) upon inaction or unreasonable delay on the part of either party.	of list from FMCS. Who strikes first determined by coin toss. The party moving for arbitration must notify FMCS of selection. Failure to do so constitutes an abandonment of the arbitration and the grievance decision will be final.

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	remaining name on the list will be the duly selected arbitrator. The party moving for arbitration will notify FMCS of the selection within two (2) workdays after such selection. Failure to notify FMCS within this timeframe constitutes and abandonment of the arbitration with prejudice and renders the grievance decision final.		
3. Art. 37, Section 3, Arbitration Proceedings	A. Once an arbitration hearing has been scheduled, there will be no postponements or rescheduling of the hearing except by mutual agreement of the parties. B. By mutual consent, arbitration may be conducted as oral proceedings with no verbatim transcript and no filing of briefs. In the event one of the parties desires a transcript of the hearing, that party shall be responsible for making arrangements for and paying the full cost of the transcript, which includes the cost of the court reporter. If the other party later wishes a copy of the transcript, then that party will pay for half of the combined cost of the original transcript and the second copy,	A. Once an arbitration hearing has been scheduled, there shall be no postponement or rescheduling of the hearing except by the written mutual agreement of the parties. B. By mutual consent, arbitration may be conducted as oral proceedings with no verbatim transcript and no filing of briefs. In the event only one of the parties desires a transcript of the proceedings, that party shall be responsible for making arrangements for and the full cost of the transcript. If the other party later wishes a copy of the transcript, that party shall pay for	S3.B: Party requesting transcript is responsible for the cost of the transcript and court reporter. If the other party later wants a copy, those costs will be split in half. S3.B: No Union language for cost of court reporter. S3.C: At least 15 workdays before opening of hearing, the parties will exchange list of witnesses and facts/evidence that may be stipulated to. Either party may make objections to witnesses, with

Article 37 – Arbitration

Article/Section	Agency Proposal	Union Proposal	Key Differences
	as well as half the cost of the court reporter. C. At least 15 workdays before the opening of the arbitration hearing, the parties will exchange lists of witnesses whom they expect to testify, along with a list of facts and/or evidence that may be stipulated to in advance of the hearing. Only material and relevant witnesses will be called. Either party may object to the other party's witness (es) on the grounds that the witness' proffered testimony is not relevant, probative, or competent. If the parties cannot agree on the list of witnesses, then the arbitrator will have the sole discretion to determine who may testify. Failure to meet the 15-workday time period will result in exclusion of the witness. This does not apply to rebuttal witnesses. D. Any pre-hearing motions (e.g., motion to dismiss, motion to exclude witness, etc.) will be heard and determined by the arbitrator at least 10 calendar days prior to the hearing.	half of the combined cost of the original transcript and the second copy. C. At least 10 working days before the opening of the arbitration hearing, the parties shall exchange lists of witnesses whom they expect to have testify along with a listing of facts and/or evidence that may be stipulated in advance of the hearing. If the parties cannot agree on a slate of witnesses, it shall be at the sole discretion of the arbitrator to determine who may testify. D. The grievant, his/her representative, and the DLA Employee (BUE) who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration hearing. All DLA participants shall be in a duty status. E. The arbitrator's award shall be limited solely to answering the question(s) put to him/her by the parties' submission. In the event	arbitrator having the final say (sole discretion). Failure to meet the 15-day requirement will result in exclusion of the witness (not applicable to rebuttal witnesses). S3.D: Pre-hearing motions to be heard and determined by the arbitrator at least 10 days prior to hearing. S3.D: No Union proposal. S3.G: Issues of grievability/arbitrability will be submitted to the arbitrator for decision prior to proceeding on the merits. Arbitrator will issue a written decision on grievability/arbitrability. If the issue is not grievable/arbitrable, then no hearing on the merits. Grievability/arbitrability cannot be waived and may be raised at any point in the grievance and arbitration

Article 37 – Arbitration

Article/Section	Agency Proposal	Union Proposal	Key Differences
	E. The grievant, his/her representative, and the DLA employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration hearing. All DLA employee participants will be in a duty status. F. The arbitrator's award will be limited solely to answering the question(s) put to him/her by the parties' submission. In the event the parties are unable to agree to a submission statement, the arbitrator will be empowered to formulate his/her own statement of the issue(s) to be resolved. G. Issues concerning grievability/arbitrability will be submitted to the arbitrator for a determination prior to proceeding on the merits. The arbitrator must issue a final written decision on all grievability/arbitrability issues before any hearing on the merits of the grievance. If the arbitrator determines that the matter cannot be grieved/arbitrated, then there will not be a hearing on the merits. Issues concerning grievability/arbitrability	the parties are unable to agree to a submission statement, the arbitrator shall be empowered to formulate his/her own statement of the issue(s) to be resolved. F. The arbitrator shall be requested to render and simultaneously serve a written decision upon both parties within 30 calendar days after the conclusion of the hearing.	process. S3.G: No Union proposal.

Article 37 – Arbitration

Article/Section	Agency Proposal	Union Proposal	Key Differences
	cannot be waived and can be asserted at any point in the grievance and arbitration process. H. The arbitrator will be requested to render and simultaneously serve a written award on both parties within 30 calendar days of the close of the hearing.		
4. Art. 37, Section 4, Cost of Arbitration	. The fee and expenses of the arbitrator will be borne by the losing party, or split 50-50 if no winner or loser can be determined. Additionally, the party whose principal contention is rejected by the arbitrator will be liable for the cost of the arbitration referral fee. The parties are encouraged to enter into settlement discussions early in the process. In the event either party initiates a settlement discussion after the point in time the arbitrator's fees are incurred, and a settlement agreement is reached on or before the hearing date, the offeror of the settlement will pay all fees and expenses charged by the arbitrator. ~~Settlements requiring a "clean 50" or the removal of adverse information from an employee's Official Personnel Folder are not authorized.~~	The fee and expenses of the arbitrator shall be borne equally by the parties including the cost of the list of arbitrators obtained from the FMCS. The parties are encouraged to enter into settlement discussions early in the process. In the event either party initiates a settlement discussion after the point in time an arbitrator's fees are incurred, and a settlement agreement is reached on or before the date of the hearing, the offeror of the settlement shall pay all fees and expenses charged by the arbitrator.	Cost of the arbitration will be paid by the losing party, or 50-50 if no loser can be determined. The party whose principle contention is rejected will be responsible for arbitration referral fee

Article 37 – Arbitration

Article/Section	Agency Proposal	Union Proposal	Key Differences
5. Art. 37, Section 5, Witnesses	In the event either party needs a witness/witnesses during an arbitration hearing, DLA employee(s) who are called by the parties will be in a duty status. Testimony by witnesses who are not at the site of the arbitration hearing will be provided normally via telephone, sworn statement, declaration, or VTC, unless the arbitrator determines that in-person testimony is necessary. For Union grievances, in the event the arbitrator determines that s/he is unable to render a decision without in-person testimony, the Union will pay travel and per diem for Union witnesses.	In the event either party needs a witness or witnesses during an arbitration hearing, DLA Employee (BUE)(s) who are called by the parties shall be in a duty status. Testimony by witnesses who are not onsite will be normally provided via telephone, sworn statement, declaration, or video teleconference, unless the Arbitrator rules that in-person testimony is essential. For Council 169 grievances, in the event the Arbitrator determines s/he is unable to render a decision without in-person testimony, the Employer will pay travel and per diem for up to 3 union witnesses who are DLA Employee (BUE). For local grievances, in the event the Arbitrator determines s/he is unable to render a decision without in-person testimony, the Employer will pay travel and per diem for 1 union witness who is an Employee (BUE). The Employer will not pay travel and per diem for union witnesses in local technical cases such as contract interpretations.	The Agency's proposal properly places the responsibility of paying travel and per diem for Union witnesses on the Union.

Article 37 – Arbitration

Article/Section	Agency Proposal	Union Proposal	Key Differences
6. Art. 37, Section 6, Exceptions to Arbitrator's Award	The arbitrator's award will be final and binding on the parties. Either party, however, may file exceptions to an award with the Federal Labor Relations Authority pursuant to its regulations.	The arbitrator's award shall be binding on the parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority (FLRA) under regulations prescribed by the Authority.	No substantial difference
7. Art. 37, Section 7, Clarification of Arbitrator's Award	Disputes between the parties over the application of an arbitrator's award may be returned to the arbitrator for clarification. The party seeking clarification will bear the full cost of such clarification.	Disputes between the parties over the application of an arbitrator's award may be returned for clarification. The party seeking clarification shall bear the full cost of such clarification.	None

Article 39 – Stays of Suspensions of More Than 14 Days, Removals for Cause, and Demotions

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 39, Section 1, General	No Agency proposal.	An Employee (BUE) may request a stay of a suspension of more than 14 days, removal for cause or demotion when the Employee (BUE): A. timely requests and is denied participation in ADR as described in Article 48, Dispute Resolution Procedures, or B. foregoes ADR and files a timely grievance or MSPB appeal. The stay must be requested in writing and submitted to the field activity Commander or Director, or the Headquarters J-Code Director or equivalent, prior to the effective date of the action. The action will be stayed for 45 calendar days from the effective date of the action or until an arbitrator or MSPB judge issues an award, whichever comes first. In the event MSPB declines jurisdiction, the stay will be terminated and the action processed. Decision notices for such 15 day or more suspensions, demotions and	The Agency proposes to delete this Article.

Article 39 – Stays of Suspensions of More Than 14 Days, Removals for Cause, and Demotions

Article/Section	Agency Proposal	Union Proposal	Key Differences
		removals will provide ten workdays notice prior to the effective date in order to provide the Employee (BUE) with sufficient time to request a stay.	
2. Art. 39, Section 2, Actions not Covered	No Agency proposal.	This article does not apply to reduction in force actions, performance based actions, actions based upon positive drug tests, or removals where there is sufficient evidence that: (1) retention of the Employee (BUE) is injurious to him/herself, his/her fellow workers, or the general public; (2) retention of the Employee (BUE) is resulting or will result in damage to Government property; or (3) may compromise national security or the internal security practices of the Employer. This Article does not apply where there is reasonable cause to believe the Employee (BUE) has committed a crime for which a sentence of imprisonment may be imposed.	The Agency proposes to delete this Article.

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 48, Section 1, Definitions	No Agency proposal.	A. Alternative Dispute Resolution (ADR) is a process designed to resolve disputes in a manner that avoids the cost, delay, and unpredictability of the traditional adjudicatory process. The overall objectives of the ADR Program are is to promote open communication between disputing parties, reduce costs, and resolve disputes at the lowest possible organizational level at the earliest opportunity. The parties agree to encourage managers, union representatives and Employee (BUE) to consider ADR Alternative	The Agency proposes to delete this Article, as there have been grievances over the use or not of ADR. Also, we don't feel that there is a need to have a contractual requirement for a completely voluntary arrangement.

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		Dispute Resolution as a means of resolving disputes. ADR is the preferred means as it is a positive means of resolving conflict without resorting to adversarial approaches. B. Mediation. A dispute resolution process in which a trained, impartial third party helps the parties communicate with each other and explore alternatives to meet their interests. Mediation emphasizes problem solving rather than a determination of fault or adversarial procedures.	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		C. Parties are also encouraged to use other types of ADR, such as, facilitation, conciliation, etc. €. Mediator. The mediator is a trained neutral third party who provides assistance to disputing parties in attempting to reach a resolution. D. Management Representative. Is a management official who has been delegated authority to enter into settlement agreements that are binding on the Agency. Normally, in disciplinary	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		actions where a final agency decision has been rendered, The management attendee in ADR will be at a level higher than the deciding official in the matter in hand.	
2. Art. 48, Section 2, Process	No Agency proposal.	A. The parties agree to engage in ADR in good faith to explore issues and options as possible resolutions of part or the entire dispute. B. An Employee (BUE) may request ADR at any	The Agency proposes to delete this Article.

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		time by requesting it through their supervisor. The eEmployer will either approve or disapprove the request. If approved, the employer will arrange the ADR. C. Participation in the ADR process is voluntary for both parties, and may be ended atany time by any party. D. The goal of ADR is to reach a mutually agreeable resolution. Settlement agreements reached as a result of the ADR process are binding on both parties and must be consistent with	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		laws, rules or regulations and may not violate the terms of this Agreement. The language of a settlement agreement that affects conditions of employment of bargaining unit Employee (BUE) will be provided to the Local President or designee prior to effecting an agreement. Such changes may be subject to bargaining in accordance with the provisions of Article 5. Providing this copy to the union will constitute notice under the terms of Article 5. The parties will keep the terms of the settlement agreements confidential to the extent permissible by law, regulation, policy and	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		agreement. It is understood that the terms may be shared with those with a need to know. E. The parties may have advisor(s) of their choice during the mediation process. The parties to the dispute are expected to participate fully in the discussions regarding the dispute and potential resolution. F. Since the parties are discussing matters that may affect their rights, the parties have the right and opportunity to consult with counsel/representatives. G. In matters involving a	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		grievable action: 1. For suspensions, demotions, removals, reprimands and ~~unsatisfactory performance ratings~~, the Employee (BUE) may submit a written request for ADR within 10 work days from the date of the decision notice or the date the performance rating was presented. Selection of ADR suspends the time limit for filing a grievance until the ADR process is complete. The ADR process must be completed within 20 workdays from the date of request, unless the parties mutually agree to an extension. Suspensions, demotions, removals , and unsatisfactory performance ratings will not be effected,	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		and letters of reprimand will not be placed in the eOPF until the Employee (BUE)'s time limit for requesting ADR has expired. Such actions are held in abeyance during ADR. In the event ADR is unsuccessful, the Employee (BUE) may elect to proceed with a formal grievance by filing with the Commander/Director/J-Code Director or equivalent in writing within 5 work days from the date of conclusion of the ADR process. 2. For other matters (not covered in a. above) the Employee (BUE) has 20 days to request ADR or to file a grievance. If ADR is requested the time limit for	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		filing a grievance is suspended until the ADR process is completed or the request for ADR is denied. The ADR process must be completed within 20 workdays, unless the parties mutually agree to an extension. In the event the dispute is not resolved through ADR, the Employee (BUE) may submit a formal grievance within 5 workdays of the conclusion of the ADR process. H. The Employer agrees to use ADR techniques unless it determines ADR is not appropriate. When the Commander/Director/J-Code Director	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		or equivalent decides ADR is not appropriate, the rationale will be provided in writing. Although individual Employer decisions to decline ADR are not grievable, a pattern of consistently avoiding ADR is not in keeping with the spirit of this agreement. The Council 169 Executive Board will advise the Director of DLA of such situations. Decisions to decline ADR processes, procedures, or use are not grievable under any circumstance. I. In order for ADR to succeed, the participants must have confidence in the neutrality of the mediator/facilitator. In the event either party believes	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		the neutral party is not truly a neutral, another mediator/facilitator will be selected. J. The parties understand that the mediator shall not decide anything, give legal or other professional advice, evaluate the dispute, or promote any particular outcome. The role of the mediator is to listen; help the parties clarify their issues, interests and statements; and generally, facilitate the parties' discussion. K. The mediator/s shall not testify on behalf of any party. The parties agree not	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		to subpoena the mediator/s or the mediator/s' records. L. Everything said and done in ADR is confidential, except as specifically waived in writing. In addition, until reduced to writing and signed by all parties, all terms of any offers, options, and agreements made in connection with the ADR are considered non binding proposals and are confidential. M. Unless the parties specifically agree otherwise in writing, a written agreement reached through ADR and signed by all	

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
		parties shall be confidential.	
3. Art. 48, Section 3, Evaluation	No Agency proposal.	At the conclusion of the mediation initiative, the parties to the mediation shall be requested (not mandatory) to complete an evaluation form. Upon request the union will be provided copies of the Mediation Evaluation Forms. The forms will be redacted to protect the confidentiality of the ADR process.	The Agency proposes to delete this Article.

Article 48 – Alternative Dispute Resolution

Article/Section	Agency Proposal	Union Proposal	Key Differences
4. Art. 48, Section 4, Records	No Agency proposal.	Since confidentiality considerations shall be maintained throughout the ADR process, no written records of the ADR proceedings shall be maintained.	The Agency proposes to delete this Article.

Article 50 – Duration and Amendments

Article/Section	Agency Proposal	Union Proposal	Key Differences
1. Article 50, Section 1, General	SECTION 1. GENERAL A. This Agreement will remain in effect for a period of six (6) years from its effective date and will be automatically renewed for an additional period of one (1) year unless either party gives notice of a desire to renegotiate portions of or the entire Agreement. Either party may give written notice of the intent to renegotiate this Agreement not more than 90 calendar days or less than 60 calendar days prior to the Agreement expiration date. The written notice will identify the article(s) to be negotiated and will be acknowledged by the other party within 20 calendar days of the date of the written notice. B. If no written notice to amend, modify, or renegotiate the Agreement is submitted by either party within the time period stated in Section 1.A above, then the mandatory provisions of this Agreement will automatically renew for a period of one (1) year, subject to agency head review. All local collective bargaining agreements, memoranda of agreement (MOAs), and memoranda of understanding (MOUs) will expire on the date this Agreement goes into effect. C. Upon receipt of a written notice to amend, modify, or renegotiate this Agreement, both parties to this Agreement will begin negotiating ground rules for negotiations within	This Agreement shall remain in effect for a period of 1 years from its effective date and shall automatically be renewed for additional periods of three years, subject to applicable law and/or regulations, unless either party gives written notice to the other party of its desire to renegotiate portions of this Agreement between 90 to 60 calendar days prior to the three year anniversary. Such negotiations, if held, will be separate and distinct from mid-term bargaining set forth in this Agreement.	The Agency proposes a six year term (for stability and repose). The Agency's proposal also sets out the procedures for notification, response, negotiation of ground rules, and what happens to outstanding MOUs, MOAs, etc. S1.A: One year term, 3 year rollover. S1.B: No Union proposal. S1.B: No Union proposal.

Article 50 – Duration and Amendments

Article/Section	Agency Proposal	Union Proposal	Key Differences
	60 calendar days of the date of the written notice. If negotiations are not completed by the anniversary date of this Agreement, then the mandatory provisions of this Agreement will be automatically extended until a new agreement is negotiated.		
2. Art. 50, Section 2	This Agreement may only be amended, modified, or renegotiated in accordance with the provisions of this Article. This Agreement is effective and binding on the parties upon approval by the agency head, or on the 31st day after its execution if the agency head has neither approved nor disapproved the Agreement. Execution of the Agreement means that the parties to the Agreement have signed and dated the same, as evidenced on the Agreement signature page. For purposes of agency head review, the date the last party signs and dates the signature page will constitute the Agreement's execution date	The Agreement is "affective _____ ."	The Agency's proposal incorporates the requirements of the Statute, as well as defines what constitutes execution of the Agreement and the last date of execution for purposes of agency head review.
3. Art. 50, Section 3	If, after the effective date of this Agreement, any practice develops which is inconsistent with this Agreement, then either party may require the other to conform to the Agreement terms by providing notice of its intention to enforce this Agreement immediately. Thereafter, both parties will comply with the terms of this Agreement	No Union proposal.	The Agency's proposal aims to eliminate non-conformance with the Agreement.

Article 54 – Use of Tobacco Products

Article/Section	Agency Proposal	Union Proposal	Key Differences
1.Article 54, Section 1	Section 1. The Union and Employer recognize that individuals have the right to have an environmentally sound work environment, which includes the right to tobacco-free conditions. In support of the health and wellness of the DLA workforce, the agency encourages participation in tobacco cessation programs as referenced in Article 49 (Wellness/Fitness Program).	Section 1. The Union and Employer recognize that individuals have the right to have an environmentally sound work environment, which includes the right to tobacco-free conditions. In support of the health and wellness of the DLA workforce, the agency encourages participation in tobacco cessation programs as referenced in Article 49 (Wellness/Fitness Program).	No substantial difference
2.Art. 52, Section 2	Section 2. Tobacco products are products made or derived from tobacco that are intended for human consumption, including cigarettes, cigars, little cigars, pipe tobacco, roll-your-own tobacco, smokeless and dissolvable tobacco, and products intended for use in hookahs/water pipes. Electronic nicotine delivery systems, including but not limited to e-cigarettes and vape pens, will also be treated as tobacco products. The parties will comply with terms and requirements set forth in DODI 1010.10.	Section 2. Tobacco products are products made or derived from tobacco that are intended for human consumption, including cigarettes, cigars, little cigars, pipe tobacco, roll-your-own tobacco, smokeless and dissolvable tobacco, and products intended for use in hookahs/water pipes. Electronic nicotine delivery systems, including but not limited to e-cigarettes and vape pens, will also be treated as tobacco products. The parties will comply with terms and requirements set forth in DODI 1010.10.	No substantial difference

Article 54 – Use of Tobacco Products

Article/Section	Agency Proposal	Union Proposal	Key Differences
3.Art. 54, Section 3	Section 3. At installations where DLA is the host, subject to availability of funds, the Employer will provide covered tobacco use areas with protection from the elements within reasonable proximity to the work area, in accordance with applicable regulations. At locations where DLA is the tenant, employees will follow applicable regulations and host installation directives.	Section 3. At installations where DLA is the host, subject to availability of funds, the Employer will provide covered tobacco use areas with protection from the elements within reasonable proximity to the work area, in accordance with applicable regulations. At locations where DLA is the tenant, ~~employees~~ DLA will follow applicable regulations and host installation directives.	The Agency proposal more appropriately outlines employee responsibilities under a collective bargaining agreement to follow the regulations versus a contractual requirement on an agency to follow another agencies regulations.
4.Art. 54, Section 4	Section 4. Employees of DLA will be allowed to use tobacco products during break periods or during their lunch break.	Section 4. Employees of DLA will be allowed to use tobacco products during break periods or during their lunch break.	
5.Art. 54, Section 5	Section 5. Use of tobacco products will only be allowed in outside areas away from any flammable or hazardous substances in accordance with DOD fire codes. Use of tobacco products is prohibited within 50 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where use of tobacco products is prohibited.	Section 5. Use of tobacco products will only be allowed in outside areas away from any flammable or hazardous substances in accordance with DOD fire codes. Use of tobacco products is prohibited within ~~50~~ 25 (twenty-five) feet from entrances, exits, windows that open,	The Agency's proposal is driven by an interest in health and safety as well as the requirements of DODI 1010.10, which prohibits use of tobacco products within 50 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where use of tobacco

Article 54 – Use of Tobacco Products

Article/Section	Agency Proposal	Union Proposal	Key Differences
	The location of outside areas designated for tobacco product use is at the discretion of the Installation Commander, consistent with applicable regulations	and ventilation intakes that serve an enclosed area where use of tobacco products is prohibited. The location of outside areas designated for tobacco product use is at the discretion of the Installation Commander, consistent with applicable regulations.	products is prohibited. The Union's proposal cuts this distance in half (25 feet), which will result in greater exposure to second-hand smoke for employees entering and exiting buildings.
6.Art. 54, Section 6	Any residue produced from use of tobacco products will be disposed in a sanitary manner in appropriate containers. Closed and spill proof containers will be used. Spitting in or on wash basins, water fountains, waste paper cans, surfaces or floors, etc. is prohibited.	Section 6. Any residue produced from use of tobacco products will be disposed in a sanitary manner in appropriate containers. Closed and spill proof containers will be used. Spitting in or on wash basins, water fountains, waste paper cans, surfaces or floors, etc. is prohibited.	

Open
Reviewed by DLA

MEMORANDUM OF AGREEMENT
Lactation Program

The Defense Logistics Agency (hereinafter referred to as DLA) and the American Federation of Government Employees, Council 169 (hereinafter referred to as the Council) hereby agree to the following concerning the revisions to DLA Instruction 7306 (Lactation Program):

In situations where a DLA activity already provides compensated breaks (e.g., 15 minutes in the morning and/or 15 minutes in the afternoon) that employees can use for any purpose, program participants who use their break time to express milk must be compensated in the same way as other employees who are compensated for such break time. In situations where a DLA activity provides for other break policies, supervisors shall work with nursing mothers to ensure evenness of applying break policies and to ensure they are allowed to utilize breaks in the same manner as other employees who utilize break time at their location. The average time for pumping varies among individuals, so any additional time used beyond the existing break period should be accounted for. A supervisor has the discretion to grant excused absence for these brief absences. Besides normal break times and excused time, when absences are for more than brief periods of time, additional time in 15-minute increments can be charged to annual leave, compensatory time, credit hours, or compensatory time off for travel, or an employee may adjust her work schedule (starting or stopping times) to make up the additional time.

For the Council:

Frank D. Rienti, Jr.
President, AFGE Council 169

Date: June 23, 2011

For DLA:

Brad Bunn
Director, Human Resources

Date: July 6, 2011

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