

Local 2052



LABOR Agreement

Between

**Bureau of Land Management
Boise District**

And

**National Federation of Federal Employees
Federal District 1
IAMAW, AFL-CIO
Federal Local 2052**



Effective: June 5, 2007

TABLE OF CONTENTS

PREAMBLE	2
ARTICLE 1 RECOGNITION AND UNIT DESIGNATION	3
ARTICLE 2 EMPLOYEE RIGHTS AND RESPONSIBILITIES	4
ARTICLE 3 MANAGEMENT RIGHTS AND RESPONSIBILITIES.....	10
ARTICLE 4 UNION RIGHTS AND RESPONSIBILITIES.....	12
ARTICLE 5 GRIEVANCE PROCEDURES.....	18
ARTICLE 6 ARBITRATION PROCEDURES.....	23
ARTICLE 7 IMPACT & IMPLEMENTATION/MID-TERM BARGAINING	26
ARTICLE 8 PAST PRACTICES	29
ARTICLE 9 VOLUNTARY ALLOTMENT OF UNION DUES	30
ARTICLE 10 UNION SPACE AND FACILITIES	31
ARTICLE 11 INCENTIVE AWARDS	33
ARTICLE 12 MERIT PROMOTION, DETAIL, FILLING OF VACANCIES.....	34
ARTICLE 13 POSITION DESCRIPTIONS AND POSITION CLASSIFICATION	36
ARTICLE 14 EMPLOYEE ORIENTATION	38
ARTICLE 15 EQUAL EMPLOYMENT OPPORTUNITY.....	39
ARTICLE 16 EMPLOYEE ASSISTANCE PROGRAM	40
ARTICLE 17 HOURS OF WORK.....	41
ARTICLE 18 FLEXIBLE WORKPLACE.....	46
ARTICLE 19 TRAINING	47
ARTICLE 20 FLSA.....	48
ARTICLE 21 EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM (EPAP).....	49
ARTICLE 22 ACTIONS BASED ON UNACCEPTABLE PERFORMANCE.....	53
ARTICLE 23 DISCIPLINARY AND ADVERSE ACTION.....	55
ARTICLE 24 CONTRACTING OUT OF WORK.....	59
ARTICLE 25 FURLOUGH AND REDUCTION-IN-FORCE	61
ARTICLE 26 FIRE PERSONNEL.....	63
ARTICLE 27 SAFETY AND HEALTH	67
ARTICLE 28 DRUG TESTING.....	68
ARTICLE 29 CLIMBING.....	69
ARTICLE 30 UNIFORMS	71
ARTICLE 31 DURATION OF AGREEMENT	72
APPENDIX A - GLOSSARY	73
APPENDIX B - ADR	85
APPENDIX C – PARTS OF TITLE 5 USC AS REFERENCED	88
APPENDIX D - OTHER LAWS AND REGULATIONS	97

PREAMBLE

Pursuant to the policy set forth by the Civil Service Reform Act of 1978(CSRA) regarding Federal labor-management relations, the following articles of this basic agreement, together with any and all Supplemental Agreements which may be agreed to at later dates, constitute a total agreement by and between the United States Department of the Interior (DOI), Bureau of Land Management, Boise District, hereinafter referred to as the BDO or Management or Employer or BLM, and the National Federation of Federal Employees, Federal District 1, of the International Association of Machinists and Aerospace Workers, AFL-CIO, Federal Local 2052, hereinafter referred to as the Local or Union, representing the Employees in the Unit described below hereafter referred to as the employee or the employees. The two groups are collectively referred to as the Parties.

This agreement is entered into pursuant to the Certificate of Representation, dated September 29, 1983.

It is the intent and purpose of the parties hereto to promote and improve the efficient administration of the Federal Service and the well being of employees within the meaning of the Civil Service Reform Act, to establish a basic understanding relative to the personnel policies, practices, procedures and matters affecting general conditions of employment within the jurisdiction of the BDO, and to provide means for amicable discussion and adjustment of matters of mutual interest.

The parties to this agreement, intending to be bound hereby, agree as follows.

ARTICLE 1

RECOGNITION AND UNIT DESIGNATION

Section 1.1 Recognition

The BDO, whose designated office official is the District Manager, hereinafter referred to as the BDO, recognize that the Local is the exclusive representative of all employees in the bargaining unit described in Section 1.2 below.

Section 1.2 Bargaining Unit

The unit to which this agreement is applicable is composed of all professional and nonprofessional employees of the Boise District formerly known as the Lower Snake River District, Bureau of Land Management, excluding management officials, supervisors and Employees described in 5 USC 7112(b) (2), (3), (4), (6), and (7) (see Appendix C - Parts of Title 5 USC) and Employees with one-time temporary appointments of six months or less.

Section 1.3 Supervisor Defined

5 USC 7103(a)(10) (see Appendix C - Parts of Title 5 USC).

Section 1.4 When it comes to either party's attention that a position or an employee may be coded incorrectly on their personnel action form or list of employee/positions, the parties will meet to determine the appropriate action.

ARTICLE 2 EMPLOYEE RIGHTS AND RESPONSIBILITIES

Section 2.1 Each Employee may elect to bring matters of personal concern directly to their supervisor or other appropriate officials in informal discussions without Local representation or notification to the Local of such a meeting, or may elect to go through the Local on such matters. Employees will be treated fairly, consistently, and equitably in all personnel matters.

Section 2.2 Each Employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes:

- A. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities,
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by Employees 5 USC 7102 (See Appendix C - Parts of Title 5 USC).

Section 2.3 Each Employee shall have the right to invest their money, donate to charity, and participate in similar types of activities freely and without coercion.

Section 2.4 Nothing in this agreement shall require an Employee to become or remain a member of a labor organization or to pay money to the organization except pursuant to voluntary written authorization by a member for the payment of dues through payroll deductions.

Section 2.5 Outside Activities

Employees shall have the right to engage in outside activities of their own choosing without being required to report to the BDO on such activities, except as required by law or regulation. No Employee will be unlawfully discriminated against by either the BDO or the Local because of lawful political affiliation or labor organization membership.

Section 2.6 An Employee is accountable for the performance of official duties and compliance with standards of conduct of Federal Employees, as set forth in Part 20, Title 43 CFR (See Appendix D - Other Laws and Regulations), and is entitled to conduct their private life as they deem fit.

Section 2.7 Constructive Communication

All coworkers shall be treated with respect, common courtesy, and consideration. Any communication with Employee(s) concerning performance or conduct will be done so in a private manner unless imminent danger exists or is perceived to exist, even in these situations, any communication will be done in a most professional manner.

Section 2.8 Each Employee may be represented by a Representative other than provided by the Local in statutory appeals actions or grievances not covered under the negotiated grievance procedure. In these situations, applicable regulations will be followed. An employee may represent themselves in a grievance under the negotiated procedure. ((See Article 4 – Section 4.2 b & c, Article 5 – Section 5.3 b, 5 USC 7121 (See Appendix C - Parts of Title 5 USC))

Section 2.9 Lawsuits

Consistent with law and regulation, the BDO will request from the office of the Solicitor, legal representation for any Employee against whom suit is brought in a civil or criminal court based upon activities found to be within the scope of official duties. Upon request, management will inform the Employee(s) being sued of current developments regarding the request for representation.

Section 2.10 Regulations, manuals and similar documents pertaining to conditions of employment that are maintained by the BDO and the Idaho State Office, under which BDO is required to observe and operate, will be available for Employees to read.

Section 2.11 Official Time for Employees

Employees shall be granted official time, consistent with Section 4.4(A), by their first-level supervisor or acting supervisor in amounts reasonable and necessary (See Appendix A - Glossary), to meet with Union Representatives.

Section 2.12 Employees shall not lose rights to representation due to assignment away from their duty station, scheduled leave, illness, layoff, furlough, suspension, removal, non-pay status or other reason beyond the employee's control. The filing deadline for any grievance, response to disciplinary action, or other deadline shall be held in abeyance during such time.

Section 2.13 Employees shall have the right to obtain information about procedural, policy, practice, or other matters pertaining to conditions of employment from persons employed to deal with such matters. Such information may be obtained through e-mail, telephone, or meetings and preferably by appointment.

Section 2.14 Lawful Rights of Employees

Nothing in this agreement or BDO authority shall abridge any right of employees under law, rule, or agency policy. Within that context, employees have a right to the following:

Grievance Procedure

Represent themselves under the negotiated grievance procedure. (See Article 5, Section 5.3 – Grievance Procedure/Local Representation)

BDO and employees are reminded that, by law, when an employee chooses to represent themselves under the negotiated grievance procedure, the union is mandated to be notified and allowed to witness the process.

Statutory Procedures

Be represented by an attorney or other representative in a statutory appeal procedure (e.g. EEOC, MSPB, FLRA, etc...).

Employees have the right to know the name and title of their supervisor.

Section 2.15 Legal Rights and Warnings for Employees in Investigations or Examinations

WEINGARTEN RIGHTS

The Civil Service Reform Act, 5 United States Code 7114 (a), gives employees in units represented by an exclusive labor organization, (NFFE Local Lodge 2052), the right to request union representation at an examination by a representative of the agency in connection with an investigation if the employee believes the examination may result in disciplinary action.

Section 7114 (a) of the CSRA of 1978 states that:

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at –

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if - -

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee;

AND

(ii) the employee requests representation.

This law also allows the Union representative to contact the employee before or during the examination of the employee to offer guidance and representation.

Further, an employee who is not being directly investigated, but simply examined in connection of another employee's examination, also has the full rights as described under the Weingarten Rights. A simple gathering of facts may inadvertently lead to self-incriminatory violations of

law, rule, or agency policy as well as negotiated policy. The employee must carefully weigh whether they want to exclude Union representation, but foremost must REQUEST a Union Representative.

Employee Rights – All Interviews

1. Right to a Union representative upon request of the employee, if the employee reasonably believes that the interview may result in disciplinary action being taken against him/her. The request for a Union representative may be made before or during the interview (Weingarten Right). When a representative is requested, the interview will be discontinued for a reasonable amount of time until a Union representative is obtained, or the meeting will be rescheduled or ended by management.
2. Right to know the purpose of the interview and whether they are the subject of the investigation. If known at the time of interview, informed whether the course of action being pursued is administrative or criminal. When a situation warrants administrative action only, or prosecution has been declined in lieu of administrative action, the employee will be informed in writing if requested, that the investigation is strictly administrative and they will be required to respond to the questions being asked. In those matters where a course of action is not known at the time of interview, the employee is obligated to cooperate with the investigator, recognizing their right to protect themselves from self-incrimination at any time during the interview. Making this determination is the employee's responsibility.
3. To ask questions pertaining to their rights, obligations and consequences before and during the interview.
4. Upon request, to receive a copy of their signed affidavit and/or taped interview.

KALKINES WARNINGS

This occurs in circumstances where it is considered necessary to require an employee to respond to questions concerning an investigation. In this situation, the Supreme Court has held that termination may not be predicated solely upon a refusal to answer questions based on the Fifth Amendment protection against self-incrimination. However, the employee may be dismissed for refusing in an administrative proceeding to answer specific, direct, and narrow questions relating to the performance of official duties when they do not infringe upon Fifth Amendment rights, and when the employee has been given immunity from criminal prosecution. Before the employee is questioned, he/she are advised that immunity has been provided by the Department of Justice (DOJ) and also be advised specifically what the prosecutor has declined to prosecute and express assurance will be given the employee that any answers will not be used against him/her in a criminal proceeding. Once approval is received from the DOJ, the employee must be warned:

- 1) That he/she is going to be asked a number of specific questions concerning the performance of his/her official duties;

- 2) That he/she has a duty to reply to these questions and failure to do so, may result in agency disciplinary proceedings;
- 3) Neither the answers nor any information or evidence which is gained by reason of such statements can be used against the employee in any criminal proceeding unless false statements or information are willfully provided, in which case, criminal proceedings may be instituted against the employee for these falsifications; and, that he/she is subject to dismissal upon refusal to answer or failure to respond truthfully to any questions. In addition to the above, the employee has the right to have an attorney or union representative present during the interview, if he/she desires.

GARRITY WARNING

The government has a need to require its employees to account fully for their actions in the course of their official duties. However, this need may conflict, at times, with an employee's constitutional right against self-incrimination. If the Garrity Warning is deemed appropriate, under this warning the subject has the right:

- 1) To remain silent if your answers may tend to incriminate you;
- 2) To be advised that anything you say may be used as evidence in an administrative proceeding or any future criminal proceeding involving you or anyone else;
- 3) To be advised that refusal to answer the questions posed on the ground of self-incrimination cannot lead to discharge solely for remaining silent. However, silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding the case.

The employee may wish to seek the advice of a lawyer or other representative of his/her own choosing and at his/her own expense, before answering any questions, and to have a lawyer or representative present during the questioning. The employee has the right to have a union representative present during the interview if he/she so desires. However, if present, a union representative cannot actively participate during the interview.

MIRANDA WARNING

“Miranda Warnings” are given prior to questioning individuals who have been placed in custody, placed under arrest or where arrest is anticipated. As most interviews conducted by investigators do not involve custodial situations, this warning is not usually required. Under the “Miranda Warnings,” prior to being interviewed, the subject of the investigation must be advised:

- 1) That the subject has the right to remain silent;
- 2) That any statement made may be used as evidence against the subject; and,

3) That the subject has the right to have an attorney. If the subject cannot afford an attorney, one will be provided by the government.

The Employee will be allowed to have a Union Representative present in addition to legal counsel, if requested.

ARTICLE 3 MANAGEMENT RIGHTS AND RESPONSIBILITIES

Section 3.1 Government Regulations

In the administration of all matters covered by this Agreement, the Parties and the Employees are governed by existing or future federal laws and Executive Orders.

Management rights are specified in law and Executive Orders. Copies of 5 United States Code Chapter 71 are provided as appendices to this Agreement.

Regulations, policies, and manuals in effect on November 13, 1998, shall cover all matters covered by this Agreement.

Section 3.2 Management Responsibilities

A. The BDO agrees to respect the privacy of all Employees during the grievance process. The credibility, privacy, and integrity of the grievance process will be protected to the extent possible.

B. Management must notify an Employee at the beginning of any investigative meeting that could reasonably be expected to lead to a disciplinary action that the Employee has the right to have Union representation.

C. In the day-to-day labor management working relationship between an employee (union official) and an agency official, each party will normally inform the other party in what capacity they are working.

Section 3.3 Communication

All coworkers shall be treated with respect, common courtesy, and consideration. Any communication with Employees concerning performance or conduct will be done in a private manner, unless imminent danger exists or is perceived to exist. Even in these situations, any communication will be done in a most professional manner.

Section 3.4 Union Work Performance

Management recognizes the need for Local Representatives to perform their union duties and responsibilities in accordance with Title 5 USC (Appendix D - Other Laws and Regulations) and this Agreement in addition to their regular duties.

In this regard, BDO will not allow any union work related time, in place of regular duties, to be

used adversely against the Employee or cause lost opportunities for promotion, details, training, annual leave use, etc.

In this regard, for Employees administering this Agreement, in addition to their regular duties, due consideration to the amount and timeliness of work will be given when applying performance standards.

In this regard, BDO will fully support an Employee's right to join the Local or act for the Union freely and without fear of penalty or reprisal in management controlled matters. (Working conditions, employment, ratings, advancement, etc.).

Section 3.5 Time Frames

- A. U.S. Postal Service – postmarked date plus 5 calendar days.
- B. Electronic Mail – date/time e-mail was sent if during the basic work week otherwise first normal business day thereafter.
- C. Facsimile Transmission – date/time of transmission if during the basic work week otherwise first normal business day thereafter.
- D. Hand Delivery – date/time of receipt.

Time frames will be reasonably adjusted due to unusual circumstances (i.e., equipment failure, "Acts of God," war, emergencies, absence of all union officers at one time) beyond the control of either the Local or BDO.

ARTICLE 4 UNION RIGHTS AND RESPONSIBILITIES

Section 4.1 Recognition

A. The Local is the exclusive Representative of the Employees in the bargaining unit and is entitled to act for these Employees in matters pertaining to conditions of employment and administration of this contract.

B. The BDO recognizes Union Representatives including the National Representatives of NFFE.

C. The BDO recognizes Union Representatives selected by the Local. These Representatives are recognized as official spokespersons with authority to act on behalf of the Local in formal discussions and grievances as authorized by the Local President. The Local will provide a written list of all officials and inform the BDO of changes.

Section 4.2 Representation

A. The BDO agrees, upon request, to meet with the Local and negotiate with the Local on any new policy or change in established policy or past practice affecting conditions of employment or adversely affecting the Employees, prior to implementation (See Article 7, Section 7.1(A)).

B. Formal Discussions: The Local will be given the opportunity to be represented at any formal discussion between the Employees and BDO.

5 USC 7114. Representation rights and duties:

(2) An exclusive representative of any appropriate unit in an agency shall be given the opportunity to be represented at-

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment:

The BDO shall notify the Local President prior to such a formal discussion and will provide the Local a reasonable time after notification to provide a representative. The Local is not required to attend the meeting, however, if so, the Local has the full right and responsibility to speak and/or participate at such a formal discussion meeting.

The formal discussion meeting may or may not always be known in advance by BDO, such as

when a meeting was called for the purpose of making an announcement or statement rather than to discuss Employee conditions of employment. In the event an informal meeting evolves into a formal meeting the BDO should suspend the meeting until lawful and contractual notification requirements to the local President have been fulfilled. Further, a meeting may be called by an Employee in regards to a grievance, in which case the Union must be notified and allowed to be present even if the employee elects not to be represented by the Union. (5 USC 7114 (a) (2) (A))

The formal discussion meeting may be in any known or future format such as telephonic, e-mail, or video conferencing.

Non-Formal Discussions occur daily between one or more Employees and one or more BDO representatives. These non-formal discussion meetings do not normally require BDO to notify the Local. Examples include performance ratings and awards.

Equal Employment Opportunity/Formal Discussions

Formal discussion meetings include a meeting between an agency representative and an employee concerning an EEO dispute. A union has a right to be represented at a formal discussion within the meaning of section 7114 (a) (2) (A) of the Statute, even if the matter discussed concerns an EEO complaint being processed as part of an EEO proceeding.

A mediation/investigation session to resolve formal EEO complaints may be a statutory formal discussion where an exclusive representative has the right to be represented and actively participate. The statutory right to representation at an investigatory examination applies to processing an EEO dispute.

When processing an EEO complaint, a “representative of the agency” for formal discussion purposes includes EEO contractors, outside investigators, mediators, directors, and counselors.

C. Union Role in Investigation and Examination of Employees

An Investigative Interview is any meeting during which an authorized representative of Management (e.g. Personnelist, Special Agent, Outside Investigator, Contract Investigator, EEOC Investigator, Office of Special Counsel, Local Law Enforcement, etc.) asks questions of a bargaining unit employee for the purpose of ascertaining facts about alleged misconduct of the employee or another employee.

Types of Misconduct:

1. Administrative (non-criminal) – alleged employee wrong doing by violating established ethics and conduct regulations or agency policy. Examples: absence without leave (AWOL), misuse of government equipment, etc.
2. Criminal – involves wrongdoing arising from violation of Federal or State criminal statute.

Investigative interviews of alleged employee misconduct are either administrative or criminal in nature. Employee rights and obligations during these interviews vary depending on whether the allegations may result in criminal charges against the employee being interviewed.

Therefore, at any time during the course of an examination of an Employee by an authorized representative of the BDO the Employee may ask for a Union representative. Once an employee has requested a Union representative BDO has three options: (1) grant the request, (2) cancel the interview, or (3) offer the employee a choice between continuing without representation or having no interview at all (if employee chooses to continue, the right to representation is waived until such time as the employee requests Union representation). The Local will be allowed a reasonable period of time to provide a representative.

If known at the time of the interview the Local representative and the Employee will be informed by the BDO authorized representative of management whether the course of action being pursued is administrative or criminal prior to the start of any investigative meeting or examination. The employee will receive warning advice per Article 2.

Investigative Meeting or Examination or Conversation or Request for Written Information

Any such meetings, examinations, conversations, or requests for written information that includes questions concerning an employee's duties or employment qualifies as an examination. A request for explanations of what may be misconduct qualify for examination status. It does not matter whether the employee is implicated or simply a witness.

Union Representative at the Meeting

The Local Union representatives' primary role for the Employee involved in the investigation/examination is to be supportive witness and advisor. The Local representative is not bound to silence during the meeting. The Employee or the Local representative may caucus at any time during the meeting.

If during the meeting or examination, the Employee appears to not fully comprehend the questions or the agency's representative does not appear to fully comprehend the answers, the Local representative may offer such notice to either party.

The Local representative may advise the Employee on the merits of the Kalkine and Garrity rights as well as to advise the Employee to remain silent in any criminal investigation until such time as the Employee has consulted with his/her attorney.

D. The Local shall have the right to submit the views of the Local directly to the Idaho State Director, Director of the Bureau of Land Management, Secretary of Interior and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities.

Section 4.3 Responsibilities

A. Internal Union business, such as soliciting membership, collecting dues, campaigning and electing officers, posting and distributing literature, will be accomplished on break times or non-duty hours. Local meetings will be conducted during lunch times, before and after work and on non-duty hours of the Employees involved.

B. The Local agrees to respect the privacy of all employees during the grievance process. The credibility, privacy, and integrity of the grievance process will be protected to the extent possible.

C. In the day-to-day labor management working relationship between an employee (union official) and an agency official, each party will normally inform the other party in what capacity they are working.

Section 4.4 Use of Time for Labor Management Relations

A. Local Union officials shall be granted official time in amounts reasonable, necessary and in the public interest to perform contract administration and official union duties which involve but are not limited to the following:

Employees may request administrative leave (paid excused absence without charge to personal leave) from their supervisor or acting in amounts appropriate to their involvement, if any, in the following:

1. Discuss the allegations of a potential problem or complaint.
2. Serve as representative and/or witness in a statutory appeal.
3. Prepare and present a grievance at Steps I and II of the grievance procedure and to prepare and present a case at arbitration.
4. Represent the Local at non-grievance meetings under 5 USC 7114 (a) (2) (A) (See Appendix C - Parts of Title 5 USC).
5. Serve as a non-participating observer at a grievance meeting when an Employee chooses to represent themselves.
6. Receive and investigate a complaint by reviewing relevant documents or interviewing witnesses.
7. Act as representative of the Local in examinations pursuant to 5 USC 7114 (a) (2) (B) (See Appendix C - Parts of Title 5 USC).
8. Prepare and present matters to the FLRA, MSPB, FMCS, EEOC, FSIP, etc.

9. The Union will be allowed ten (10) hours per week of official time to be allocated by the Local President. Normally six (6) hours per week will be scheduled, published office hours. The schedule will be allocated and published two (2) weeks prior to the subsequent month's schedule. This will give the Union representatives official time to read and respond to the Agency's memos, letters, and other notifications in a manner most beneficial to government efficiency. It will also give Union officials the ability to timely respond to agency and bargaining unit employee calls, visits, letters, e-mails and other official Union business.

When the Local President allocates official time for the reasons listed above, the Local President will notify the supervisor and designated union representative(s), in advance, by e-mail or by phone. If management has any concerns about the allocated official time because of workload exigencies, they will notify the Local President and the designated Union representative(s) prior to the requested time.

B. Local officials and their supervisors are expected to communicate with each other on the use of official time, including information about the representation matter, any confidentiality concerns, the approximate length of time needed, and locations. Both are encouraged to agree to ongoing arrangements regarding use of official time that are suitable to their circumstances.

C. Release Procedure for Use of Official Time: This is the procedure for release of official time (over and above the minimum under Section 4.4.A.9) where the Parties (including individual Local representatives and their supervisors) are not mutually agreeable to alternative arrangements on a continuing basis.

1. The supervisor or acting supervisor shall approve, deny, or propose alternative scheduling for official time within a reasonable time of receiving the request.

2. If the Local official cannot be released immediately for work-related reasons pertaining to mandatory short-term coverage and/or the critical mission of the functional area, the Local official will be released as soon as the mandatory work requirement is met or other appropriate arrangements are made. Delay of more than one (1) day in release will be given to the Local official in writing, explaining the reason for the delay. If a delay in releasing a Local official involves a situation of contractual time limit, the time limit will be extended equal to the delay.

3. When performing representational functions with Employees at other work sites, the Local official will notify the unit head or the immediate supervisor before visiting an Employee(s). If the visit would unduly interfere with work requirements, the supervisor shall establish another time at which the Local official can visit the Employee(s).

D. The BDO will contact the Local President to discuss any perceived conflict between Labor-Management activities and BDO-assigned work. While it is the responsibility of BDO to initiate discussions regarding impacts of labor-management activities on achieving the mission, it benefits both parties that they bring to each others' attention any potential conflicts, as early as possible.

Section 4.5 The Local officials have the right not be coerced, discriminated against, interfered with, or restrained in the performance of any duties under this Article.

Section 4.6 Time frames

A. U.S. Postal Service – postmarked date plus 5 calendar days.

B. Electronic Mail – date/time e-mail was sent if during the basic work week otherwise first normal business day thereafter.

C. Facsimile Transmission – date/time of transmission if during the basic work week otherwise first normal business day thereafter.

D. Hand Delivery – date/time of receipt.

Time frames will be reasonably adjusted due to unusual circumstances (i.e., equipment failure, “Acts of God,” war, emergencies, absence of all union officers at one time) beyond the control of either the Local or BDO.

Section 4.7 Union Representatives Access

A Union official, other than BDO employees, that requires building access through the security system, may be granted building access after appropriate background investigations and payment. The Union official will be required to pay for or provide evidence of a background investigation and the BDO will be required to furnish the security access card.

ARTICLE 5 GRIEVANCE PROCEDURES

Section 5.1 Purpose

The purpose of this article is to provide a mutually acceptable method for the prompt and orderly resolution of grievances. The BDO and the Local recognize that most grievances arise from misunderstandings and disputes that can best be resolved at the lowest supervisory level.

Section 5.2 Definition

A. A grievance is any complaint from:

1. Any Employee or the Local concerning any matter related to the employment of the Employee(s).
2. Any Employee, group of Employees, the Local or the BDO concerning:
 - a. The effect or interpretation, or a claim of breach of this agreement; or
 - b. Any claimed violation, misinterpretation, or misapplication of any law or regulation affecting conditions of employment.

B. The grievance shall not apply to:

1. Any claimed violation of sub-chapter II of chapter 73 of this title (relating to prohibited political activities);
2. Retirement, life insurance, or health insurances;
3. A suspension or removal for national security;
4. Any examination or certification administered by the Office of Personnel Management, or appointment by the Department of the Interior;
5. The classification of any position which does not result in the reduction in grade or pay of an employee;
6. The termination of a temporary appointment for just cause;
7. The termination of a probationary Employee;
8. The termination of a temporary promotion for just cause;

9. Reduction in force or furloughs of more than thirty (30) calendar days;

Section 5.3 Local Representation

A. The Local agrees to counsel the Employees as to the validity of potential grievances, and whether the remedy sought is believed to be legal, feasible, and appropriate.

B. Only the Local, or representative approved by the Local, may represent Employees under this grievance procedure. However, any Employee or group of Employees may personally represent a grievance and have it resolved without representation by the Local, provided that the Local will be given the opportunity to be present at all discussions between the Employee and supervisor during the grievance process and resolution. Any such resolution must be consistent with the terms of this agreement.

Section 5.4 Early Resolution

A. Employees and/or their Representative(s) are encouraged to discuss issues of concern informally with their supervisors. Employees and/or their Representative(s) may request to talk with other officials about items of concern without filing a formal grievance.

B. Alternative Dispute Resolution (ADR) process, such as mediation, may be used at any point during a conflict or grievance and is encouraged early in the process. The mediator/facilitator can be selected from any available source agreed upon by all parties. (See Appendix B - ADR)

C. The Parties agree that participants in an ADR process will be limited to the mediator/facilitator, the grievant, and/or grievant representative and BDO representative.

D. Representatives for the Parties must have the authority to reach final resolution. If resolution is reached, a written agreement will be signed by the Parties.

E. Deadlines shall be extended during ADR mediation process.

Section 5.5 Procedures for Employee Grievances

A grievance will be in writing stating the nature of the grievance and the remedy desired. The remedy requested must be within the control of the Bureau of Land Management, appropriate to the issue being grieved and benefiting the grievant(s).

The following procedures are established for the resolution of grievances by an Employee or group of Employees:

A. **Step One** - The formal grievance shall first be taken up by the grievant (and/or Local Representative/Steward, if they elect to have one) with the Human Resources Specialist (Employee Relations). This step will be initiated in writing within 30 calendar days of the

incident that gave rise to the grievance, unless the grievant could not reasonably be expected to be aware of the incident by such time. In that case, the grievance must be initiated within thirty (30) calendar days of the date the grievant became aware of the incident. A grievance concerning a continuing practice or condition must be initiated within 30 calendar days of the last incident.

The Human Resources Specialist (Employee Relations) in the BLM Idaho State Office will determine if the matter is grievable, and will make the determination of who will be the Step One and Step Two Deciding Officials. These determinations will be forwarded to the Step One Deciding Official, the grievant, the Local President and Union approved designees.

A grievance that is declared totally non-grievable may immediately go to arbitration under Article 6. A grievance that is declared partially non-grievable may continue through the steps of the grievance with non-grievability added as an issue. However, the portion declared as non-grievable may go directly to arbitration in accordance with Article 6.

For Example:

1. Grievance that is totally non-grievable:
 - a. May go to arbitration.
2. Grievance that is only partially non-grievable:
 - a. Go to step 1 for issues that are determined to be grievable.
 - b. Non-grievable issues may go directly to arbitration or may continue through the steps with grievability as an issue.

Any decision on the grievance will be delivered in writing to the grievant within thirty (30) calendar days of presentation of the grievance. The decision will include a statement indicating the grievant's right to submit a grievance to Step Two if the grievant is dissatisfied with the decision.

B. Step Two - If the grievant is dissatisfied with the Step One decision, the grievance may be submitted under Step Two.

The grievance must be submitted in writing within ten (10) work days of receipt of the Step One decision. The Step Two grievance will be submitted to the BDO or designee. The deciding official will provide the Employee and Local representative with a written decision on the issue within thirty (30) calendar days of receipt of the grievance. The decision will include a statement indicating the grievant's right, if dissatisfied with the decision, to submit the grievance to the Local President for invoking the Arbitration procedure in accordance with this agreement and union procedures.

C. Either party may request a meeting on the matter in either Step One or Step Two and, if requested, the meeting will be held prior to the decision.

D. Alternative Dispute Resolution (see Appendix B - ADR) processes such as Mediation while voluntary are encouraged and may be utilized at any time by mutual agreement of the parties.

E. Any meeting or ADR process will extend time limits appropriately to preclude missing deadlines and will be documented.

Section 5.6 Grievances by BDO or Local

A. Alternative Dispute Resolution

The parties are encouraged jointly to develop optional ADR processes that will facilitate resolution of problems.

B. Early Resolution

The BDO or the Local will clearly notify the other party of a potential grievance. This notice should be made within thirty (30) calendar days of the incident that gave rise to the potential grievance. The notification will be initiated in writing within 30 calendar days of the incident, or in the case of a continuing practice or condition must be initiated within 30 calendar days of the last incident. The Local President or the BDO shall, within 15 work days, provide a clear response.

C. Grievance Procedure

If the BDO or the Local is dissatisfied with the response, the appropriate party may, within 15 work days, file a written grievance with the Local President or the BDO specifying the violation and remedy sought.

The Local President or BDO must, within 30 calendar days, file a written response. If management or the Local is not satisfied with the response or resolution proposed, they may invoke arbitration using the procedures set forth in this Agreement.

Section 5.7 Time Frames

Any time limits of the Employees, BDO or Local grievance procedures may be extended if mutually agreed to by the parties. When information is requested from a party that is needed to process a grievance or determine if a grievance exists, the time limits will be extended equal to the amount of time required to receive the information.

A. U.S. Postal Service – postmarked date plus 5 calendar days.

B. Electronic Mail – date/time e-mail was sent if during the basic work week otherwise first normal business day thereafter.

C. Facsimile Transmission – date/time of transmission if during the basic work week otherwise first normal business day thereafter.

D. Hand Delivery – date/time of receipt.

Time frames will be reasonably adjusted due to unusual circumstances (i.e., equipment failure, “Acts of God,” war, emergencies, absence of all union officers at one time) beyond the control of either the Local or BDO.

The intent of this procedure is to resolve problems, and, as such, a response is expected from the deciding official at every step within the specified time period. If the grievant does not receive a response within this time period, the grievant may petition the other party in writing to secure the reasons for the delay or may proceed to the next step. If no response is received within five (5) work days, the grievant may proceed to the next step of the grievance and/or arbitration procedure. The absence of response will become a part of the documentation of the grievance and will be given due consideration by the next deciding official and/or arbitrator. Time limits will be extended to equal the time required to meet this step.

Failure by the grievant to meet time limits, or to request and receive an extension of time, shall automatically cancel the grievance unless mitigating circumstances prevail - such as fire assignments lasting 24 or more clock hours or approved absence. Time limits will be extended equal to the time required to meet this step.

Section 5.8 Deciding Official

If a deciding official for one of the grievance steps delegates the decision-making to another official, that official will have the full authority to render a decision.

Section 5.9 Non-Grievable

Should either party declare a grievance non-grievable, the original grievance will be considered amended to include this issue. If arbitration is invoked, all disputes of grievability will be referred to the arbitrator as a threshold issue in the case.

ARTICLE 6 ARBITRATION PROCEDURES

Section 6.1 Right to Arbitration

If the decision on a grievance processed under the negotiated grievance procedure is not satisfactory, the Local or the BDO either as a grievant or as a representative of the Employee(s) (grievant) may refer the issue to arbitration. The request to refer an issue to arbitration must be in writing, signed by the President of the Local, or the BDO to be valid. The request for arbitration must be filed within thirty (30) calendar days of the decision of the BDO or the President of the Local, if mediation is not used, or within thirty (30) calendar days of an unsuccessful mediation attempt.

Section 6.2 Selecting the Arbitrator

Within twenty (20) calendar days of receipt of a valid arbitration request, the parties shall attempt to select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall immediately request the Federal Mediation and Conciliation Service (FMCS) to submit a list of nine (9) impartial persons qualified to act as arbitrators. A brief statement of the nature of the issues in dispute will accompany the request to enable the FMCS to submit the names of arbitrators qualified for the issues involved. The request shall also include a copy of the collective bargaining agreement. In the event that the entire agreement is not available, a verbatim copy of any provision relating to arbitration of the grievance shall accompany the request. The moving party strikes first then the parties alternate. Parties shall meet within ten (10) calendar days after the receipt of such list to select an arbitrator.

Section 6.3 Fees and Expenses

Each party shall bear the expense of preparing and presenting its own case.

- A. The Arbitrator's fees and expenses shall be paid by the losing party.
- B. If, in the arbitrator's judgement, neither party is the clear losing party, then the arbitrator will indicate the percentage of arbitration each party will pay.
- C. Transcript cost will be paid for by the requesting party.

Section 6.4 Arbitration Process

- A. Within three (3) work days of the selection of an arbitrator, the parties will meet and attempt to clarify the specific issues for arbitration that have been raised during the grievance procedure.

B. The process to be utilized by the arbitrator may be one of the following:

1. A “stipulation of facts to the Arbitrator,” can be used when both parties agree to the facts of the issue and a hearing would serve no purpose. In this case, all facts, data, documentation, etc. are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.

2. An “arbitrator hearing” should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator. By mutual agreement the parties may use an expedited hearing procedure.

C. The parties may mutually agree on “stipulation of facts to the arbitrator”, or either party may request a hearing.

D. An arbitration hearing will be held at a mutually agreed upon location during the regular work hours of the basic work week.

Section 6.5 Time Limit

The arbitrator will be advised that in order to fulfill the delegation to arbitrate, they must render a decision and remedy to the BDO and the Local as quickly as possible, but in any event no later than thirty (30) calendar days after the conclusion of the hearing unless the parties otherwise agree.

Section 6.6 Arbitrator’s Authority

A. The arbitrator’s decision shall be in writing and shall be final and binding and the remedy shall be affected in its entirety, provided it is in accordance with law, rule, and regulation.

B. The arbitrator shall not have authority to add to, subtract from, or modify (1) any of the terms of this agreement or any supplement thereto, or (2) any law or government-wide regulation. The arbitrator shall have the full benefit of review of laws, federal regulations, Department of the Interior and Bureau of Land Management published policies and regulations.

C. In considering grievances, the arbitrator will hold the respondent to the grievance to the following burden of proof, consistent with 5 USC 7701(c)(1) (See Appendix C - Parts of Title 5 USC):

1. For matters of unacceptable performance or other matters appealable to the BDO, a burden of substantial evidence will be used.

2. For matters concerning adverse actions or other matters appealable to the MSPB, a burden of the preponderance of the evidence will be used.

D. The arbitrator shall have the authority to make all grievability and/or arbitrability determinations.

Section 6.7 Exceptions

An exception to the arbitrator's decision must be filed with FLRA or other appropriate authority within thirty (30) calendar days following receipt of the award. If no exception is filed, the arbitrator's decision and remedy will be effected as quickly as possible.

Section 6.8 Correction of Unjustified or Unwarranted Personnel Actions

An Employee who is found to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the Employee is entitled to correction of the personnel action (i.e. back pay and interest), and to receive reasonable attorney fees related to the personnel action award in accordance with standards established under 5 USC 7701(g) (See Appendix C - Parts of Title 5 USC). Such correction shall occur within a reasonable time.

Section 6.9 Necessity of Witnesses

Questions raised as to whether witnesses are necessary will be resolved by the arbitrator.

ARTICLE 7

IMPACT & IMPLEMENTATION/MID-TERM BARGAINING

Section 7.1 During the life of this agreement no regulation, other than those implementing government-wide policy against prohibited personnel practices, shall be enforced if it conflicts with any portion of this agreement and was not in effect on the date this agreement takes effect. (See Section 4.2.A)

A. The Employer will provide the Local at least ten (10) work days advance notification of changes in conditions of employment, except in emergencies or other uncontrollable conditions. Examples may include substantive changes to Information Memoranda (IMs) and Information Bulletins (IBs). The notification will include a written proposal of the new or modified change, the proposed implementation date, the method of implementation, and/or other pertinent aspects of the proposal. (See Section 4.2(A))

B. The local will review the proposal and may request to negotiate. Such a request will be submitted in writing to the BDO within seven (7) work days after receipt of the proposal.

1. When the Local timely requests negotiation, the BDO shall delay the implementation of the proposed change until such time as the Parties reach agreement on all negotiable issues connected with the change, unless an emergency or overriding exigency exists requiring management to implement change prior to agreement.

2. If the request is not received within seven (7) work days, the BDO assumes concurrence by the Local with the proposal, and may implement the change without further notification to the Local.

C. Upon receipt of a request to negotiate, the Parties will select a date to have a clarification meeting regarding the proposed change(s). The Local must submit concerns and issues to the BDO within seven (7) work days of either the clarification meeting with the BDO, or if the Local has submitted a data request, within seven (7) calendar days after receipt of the data, whichever comes later.

D. The parties agree that the Union will be entitled to have the same number of team members as management. The Union officials shall be authorized official time for such purposes during the time the employee would otherwise be in a duty status.

Normally, bargaining teams will consist of a minimum of two (2) team members for each party.

E. Names of the members on the negotiating team will be exchanged formally in writing by both Parties before negotiations start.

F. Negotiations shall be conducted on official time during the regular administrative work week unless otherwise agreed.

G. Upon reaching agreement on all proposals, a memorandum of agreement (MOA) will be immediately prepared and signed by both Parties.

H. The BDO will provide copies of the MOA to appropriate management officials and Local representatives.

Section 7.2 Call for Mid-term Bargaining

A. Either party may request mid-term bargaining which cannot be refused, in February closest to the mid-point of the contract by issuing a written request stating:

1. The reason for the request.
2. The expected impact of the issue(s) in question.
3. The expected impact if the issue(s) are not addressed.
4. The expected duration of impact of the issues.
5. Whether or not a permanent change to the Basic Agreement is the expected result.
6. Number of members requested to be on each bargaining team.

B. The party receiving the request will have ten (10) work days to respond in writing.

C. Bargaining will be confined to items stated in the original request unless mutually agreed by both parties.

Section 7.3 Negotiation Impasse

A. When the Parties cannot agree on a negotiable matter and an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been completed, the set aside items will be reviewed jointly by the Parties. If agreement is not reached after a final attempt on negotiations, the parties may seek the services of the FMCS. When mediation does not resolve the impasse, either party may seek the services of the Federal Service Impasse Panel.

B. In the event impasse is invoked during negotiations, no change in personnel policies, practices, or conditions of employment will be implemented except in order to take whatever actions may be necessary for the functioning of the BDO, in case of emergency or delay of effective date of law.

Section 7.4 Non-Negotiability

When BDO believes that a matter is non-negotiable, and upon written request from the Local, it will advise the Local in writing of its rationale for such belief. The Local has the right to proceed to the Federal Labor Relations Authority in accordance with Chapter 71 of 5 USC (See Appendix D – Other Laws and Regulations), and may seek the services of the FMCS or other ADR resources.

ARTICLE 8 PAST PRACTICES

Section 8.1 It is agreed and understood that this Agreement supersedes any past practices and understanding which were in effect on the effective date of this Agreement at any level (District, Field Office, Division) and which are specifically covered by this Agreement.

Section 8.2 Privileges of Employees which are past practices and have become an integral part of working conditions shall remain in effect unless the BDO moves to modify them. The Local will be afforded the opportunity to negotiate, as appropriate, and the practice shall be maintained in status quo pending the conclusion of the negotiation, unless it becomes necessary to implement a change prior to the conclusion of said negotiation.

Section 8.3 For a past practice to be binding on the BDO, it must concern a condition of employment, be clear, be known and consistently followed by both parties for an extended period of time and followed by both parties or followed by one party and not challenged by the other over a substantially long duration, and be consistent with law and Government-wide regulations.

ARTICLE 9

VOLUNTARY ALLOTMENT OF UNION DUES

Section 9.1 Procedures

Payroll shall continue to deduct Union dues from the pay of Employees in the bargaining unit, subject to the following provisions:

- A. The Local agrees to procure form SF-1187, “Request and Authorization for Voluntary Allotment of Compensation of Payment of Employee Organization Dues,” and furnish them to eligible members desiring to authorize an allotment for withholding of dues from their pay.
- B. The Local President or other authorized officer of the Local will certify on each SF-1187 that the Employee is a member in good standing in the Local, insert the amount or percent of hourly basic pay to be withheld, and submit completed SF-1187 to the payroll servicing officer.
- C. The Local President or other authorized officer of the Local shall notify the payroll servicing officer when the Local’s dues structure changes.
- D. Allotments will normally be effective at the beginning of the first full pay period after receipt of SF-1187's by the payroll servicing officer.
- E. The Local will promptly notify the payroll servicing officer in writing when a member of the Local is expelled.
- F. The Bureau of Land Management agrees to have the payroll servicing officer prepare a bi-weekly or monthly remittance check and forward it to the officer designated by the Local. The check will be for the total amount of dues withheld for that pay period.
- G. The Bureau of Land Management will submit with the remittance check, a listing of Employees from whom deductions were withheld and the amounts withheld. The Employee is responsible for notifying the BDO of any dues allotment that should be stopped because the Employee is no longer included in the Bargaining Unit due to specific exclusion as stated in Article 1, Section 2. This does not preclude the employer from initiating this action on its own. The employer will notify the Local if and when such action is initiated.
- H. A member may voluntarily revoke an allotment for the payment of dues by filling out a form SF-1188, “Revocation of Voluntary Authorization of Allotment of Compensation for Payment of Employee Organization Dues,” and submitting it directly to the payroll servicing officer. After receipt of such notice by the payroll servicing officer, revocation will become effective as soon as possible following the anniversary date of the Employee’s original authorization (SF-1187). The BDO will make every effort to apprise the Local of revocation of allotments for payment of dues.

ARTICLE 10 UNION SPACE AND FACILITIES

Section 10.1 General

It is recognized that the use of government space and equipment benefits both parties, however, in the case of conflict the mission of the BDO takes precedence.

Section 10.2 Meeting Facilities

Upon request and subject to availability, the BDO will make conference room facilities available for conducting internal Union business at the Main Office, and at outlying offices, provided that such use takes place during non-duty hours. The Local will be responsible for the proper use and care of the conference room facilities when used.

Section 10.3 Office Space

The BDO will allow space for an office for Local officials, when such space is available, and has been mutually agreed upon by both parties. As facilities are added or remodeled, adequate Union space must be included. The BDO agrees to allow the Local to use surplus furniture (such as files, desks, chairs, etc.) as are available and needed. Other work areas or office areas, as available, may be used from time to time for interviewing or other intermittent union business. Such space as is allocated for Union use shall be reserved for Union use, and any and all materials contained therein shall be considered to contain confidential Union information which may be accessed by Union officials or their designees only.

These confidential premises should not be accessed without a Union escort except in the event of a compelling reason, such as law enforcement or other emergency action which necessitates investigation or search of the aforementioned items. If escort is not available the premises should be secured until such time an escort can be present. BDO will notify the Union in writing within two working days of the compelling reasons for, and the results of, any search which occurred without a Union escort. Absent any compelling reason the BDO will wait for a Union escort.

Section 10.4 Communications

A. Copy machines, fax machines, e-mail, telephone services and computers may be used by the Local, however, shall not have precedence over the mission of the BDO.

B. The Bureau of Land Management's internal mail distribution system may be used by the Local. The Local, however, shall submit its material addressed and ready for delivery as appropriate.

C. The Local shall be allowed to send and receive US Mail at the BDO, but shall be responsible for their own Postal expenses.

D. Any documents, notes, materials, files, faxes, cabinets, computers that are not connected to the network either by network connection or by modem and do not contain non-union government information, boxes, etc. which are marked "Union," "FL – 2052," "NFFE," "IAMAW," or are otherwise marked in a manner indicating that they contain confidential Union information, material, or property, shall be considered to contain information confidential to the Union and may be accessed by Union officials or their designees only.

These confidential items should not be accessed without a Union escort except in the event of a compelling reason, such as law enforcement or other emergency action which necessitates investigation or search of the aforementioned items. If escort is not available the items should be secured until such time an escort can be present. The BDO will notify the Union in writing within two working days of the compelling reasons for, and the results of, any search which occurred without a Union escort. Absent any compelling reason the BDO will wait for a Union escort.

The BDO shall provide the Local with a secure electronic mail address/box for purposes of Union related business and a restricted folder on the shared drive for Union use. The Union President will determine which officers will have access (read and/or write) and the electronic mailbox will be password protected. Changes to access levels will be submitted through established "Help Desk" procedures.

All timeframes will be delayed when the electronic mail system is not operating correctly.

Section 10.5 Bulletin Board Space

At each office location, bulletin board space in a central location, a minimum of three (3) feet by four (4) feet, will be made available for use by the Local. The posted material must pertain specifically to the business of the Union or be related to the Employees' work or employment conditions. This material shall not be libelous nor derogatory, nor shall it contain any personal attacks against any individual or group. This bulletin board shall be the exclusive area for posting such material. The bulletin boards may be placed in the fire office ready room, break rooms, and guard camps.

Section 10.6 Use of Government Owned or Leased Vehicles

The Local will be allowed the use of government vehicles to visit outlying facilities as needed to conduct Union business.

ARTICLE 11 INCENTIVE AWARDS

Section 11.1 The goal of the Incentive Awards Program is to encourage Employees to maximize their individual efforts in contributing to the mission of the BDO.

Section 11.2 A supervisor receiving a recommendation for an award for one of their Employees will respond to the person(s) making the recommendation within twenty-one (21) calendar days with at least a minimum response of : 1) will pursue, 2) will not pursue, or 3) a request for more information.

Section 11.3 All written and verbal communication concerning awards shall be handled and considered as private matters between the recommending person(s), the supervisor and any awards personnel.

Section 11.4 Employees and supervisors can contact the Idaho State Office, Human Resources Office for any information regarding the Awards Program.

ARTICLE 12

MERIT PROMOTION, DETAIL, FILLING OF VACANCIES

Section 12.1 General

A. It is agreed that BDO will use the skills and abilities of Employees to the maximum extent possible consistent with mission requirements, merit principles, and laws and regulations. All actions under this article shall be made without regard to political, Union, or religious affiliation, marital status, race, color, sex national origin, age, or non-qualifying handicap as required by law.

B. Merit promotion procedures will be in compliance with 5 CFR 335 (See Appendix D - Other Laws and Regulations), the DOI Merit Promotion and Placement Policy, and all other regulations in effect at the time of placement action.

Section 12.2 Vacancy Announcements

Information on jobs advertised for open competition will be available to Employees through an electronic distribution system, local announcement, or other format that provides adequate notification to interested applicants. The BDO will post a list of all current vacant positions in the District which have been approved for filling, when the decision to fill has been made.

Section 12.3 Career Opportunities

When deemed appropriate, BDO will advertise positions at grades below their full-performance grade level to enhance career opportunities. Additionally, where practicable, the BDO will use interest announcements for detail assignments.

All vacancies should be evaluated to determine if they are suitable to be filled as upward mobility positions, or suitable to be filled at less than full performance level positions. Factors such as full-performance level, immediate job assignments and production needs, stabilization/creation of career ladders and BDO's ability to meet mission objectives should be taken into consideration.

Section 12.4 Information

Applicants are entitled to information as to whether they met the basic qualification requirements for the position (including time-in-grade), whether their name was referred to the selecting official, and the name of the person selected. Candidates who were referred to the selecting official but were not selected may request information from the selecting official as to what they can do to improve their chances in future competition.

Section 12.5 Merit Procedures

BDO recognizes the benefit of promoting from within the bargaining unit whenever appropriate.

Section 12.6 Accretion of Duties

If a position is classified at a higher grade as a result of accretion of duties, the BDO will submit the paperwork for the Employee to be noncompetitively promoted within thirty (30) calendar days subject to Article 13, Section 13.5.

Section 12.7 Details and Temporary Assignments

A. In the interest of effective Employee utilization, details to positions or work assignments will be based on a bona fide need and will be consistent with applicable regulations and the merit system. Details and temporary assignments may be used to meet emergencies or situations occasioned by abnormal workloads, changes in mission or organization, cross-training to expand Employee capability and improve skill mix, absences of personnel, or to cover vacancies prior to permanent placement action.

B. When an Employee is detailed from their position of record to another position, and the detail lasts more than thirty (30) calendar days, the detail will be documented on SF-50's in the Employee's OPF and a copy given to the Employee. Experience gained in details will be credited in qualification considerations when the Employee applies for positions within the BDO if the Employee documents the detail on their application.

C. When an Employee is temporarily assigned to a higher graded position for thirty (30) consecutive calendar days, the Employee shall be temporarily promoted into and receive the rate of pay of that position commencing on the thirty-first day. The Employee must be qualified to fill the position on a permanent basis. If an Employee is temporarily assigned to a higher grade position expected to continue longer than thirty (30) calendar days, they should be temporarily promoted into that position immediately, and receive comparable pay.

D. When an Employee is assigned additional duties for thirty (30) consecutive calendar days, the Employee should consider getting their position description re-evaluated as described in Article 13.

E. If the BDO is unable to honor an Employee request for a detail assignment, the BDO will make every effort to consider the Employee for future opportunities. Upon written request by the Employee, BDO will furnish a written explanation of why the detail was denied.

Section 12.8

The BDO will notify District Employees of opportunities for lateral reassignment within the District, and shall use interested District employees whenever feasible.

ARTICLE 13

POSITION DESCRIPTIONS AND POSITION CLASSIFICATION

Section 13.1 Policy

Each Employee shall have a position description which is accurate as to title, series, and grade, and which clearly states major duties that are reflected in performance elements. A position description is deemed to be accurate when the principle duties, knowledge requirements, and supervisory relationships are described and it covers eighty (80) percent or more of the work situation. All major duties must be covered in the eighty (80) percent or more of the work situation. The term “major” means a task that is grade or series controlling or a task that takes five (5) percent or more of an employee’s time, and which the Employee requests to be included in the position description. The position description shall be reviewed annually by the employee and work supervisor.

Section 13.2 An Employee who believes their position description no longer accurately states their major duties and responsibilities may draft a proposed new position description or amendments to the current position description, and present it to their supervisor. As an alternative, the Employee may submit a written request for review including a summary of the points to be reviewed. The position is then to be reviewed by the supervisor and the findings presented to the Employee within thirty (30) calendar days of the Employee’s request for review or rewrite. In conducting such reviews or rewrites, the reviewer will consider the employee’s written and oral comments. The employee may have Local representation during any discussions related to the review. If the supervisor agrees with the changes, the supervisor shall forward a revised position description to the Idaho State Office for classification. If the employee is not satisfied with the results of the supervisor’s review, they may grieve in accordance with Article 5.

When an Employee has been assigned recurring duties of such a nature that they may affect grade determination or qualification for future promotional consideration, that Employee should notify their supervisor and, if necessary, take the steps noted above.

Section 13.3 Position Description Changes by BDO

Whenever management proposes to modify the position description of any Employee in the unit, that Employee will be given the opportunity to review and discuss the proposed change. The Employee may have Union representation during any discussions related to the review.

Section 13.4 Classification Appeals

Any Employee who does not agree with the Idaho State Office (ISO) Classification Decision will follow the established appeal process (5 CFR 511, BLM Manual 1400-511, DM 370, DM 511 (See Appendix D - Other Laws and Regulations)). Upon completion of the ISO Classification Decision, the findings shall be discussed with the Employee and a Local Representative, if the

Employee so desires.

A. Wage Grade Employees may appeal a classification decision at any time through the Agency Wage Grade appeal procedure and then to the Office of Personnel Management.

B. General Schedule Employees may appeal a classification decision at any time to the Agency or Department (but not to both) first, and then to the Office of Personnel Management if dissatisfied, or may go directly to the Office of Personnel Management.

Section 13.5 Non-Competitive Promotions

When there has been an accretion of duties and responsibilities to warrant an increase in grade, the Employee in the position will be promoted without competition, unless the BDO eliminates or redistributes the grade-controlling duties, in accordance with Article 12. BDO shall refrain from temporarily reassigning potentially grade controlling duties during the position classification review. Accretion of duties occurs when the following conditions are met:

A. The new position absorbs the major duties of the old position and the old position is abolished.

B. The new position is in the same organization and retains the same supervisor as the old position.

C. The new position does not involve the addition of project leader, group leader, or supervisory duties to a formerly non-supervisory position or the addition of duties which causes the new position to replace a higher-level supervisory position.

ARTICLE 14 EMPLOYEE ORIENTATION

Section 14.1 The BDO agrees to inform each new and returning employee of their bargaining unit status and that the Union (Local 2052) is the exclusive representative of Employees. The BDO further agrees that it will provide a copy of this contract for each new employee as part of their orientation program while the Local will provide a list of its current officers and representatives.

Section 14.2 Each new Employee will receive an employee orientation. The orientation checklist will contain a line item that recommends new Employees meet with the Union within thirty (30) days. Employees attending the annual fire and aviation orientation are exempt from completing the checklist. Rosters of attendees will be taken and attached to an orientation checklist for the group. FLSA provisions (See Appendix D – Other Laws and Regulations) regarding overtime status and classification will be discussed during new employee orientation.

Section 14.3 The Local will be allowed one hour of official time for a representative to orient new employees, or group of employees, as to the scope and function of the Union within the BDO.

Section 14.4 BDO will provide to the Union a listing of all new bargaining unit employees monthly. The list will include the employee's name, assigned organization, and effective date of hire.

ARTICLE 15

EQUAL EMPLOYMENT OPPORTUNITY

Section 15.1 The BDO and the Local agree to abide by the principle of equal employment opportunity as stipulated in Section 717 of the Civil Rights Act of 1964 and other laws, rules, and regulations governing Federal Employees. Most of these laws are codified under 3 USC 411 and 2 USC 1311. The administration of this Agreement shall not unlawfully discriminate against any Employee because of age, race, color, religion, national origin, sex, sexual orientation, or mental or physical disability.

Section 15.2 The BDO agrees to make available to the Local and Employees, annually, a copy of the BDO Affirmative Employment Plan, a description of the EEO complaint process and a list of current Idaho EEO Counselors.

Section 15.3 Employees believing that they have an EEO complaint may process their complaint through the departmental EEO complaint process or the negotiated grievance procedure (Article 5), but not both. During this time, the Employee may ask to be represented by the Local or to have a Local representative present. Employees will have a reasonable amount of official time to discuss the pre-complaint counseling issues with the designated EEO Counselor.

Section 15.4 Upon request of an Employee, a Local official may advise an employee who is using the EEO complaint process. In this case, it is understood that the Local official is not acting in the capacity of an EEO Counselor.

Section 15.5 The Local will be given the opportunity to have a participant as a member of the BDO EEO/Human Rights Committee.

Section 15.6 Vacancies for any of the BDO collateral duty EEO assignments will be filled through a BDO interest announcement.

ARTICLE 16

EMPLOYEE ASSISTANCE PROGRAM

Section 16.1 The BDO and the Local mutually recognize the benefits of an Employee Assistance Program (EAP) as a valuable resource for everyone. The use of EAP programs is encouraged by the BDO and the Local. EAP assessment visit(s) is provided at no cost. The purpose of the assessment is to help an employee accurately identify their problem(s), if any, discuss possible solutions, and clarify additional resources, if necessary. Should an Employee choose to pursue any of the recommended resources, the Employee will be responsible for the cost of those services as applicable. The Employee should check with their health benefits plan as it may cover part or all of these costs.

Section 16.2 The Employee Assistance Program is designed to assist Employees, family members, and “significant others” with a variety of situations that impact the quality of life or work, such as: substance abuse or dependencies, stress, depression, grief, work or family life issues, parenting, emotional or psychological issues, legal or financial situations, work/group dynamics, and critical life incidents.

Section 16.3 While participation in the EAP Program is voluntary, Employees are encouraged to identify and manage problems early, before they reach a crisis level.

Section 16.4 Confidentiality within the EAP Program is assured. No releases of information will be done without the Employees’ written consent.

Section 16.5 The BDO will publicize the program on an annual basis through memoranda, literature, updates, and contact telephone numbers.

Section 16.6 Employees encountering problems with service or satisfaction when dealing with a contract EAP provider should report the problem(s) to the ISO Safety Manager or the Human Resources Office.

ARTICLE 17 HOURS OF WORK

Section 17.1 Tour of Duty

A. The basic work week for non-fire employees shall consist of:

1. Monday through Friday from 6:00 a.m. to 6:00 p.m. with a lunch normally between 11:00 a.m. and 1:00 p.m. of no more than one (1) hour and no less than ½ hour (30 minutes) per day. The lunch period may be waived for employees working less than full shift (six (6) hours or less)).

2. One (1) work break will be allowed and encouraged for each four (4) hours worked, which will not exceed fifteen (15) minutes. This does not preclude those engaged in heavy physical activity from taking recovery breaks, nor does it preclude pausing to evaluate the safety and efficiency of the work in progress. Employees may use appropriate commercial establishments for breaks if the break is taken while in route to or from the official destination. Breaks will not be accumulated for any purpose.

Section 17.2 Overtime/Compensatory Time

A. Overtime shall be requested and authorized as per BLM Manual 1400-550 and other appropriate regulations. Employees shall be compensated for any partial hour worked in increments of one-fourth (1/4th) hour. The first consideration for overtime will ordinarily be given to those Employees who are normally assigned to do the work. In the event the Employee does not desire to work overtime, the BDO will attempt to accommodate that request. The Local may request from the BDO a list of overtime distribution for Employees. Overtime work will be assigned fairly, consistently and equitably to all qualified Employees. If an Employee expresses willingness to work on fire assignments, which normally include overtime, the supervisor shall attempt to accommodate the Employee.

B. If “on-call” duty is needed the BDO will first ask for qualified volunteers.

An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

(1) The employee is allowed to leave a telephone number or to carry an electronic device (i.e., pager or cell phone) for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

(2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

The BDO has the authority to assign an employee to Ordered Scheduled Duty, where an employee is paid unless eating or sleeping according to the BLM Manual 1400-610(14) & (15).

Each employee has the right to volunteer for “on-call” duty freely and without coercion.

C. Employees actually called in to work outside of the time connected to their basic work week shall be paid a minimum of two (2) hours overtime pay, whether assigned to be on call or not.

D. When a non-exempt Employee has been authorized to work overtime for compensation, they may request overtime pay or compensatory time in lieu of overtime. However, all overtime pay and compensatory time is subject to applicable regulations, including those for Employees exempt and non-exempt from the FLSA. Employees will not be required to work for compensatory time as per 5 U.S.C. 6132.

E. The BDO will not adjust an employee’s work schedule for the purpose of avoiding overtime, other premiums, or extra compensations except as allowed by 5 CFR 610.121.

F. Standby

(a) In accordance with the Comptroller General rulings and 5 CFR 551, Subpart D, an employee is considered on duty and time spent on standby duty shall be considered hours of work when:

(1) The employee is restricted to agency facilities or worksite or so close that the employee cannot use the time effectively for his or her own purposes; or

(2) The employee is restricted to his or her living quarters and the employee is required to remain in a state of readiness to perform work.

(b) Employees who are involuntarily placed on standby, regardless of the methods Management uses to restrict use of personal time and to maintain their readiness for work (i.e., pagers, cell phones), will be compensated in accordance with applicable Federal pay regulations. Employees who voluntarily restrict their activities and/or use electronic communication devices to be available for duty after work hours are not on standby. The Local Parties may further negotiate matters concerning scheduling, rotation, and hardships.

Section 17.3 Alternate Work Schedule (AWS)

The parties agree that AWS, which are flexible and compressed work schedules, will be used according to the guideline and approved schedules below, for the purpose of improved productivity and greater service to the public, according to 5 U.S.C. 6120-6133. In addition, the AWS must be administered fairly and equitably to all Employees.

A. Guidelines

1. Recognizing that all offices and field operations must be adequately staffed, all employees have the right to apply for any approved AWS. The BDO will not deny an Employee the opportunity to participate in an alternative work schedule without adequate justification, and will present the justification to the employee in writing upon request.
2. The BDO may be required to limit work to eight (8) hours or to change work schedules when weather, work load, public needs or other emergency conditions warrant the change. The BDO may make short term changes of no more than one (1) pay period in AWS. The changes will be administered fairly and equitable in the work unit affected. Every effort will be made to plan work to minimize disruption to an employee's work schedule on emergency changes. Non-emergency changes shall not begin until the next pay period after the notification.
3. Employees approved to use 5-4/9 or 4-10 will, based on supervisor approval, schedule their "off" day and their "short" day. Subject to work demands, the supervisor may change the scheduled "off" day during a future pay period.
4. The BDO may, in some situations, require an employee to convert to a basic work schedule to curb abuses. The BDO will provide the employee the reasons for the schedule change at least one pay period before the change would be implemented. The Union will be notified if such a decision is necessary. Such decisions are grievable.

5. Credit Hours

- a. Credit hours can be earned only by Employees on flexible AWS (i.e. Gliding, variable day, variable week, and maxiflex).
- b. Credit hours are hours of work performed at the employee's option. Employees cannot be forced to work credit hours.
- c. Credit hours may be earned and used within the same biweekly pay period, but can only be used after they are earned.
- d. Credit hours may only be earned by employees between 6:00 a.m. and 6:00 p.m. on their scheduled work week (excluding holidays).
- e. An employee can use credit hours with prior supervisory approval. Employees cannot be forced to use credit hours.
- f. Credit hours when used are considered hours paid.

g. There is no limit on the number of credit hours an employee may accumulate during a biweekly pay period. A maximum of twenty-four (24) hours may be used as a credit hour carry-over from one biweekly pay period to a subsequent biweekly pay period by full-time employees. Part-time employees are prorated for credit hour carryover.

B. Allowable Alternative Work Schedules (see BLM Manual 1400-610)

1. Flexible Schedules

a. **Gliding:** The Employee has a basic work requirement of eight (8) hours per day and forty (40) hours per week. Arrival and departure times may vary between 6:00 a.m. and 6:00 p.m.

b. **Variable Day:** Employee may vary the length of the workday daily. Employee must work ten (10) days per biweekly pay period. Employee must work at least forty (40) hours per workweek and eighty (80) hours per biweekly pay period. Employee must account for core time on each workday.

c. **Variable Week:** Employee may vary the length of the work week as well as the workday daily. Employees must work ten (10) days per biweekly pay period. Employee must account for core time on each workday.

d. **Maxiflex:** Employee may vary length of the work week as well as the workday daily. Employee may vary the number of hours per day and the number of days per week. Employee must work at least eighty (80) hours per biweekly pay period. Employee must account for core time on three workdays per week. Core time and core days for AWS are 9:30 a.m. to 11:00 a.m. and 1:00 p.m. to 2:30 p.m. Tuesday through Thursday.

2. Compressed Schedules:

a. **4-10:** Employee works four (4), ten (10) hour days per week. Employee schedules day off with supervisor.

b. **5-4/9:** Employee works eight (8), nine (9) hour days with one (1), eight (8) hour day. Employee schedules short day and day off with supervisor's approval.

c. **Fire Assignments:** Employees with flexible schedules assigned to an emergency fire tour will be spot changed to a first eight (8) hour tour at the start of the first calendar day of the fire. Employee may decline spot change.

Section 17.4 Tardiness

Supervisors have the option to excuse infrequent absences and/or tardiness in accordance with BLM regulations, on a case-by-case basis.

Section 17.5 Leave Restrictions

Prior to an employee being placed on leave restriction in accordance with BLM Manual 1400-630.17, supervisors are encouraged to provide verbal counseling on at least two (2) separate occasions. The leave restriction will be reviewed every three (3) months. If no leave abuse is found to be occurring, the leave restriction will be lifted at that review.

Section 17.6 Administrative Leave for Hazardous Travel Conditions

An Employee may be granted up to an hour of administrative leave for late arrival at work when road conditions from their primary residence are extremely hazardous, and without sufficient warning to allow the employee to start traveling earlier.

Section 17.7 Excused Absence

To the maximum extent possible, BDO will excuse an employee without charge to leave for a reasonable period of time, i.e. to visit or consult with a member of the Human Resources (HR) Staff in the Idaho State Office. Employees requesting approval to visit the HR Office should have an appointment with the person they wish to visit and supervisory approval prior to leaving their work area.

To the maximum extent possible, BDO will excuse an employee without charge to leave for a reasonable period of time to visit or consult with an EEO counselor or with the EEO Manager. Employees requesting approval to visit with an EEO Representative should have an appointment with the person they wish to visit and supervisory approval prior to leaving their work area.

ARTICLE 18 FLEXIBLE WORKPLACE

Section 18.1 General

The parties recognize that a flexible workplace, or “flexiplace,” arrangement can be beneficial to the organization and the Employee. The BDO agrees to consider requests from individual Employees for use of flexiplace or, under certain circumstances, may propose flexiplace for some Employees. Flexiplace arrangements must be developed in accordance with OPM guidelines.

ARTICLE 19 TRAINING

Section 19.1 General Procedure

It is the Employees' responsibility to maintain proficiency in connection with assigned duties. Although it is expected that personnel are basically qualified to perform their duties as a prerequisite to employment, the parties recognize the need for additional training to maintain the competence of the work force and to accomplish BLM programs. The efficiency of operation and conduct of training and development activities for Employees are the responsibilities of the BDO. The BDO is responsible for implementing training to assist in improving Employee efficiency and competence.

Section 19.2 On-the-Job Training

If an Employee is assigned to train another Employee, the impact of this assignment will be taken into consideration when reviewing and/or completing the Employees' performance evaluation.

Section 19.3 Expenses

The BDO agrees to reimburse the expenses incurred by an Employee in attendance of BDO approved, work related courses during non-work hours in accordance with existing policies and regulations.

Section 19.4 Use of Equipment

If mutually agreeable, the BDO agrees to make available to Employees enrolled in approved training courses, BLM equipment items during the Employee's non-work or working hours.

Section 19.5 Travel to Training

Travel to training will be compensated according to BLM and OPM regulations.

Section 19.6 Union Recommended Training

Recognizing that it is necessary and desirable in the public interest that government sponsored training be provided for employees for performance of official duties and for the development of skills, knowledge, and abilities, Union Officials may recommend to BDO management training that enhances the Union official's abilities to perform their official duties. (Example, a Union Official that is also an EEO counselor is recommended for a course in conflict resolution). Union recommended training that is completed may not exceed \$1,500.00 cumulative annually for tuition, registration, travel expenses, and per diem.

ARTICLE 20

FLSA

Section 20.1 The Local and the BDO agree that Employees should be properly categorized as to FLSA status.

Section 20.2 Exempt and non-exempt Employees are compensated according to the FLSA.

ARTICLE 21

EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM (EPAP)

Section 21.1 Management Rights and Obligations

The BDO and the Local recognize the right and obligation of the BDO to evaluate the performance of all Employees in accordance with Chapter 43 of Title 5 United States Code, 5 CFR 430, 370 DM 430 (See Appendix D - Other Laws and Regulations), and this Agreement.

Section 21.2 The identification of performance elements and the establishment of performance standards will be a joint planning and communication process between the Employee and the rating supervisor. It is the rating supervisor's responsibility to ensure that performance elements and standards are developed and communicated in writing to the Employee annually or within thirty (30) calendar days after change of position. The performance elements and standards shall be documented on the appropriate form and signed by the Employee and rating supervisor. Performance elements identified as critical elements will be so noted. Further amendments may be made during the rating year, and these amendments will be noted with the Employee and rating supervisor initials. The Employee's signature or initials only means that the Employee has received a copy.

Section 21.3 Supervisors are encouraged to not make performance elements generic in nature. Performance elements should reflect employees' position description. The manager and employee will develop the critical elements using a collaborative process. Management reserves the right to develop the final language for the EPAP. Critical elements may not include performance expectations otherwise considered to be illegal, immoral or unethical or in direct contrast to Federal regulations. In addition, the EPAP should be signed and dated by November 30th of each year.

Section 21.4 Performance standards and critical elements must be consistent with the duties and responsibilities contained in the Employee's position description and/or current assignment(s). They must permit the accurate evaluation of job performance. To the greatest possible extent, objective criteria will be used. They must be applied fairly and equitably.

Section 21.5 Whenever possible, the rating supervisor will be an individual with administrative authority for the Employee and who has direct knowledge of the Employee's performance. Performance ratings must make allowances for work-related factors beyond the Employee's control.

A. For Union Officials administering this Agreement on a continuing basis, in addition to their regular duties, due consideration to the amount and timeliness of work will be given when applying the performance standards.

B. Supervisors have the responsibility to realize that any task not completed or not properly

completed due to lack of adequate funding or personnel does not reflect an inadequacy on either the supervisor or the personnel performing the task.

Section 21.6 The rating given Employees shall be fair and equitable and prepared in accordance with the following:

A. The rating supervisor will discuss and document in writing the employee's job performance with the employee in private surroundings at least once per year during each appraisal period at approximately mid-way through the rating cycle. All dates placed on the EPAP shall be truthful and accurate. The progress review, at a minimum, will indicate the mid-year overall rating with a brief narrative justification. The narrative justification will be attached to the EPAP. The employee has 30 days to add comments to the supervisor's rating. The signature of the employee only indicates receipt of the EPAP not agreement with it.

B. If a position change occurs during the appraisal period, this action will be documented on the appraisal form. This may take the form of an EPAP closeout of an existing EPAP, issue of a new EPAP based on different critical elements, or documentation of mid-year progress review as discussed in 21.6(A), etc.

C. If the rating supervisor has identified shortcomings in the Employee's performance, the Employee shall be notified when the problem is perceived. The rating supervisor will state what they will do to assist the Employee and suggest ways for the Employee to improve the quantity, quality, and/or timeliness of work in order to more satisfactorily perform duties at expected levels. When such discussions are documented by the rating supervisor, a copy of that documentation will be given to the Employee.

D. The rating of record will be documented on the appropriate form and include, to the extent feasible, the backup information for the record. Closeout summary narratives will be written for each critical element on the EPAP form no matter what rating is given. If an employee does not have an opportunity to perform a critical element during the rating period, no rating will be assigned for the critical element and the words "Not Rated" should be written on the EPAP. The EPAP rating for each critical element should be based on the critical element as a whole, not upon performance of each and every component.

Section 21.7 The rating period will correspond with the fiscal year.

Section 21.8 Withholding a Within-Grade Increase

Level of competence determinations will be made in accordance with 5 CFR 531 and BLM Regulations (See Appendix D - Other Laws and Regulations). A progress review or annual appraisal with a rating of record of "fully successful" or higher which has been sustained will qualify the employee for a within-grade increase.

A. Advancement to the next higher step of the Employee's grade shall be earned when the Employee has:

1. Met the waiting period requirements.
2. Not received an equivalent increase during the waiting period.
3. Has a current summary rating of fully successful.

B. Before withholding a Within-Grade Increase, the Employee must be advised in writing that their performance must be improved and the Employee must be given a reasonable opportunity (minimum of thirty (30) calendar days) to raise the summary rating to the "fully successful" level. The written notification will advise the Employee of those aspects of performance in which the Employee must improve and what the Employee must do to be granted the Within-Grade Increase. If the Employee's performance does not improve during this period, the employee shall be notified in writing of the reasons for withholding the Within-Grade Increase. The written notification will inform the Employee that they can request reconsideration of the negative determination, and that the matter is not grievable concurrently with any reconsideration.

C. An Employee may request reconsideration of a negative determination by filing, not more than fifteen (15) calendar days after receiving notice of determination, a written response to the negative determination setting forth the reason. BDO shall reconsider the determination.

Section 21.9 Career-Ladder Promotions

A. Competitive procedures are not applicable for career promotions when competition was documented at an earlier stage. Except as provided below, employees within a career ladder will be promoted to the full performance level as soon as they have met the time-in-grade requirements and have met the "fully successful" requirements of current and the next higher grade in the areas they have been provided an opportunity to perform. If a supervisor's review leads to the conclusion the employee's work does not warrant a promotion or that other circumstance exist that may delay a promotion, the supervisor will provide a notice to the employee in writing sixty (60) calendar days before the employee is eligible for the promotion. The written notice will explain where the employee's performance is lacking and advise as to what the employee must do to qualify for the promotion. If delays are for reasons other than performance, they will be explained in the advance notice.

B. However, if the decision not to promote was based on performance, the Employee will then be given sixty (60) calendar days to improve to a level warranting promotion. If at the end of sixty (60) calendar days, performance has improved to an acceptable level, the Employee will be promoted to the higher grade. If BDO fails to timely submit documentation to promote an employee, the employee must initiate a timely appeal or grievance.

Section 21.10 The guidelines for rewarding employees based on performance will be followed as

stated in the Performance Appraisal Handbook (370 DM 430). Management will make every effort to be fair, equitable and consistent in the distribution of performance based awards as limited to Boise District Office budget availability. This includes awards such as non-monetary, time-off, cash or a Quality Step Increase.

ARTICLE 22

ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

Section 22.1 In accordance with the appraisal system required by 5 USC 4302 (See Appendix C - Parts of Title 5 USC), an Employee may be reduced in grade or removed for unacceptable performance under 5 USC 4303 (See Appendix C - Parts of Title 5 USC), 5 CFR Part 432 (See Appendix D - Other Laws and Regulations), Departmental and Bureau regulations, and this Agreement.

Section 22.2 Performance Improvement Plan

Before initiating an action to remove or downgrade an Employee, the Employee will be placed on a Performance Improvement Plan (PIP). A PIP is a formal means for developing a written strategy to assist an employee in improving deficient performance to a satisfactory level. The PIP will be imposed by either the first or second-level supervisor and will contain the following information:

- A. Notice of unacceptable performance which gives in detail the specific critical results and related performance standards where the employee has not met requirements.
- B. The notice must inform the Employee of what is required to improve their performance to an acceptable level.
- C. The action the Employee's first and/or second-level supervisor should take to help the Employee improve their performance, may include: on-the-job training, counseling by the supervisor, other counseling, formal training, developmental assignments to gain appropriate experience, etc.
- D. The period of time which will be given to improve performance is at least thirty (30) calendar days. The amount of time necessary to provide a reasonable opportunity for improving will depend on the circumstances in each case.
- E. It is recognized by the Union and BDO that the employee may be under abnormal stress due to the PIP process, therefore the Union may assist the employee in understanding and clarifying information presented by BDO. Therefore, the notice will contain a statement that the employee has the right to request Union representation during any discussion(s) with employee regarding his or her "unsatisfactory" performance rating.

Section 22.3 Throughout the entire PIP process there should be constant communication between the Employee and the supervisor who issued the PIP.

Section 22.4 Normally within fourteen (14) calendar days after the end of the performance improvement period, the employee shall be notified in writing by their supervisor who issued the

PIP whether their performance has improved to an acceptable level. If the determination is that the Employee's performance is unacceptable, BDO may reassign the Employee upon written notice that includes a statement of grievance rights or, as set forth below, propose to remove or demote the employee.

Section 22.5 Notice of Proposed Action

An Employee whose reduction in grade or removal is proposed is entitled to at least thirty (30) calendar days advance written notice from the first or second-level supervisor that informs the Employee of:

- A. The nature of the proposed action.
- B. The specific instances of unacceptable performance by the Employee on which the proposed action is based and the critical results involved in each instance of unacceptable performance.
- C. The time frame in which they may make a written and/or oral reply.
- D. The right to be represented by a Local representative, an attorney, or other representative.

Section 22.6 Decision

At the end of the notice period, a decision will be made to reduce in grade, remove or retain the Employee. It will be made by the next level supervisor who is higher than the proposing official. The decision letter to reduce in grade or remove an Employee will specify the instances of unacceptable performance on which the removal or reduction in grade is based. It shall also inform the Employee of the option to appeal the action to the Merit Systems Protection Board (MSPB), with the procedures necessary to file; or grieve the action through the negotiated grievance procedure established in Article 5, but not both.

ARTICLE 23 DISCIPLINARY AND ADVERSE ACTION

Section 23.1 General

- A. For purposes of this Agreement, disciplinary action shall be defined as reprimands, reductions in grade, suspensions and removals.
- B. Discipline shall be based on just cause and in accordance with applicable law and regulations.
- C. Counseling sessions conducted by the BDO with Employees are not considered discipline.
- D. Adverse actions may only be taken for such cause as to promote the efficiency of the service.
- E. BDO and the Union agree it is important that the supervisor/employee relationship encourage early recognition and resolution of potential performance or conduct situations that could lead to disciplinary action.
- F. The Union and BDO agree that the objectives of discipline measures are to prevent the recurrence of misconduct, to correct employee behavior, to maintain morale between other employees, and to apply appropriate penalties.
- G. Disciplinary action will be taken for the sole purpose of correcting employee behavior. When corrective measures can be accomplished through informal actions such as closer supervision, on-the-job training and oral warnings, formal disciplinary actions such as reprimands, suspensions and removals should not be used. This does not prevent management from taking any disciplinary action when he/she deems it necessary. The Employee can appeal the disciplinary action through appropriate procedures.

Section 23.2 Time Limits for Initiating Disciplinary Action

- A. When an Employee is found to be subject to disciplinary action, it is agreed that within a reasonable time of the offense, or the supervisor's awareness of the offense, the supervisor will impose an action or serve a notice of proposed action. When BDO becomes aware of misconduct by an employee, normally the employee will be contacted as soon as possible and instructed to discontinue the misconduct.
- B. BDO will not allow instances of misconduct to continue solely for the purpose of increasing the severity of a potential penalty.
- C. If the Union or employee has been made aware of an on-going investigation or an inquiry, the affected employee(s) or Union may inquire about the status at any time. BDO will promptly respond to these inquires unless it jeopardizes the investigation or inquiry.

Section 23.3 Procedures

A. When the BDO becomes aware of a possible or actual misconduct, the supervisor may at their discretion, conduct an inquiry and/or discuss the matter with the Employee(s). Such discussion shall be in private with the Employee(s) involved and the Employee's representative, if requested by the Employee. Before disciplinary action is taken supervisors and managers are encouraged to investigate the circumstances surrounding the situation. (Refer to Article 4 – Section 4.2 B & C)

If such inquiry or discussion involves searches of personal property found on government premises the employee must allow the search to be done, as per federal law. However, the employee should be given the opportunity to be present during the search, except in the event of a compelling reason, such as law enforcement or other emergency action which necessitates investigation or search of the aforementioned items. If the employee is not available the items should be secured until such time the employee can be present. Absent any compelling reason the BDO will wait for the employee. If this delay prevents the employee from reporting for their tour of duty, the employee will request leave to cover their absence.

B. Reprimand

1. A letter of reprimand will be issued directly to an Employee and will be sufficiently specific to indicate why the letter is being issued and what the Employee can do to improve or take corrective action.
2. The Employee may make a written statement or explanation that will be retained with the reprimand which remains for two (2) years as part of the record. At the supervisor's discretion, this letter may be removed earlier.

C. Suspensions of fourteen (14) calendar days or less:

1. Upon receipt of the proposed suspension, the Employee will be allowed fourteen (14) calendar days to respond to the charges orally and/or in writing, and submit affidavits or other documentary evidence. The proposal letter will outline the process to request an extension to respond.
2. Within a reasonable time of the Employee's response, or expiration of the time limits in the preceding paragraph, whichever comes last, the District Manager or designee will issue a written decision in the matter.

D. Suspensions of more than fourteen (14) calendar days and removals:

1. The proposing official shall provide the Employee with at least thirty (30) calendar days advance written notice stating the specific reasons for the proposed action, unless there is reasonable cause to believe the Employee has committed a crime for which a sentence of imprisonment may be imposed (5 USC Sec 7513 (b)) (See Appendix C - Parts

of Title 5 USC). The proposal letter will outline the process to request an extension to respond.

2. The Employee will be allowed twenty-one (21) calendar days, to respond to the charges orally and/or in writing, and submit affidavits or other documentary evidence.

3. Within a reasonable time of the Employee's response, or expiration of the time limits in the preceding paragraph, whichever comes last, the District Manager or designee will issue a written decision in the matter.

E. Extensions for replying to notice of proposed action or grieving a notice of final decision will be granted for valid reasons, such as workload and availability of Local representation, illness and accidents, death in family, and jury duty, if requested in writing by an Employee or designated representative.

Section 23.4 Reconsideration

A. Where the Supervisor issues a proposed notice of disciplinary action under the regulatory provisions of this Agreement, it is recognized that the Supervisor may, after considering an Employee's response, subsequently decide or agree to impose a lesser penalty covered by the provisions of this article. When this occurs, it is agreed that a final decision will be issued without the necessity of issuing an additional proposed notice.

B. If the Supervisor decides that disciplinary action is not appropriate, the Employee will be so informed in writing.

Section 23.5 Right to Grieve or Appeal

A. Counseling sessions, verbal or written, are grievable (Article 5).

B. The Employee may file a grievance regarding the issuance of a reprimand, or suspension of fourteen (14) calendar days or less. Notification of a proposed action is not grievable.

C. Suspensions for more than fourteen (14) calendar days or removals may be grieved using the established grievance procedures.

Section 23.6 Non-Disciplinary Adverse Action

For adverse actions other than those described above, i.e. reduction in grade, reduction in pay, furloughs of thirty (30) calendar days or less, non-disciplinary removals, the advanced notice will be in accordance with 5 CFR 752.404 (See Appendix D - Other Laws and Regulations) and will include representation rights.

Section 23.7 Availability of Records

Upon request by the Employee, or their designated representative, copies of all documentation used by the BDO in support of the action will be provided.

ARTICLE 24 CONTRACTING OUT OF WORK

Section 24.1 The BDO and the Local agree the BDO has the right under 5 USC 7106 (See Appendix C - Parts of Title 5 USC) to determine how work may be done to accomplish the mission of the agency. The BDO will follow the appropriate laws and regulations when making decisions on contracting out.

Section 24.2 The BDO will inform the Local when the BDO proposes contracting activities which will cause the separation of a current Employee or adversely affect the grade and pay of a current Employee.

Section 24.3 Prior to implementation of any decision to contract out work, BDO shall negotiate with the Union to the fullest extent allowed by law. These negotiations shall be conducted in accordance with the terms of this Agreement.

Section 24.4 Briefings

The Union shall have the right to send a representative of their choice to attend briefings of BDO employees who are affected by OMB Circular A-76 or any other type of contracting-out directive.

Section 24.5 Draft Performance Work Statements

The Union shall be furnished a copy of each Draft Performance Work Statement (PWS) and shall be provided the opportunity to comment.

Section 24.6 Reduction in Force - See Article 25

Section 24.7 Right of First Refusal

Management recognizes the “right of first refusal” required by applicable OMB Circular A-76 procedures which provide that the contractor will grant those Federal employees who are being separated based on a conversion to contract with the “right of first refusal” of employment openings created by the contractor. Refusing an offer of employment based on this right will not deny an employee of any entitlement or right he or she might have based on reduction in force procedures. However, other entitlements, i.e. eligibility for unemployment compensation, may be affected. Employees are reminded that they must apply for a position directly with contractor for the “right of first refusal” to apply.

Section 24.8 Supervision

When bargaining unit employees are under the supervision of a person who is not an employee of the Federal Government, the bargaining unit employee retains all rights to appeal administrative actions.

Section 24.9 Inventories

BDO will provide the Union with a copy of the A-76 inventory every time there is a change.

Section 24.10 Work Review

Work performed by contractors should be reviewed for completeness, quality, and contract compliance.

Section 24.11 Appeal Rights

The Union has the right to appeal contracting-out determinations under applicable OMB Circular A-76 procedures. The contents of OMB Circular A-76 prohibit the filing of a grievance under the negotiated grievance procedure.

ARTICLE 25

FURLOUGH AND REDUCTION-IN-FORCE

Section 25.1 General

The decision to conduct a furlough or a reduction-in-force (RIF) is a management right, and will be administered by the BDO in accordance with guidance from OPM, applicable regulations in 5CFR 351 (See Appendix D - Other Laws and Regulations), and any other applicable laws and regulations that may hereafter become effective.

Section 25.2 Advance Planning

In the spirit of partnership, the Parties will consult concerning any possible furloughs or RIFs. The BDO will take reasonable steps to prevent a furlough or RIF by using other techniques to minimize impacts to Employees, as well as to the BDO.

Section 25.3 Notification

A. At the earliest possible date, and prior to notification of affected Employees, the BDO agrees to notify the Local of the proposed implementation of a furlough or reduction-in-force (RIF).

B. The BDO agrees to provide the following information to the Local concerning a proposed furlough or RIF as soon as it is available:

1. The reason for the action;
2. The numbers, types, and grades of Employees involved or affected;
3. The anticipated effective date of the action;
4. Any additional information requested by the Local consistent with applicable laws and regulations.

C. The BDO agrees to inform affected Employees of the progress and impacts of any furlough or RIF action by making available accurate information throughout the process as soon as it becomes available. The BDO will endeavor to make Employees aware of the various employment placement programs.

Section 25.4 Outplacement

The BDO agrees that in the event of a reduction in force where Employees are separated, an active outplacement program will be implemented. The primary aim of this program will be to find a position in the Federal Service for each affected Employee commensurate with that

Employee's skills and experience. The BDO and the Local will jointly encourage each Employee to see that their employment application is up to date as soon as a RIF is announced. Employment applications will be used to match Employees with vacancies. Employees possessing skills in more than one area will designate those areas in which they wish to be matched for consideration for vacancies. This section applies only to career or career-conditional Employees.

ARTICLE 26 FIRE PERSONNEL

Section 26.1 Tour of Duty

- A. Employment as a firefighter will not preclude an Employee from requesting an AWS as described in Article 17. However, during the fire season, all fire personnel may be assigned a standard work schedule.
- B. When an Employee returns to their official duty station following a fire incident, an Employee will assume their regularly established tour of duty.
- C. Employees shall have a minimum of one week notice before being laid off, except where budgetary constraints or weather requires less notice. Only in cases beyond the Employers reasonable control shall the Employee have less than two (2) days notice. Employee should receive advance notice if lay off may be imminent.
- D. During initial attack, if two (2) or more employees at a fire within BDO are placed into required rest, and the employees so desire, every effort will be made to ensure a quality rest situation occurs. When crews are reasonably close to a BLM station or commercial housing and the incident commander feels that there is not an imminent threat to public or firefighter safety during the rest period, they shall be sent to that location for quality rest. Their rest time or off-duty time does not start until they reach that location.

Section 26.2 Quality Rest

To the maximum extent possible, management will provide the following to ensure quality rest:

- A. Uninterrupted sleep
- B. Facilities for showering
- C. Access to a telephone for personal calls
- D. Nutritious meals (normally not Meals Ready to Eat)

Section 26.3 Work Shift Length

- A. Off-shift (unpaid) time is not to be included as work time and does not count toward the shift length.
- B. The appropriate agency administrator, incident commander, or other individual with expressly delegated authority may pre-approve work shifts exceeding sixteen (16) hours and/or exceeding two (2) to one (1) work to rest ratio. Appropriate documentation is required and care should be taken to ensure employees are not too fatigued to safely perform the assignment. This then “resets the shift clock.” This gives the BDO the appropriate authority to reactivate crews and/or

individuals before a full work-rest ratio is complete.

Section 26.4 Required Rest during Normal Tour of Duty

If an employee's rest time is during their normal work schedule, the employee will be paid for that period. This rest time would be charged to administrative leave and to the appropriate fire code as determined by the fire management officer. Employees are reminded that this administrative leave must be requested and approved in advance. Employees assigned to fire are not to be released back to their 'regular jobs' until any required rest has occurred.

A best effort will be made to ensure that rest time will occur at approximately the same time of day during a prolonged fire assignment. As a result of this a best effort will be made to ensure employees are assigned to the same shift during a prolonged fire assignment.

Section 26.5 Work Schedules

A. Fire Response Capability: Fire crews provide fire response capability seven (7) days a week during a fire season. This may be achieved by varied staffing schedules, such as first 40, four 10's, or 5-4-9s, and with varied or staggered start times. Fire crews are typically assigned to work schedules other than Monday-Friday, with 2 consecutive days off. In periods of frequent fires, high fire danger, or other circumstances, employees are required to work overtime, including their normal days off.

B. Assignment of Work: According to 5 United States Code 7106 (a) (2) (B), management has the right to assign work. This includes the right to assign work schedules. This right to assign schedules is upheld by case law. BDO will make every effort possible to ensure fire personnel are not assigned to a shift, the majority of time which would include both afternoons and evenings, i.e., from noon to 9 p.m.

C. Assignment to Shifts outside the hours of 0800 – 1600: Regularly scheduled work after 6 p.m. entitles an employee to night differential pay. (The following provisions do not apply to employees who are hired with the understanding that they are normally scheduled to work outside 0600-1800 hours). These provisions are to help to ensure that employees have quality time with their families/friends.

1. If an employee or fire crew is assigned a regularly scheduled shift with hours between 1800 – 0600, or a similar shift, in order to insure fire personnel can be immediately available in case of a fire, the fire crew or employee will not be assigned this type of shift schedule for a period longer than two weeks (one pay period) and for not more than once in a six-week period unless other employees/fire crews are not available for this shift.
2. This scheduling will be managed on a unit by unit basis; however, when employees are reassigned to other units individual employees may experience late shift schedules more frequently than once every six weeks. Should this situation occur, the appropriate official will notify the Union and the Union will be given the opportunity to discuss with the appropriate

official.

3. The Union will also be given the opportunity to meet with the affected employees to discuss the reason(s) for the requirement(s) to change their tour of duty earlier than the required six-week rotation.

4. Shifts of this nature will be equally rotated and, unless due to an emergency, employees or fire crews will normally receive three (3) week's notice but will never receive less than one week's notice when a shift change is required. The provision contained in Article 17 Hours of Work, Section 17.2 E, applies when adjusting work schedules.

Section 26.6 Representation

Temporary assignment of any Employee to a fire incident does not remove their position from the bargaining unit, nor does it abrogate the Employee's right to Local representation.

Section 26.7 Grievances

If a grievance should arise while an Employee is on temporary assignment at a fire incident, the Employee will first attempt to resolve the issue by bringing it to the attention of the Incident Commander or other appropriate official. If the matter is not resolved to the satisfaction of the Employee, they may file a grievance in accordance with Article 5, of this Agreement. The filing deadline for this grievance will be held in abeyance during such time as an Employee has less than seven (7) calendar days between fire incident assignments.

Section 26.8 Days Off

As a general guideline, employees should normally have at least one (1) day off after fourteen (14) consecutive days worked, or two (2) days off after twenty-one (21) days. This applies for both when on home unit and off-unit assignments. If an off-unit assignment occurs when the employee is out less than fourteen (14) days, the employee may mobilize, and upon return, may be required to take one (1) or two (2) days off, depending on the duration of assignment. If the employee is required to take days off, and these do not fall on their regularly scheduled days off, these days off will be paid and charged to the fire. If these days fall on an employee's regular day(s) off, they will not be paid.

If crew members of a unit being mobilized are on their days(s) off, a reasonable attempt will be made to contact them in order to allow them to accompany the unit.

Section 26.9 Duty Station

A duty station, for purposes of this Article, is an assigned duty location where employees are not entitled to per diem, shall have running water, flush toilets, and power. Employees shall not be required to remain at their duty station during hours for which they are not paid.

Employees may have their privately owned vehicles at their duty station.

Section 26.10 Mobilization

If crew members of a unit being mobilized are on their day(s) off, a reasonable attempt will be made to contact them in order to allow them to accompany the unit.

Section 26.11 Extended Staffing

Extended staffing duty shall be a minimum of one (1) hour.

Section 26.12 Labor-Management Relations

If requested by the Union, and needed to address fire & aviation related issues, a representative from that organization will make every effort possible to attend and participate in the scheduled meeting.

Section 26.13 Quarters

Since employees cannot be required to stay at their duty station during hours for which they are not paid, employees cannot be forced to live at a duty station. If an employee does not live at a duty station, that employee does not have to pay quarters charges. This does not, however, cover the situation of an absence due to leave or temporary assignment and the employee's personal possessions remain in their bedroom at the duty station. In this situation, quarters charges must still be paid.

Section 26.14 Requests to Reopen and Amend

It is understood by both parties that the guidance which is currently in effect relating to this article will most likely change. It is therefore agreed that if either party requests to reopen and amend this article the other party will agree to do so.

ARTICLE 27 SAFETY AND HEALTH

Section 27.1 General

The BDO and the Local mutually agree to cooperate in a common effort to create and maintain safe and healthy working conditions to minimize accidents, and to prevent lost work time due to illness or injury. A Safety and Health program will be administered in accordance with Executive Order 12196 and all applicable Federal laws and regulations including the Occupational Safety and Health Act of 1970. Employees involved in activities or representation or pursuant to this Article shall receive official time for such activities.

Employees will make every effort to comply with Federal Safety Laws (e.g. OSHA), and District, State, and Bureau safety policies.

Section 27.2 Safety and Health Committees

The Local shall be allowed to designate one Local member to serve on any BDO Safety Committee.

Section 27.3 Exposure

When an Employee is in a situation where he/she has a reasonable belief there is a risk of imminent death or serious injury, and where there is insufficient time for corrective action or redress through normal abatement procedures, the employee may refuse to perform the task. The supervisor shall inspect the work area or hazard and ensure that the work is safe (or may be safely handled) before requiring the Employee to carry out the work assignment. The supervisor will document the inspection at the earliest time possible. If any doubt regarding the safety of the work area or safety due to the hazard is raised, an appraisal shall be obtained from the BDO Safety Officer or appropriate BDO official before proceeding. The Local will be notified of the incident at the earliest possible time and given documentation concerning the reported unsafe conditions.

ARTICLE 28 DRUG TESTING

Section 28.1 The BDO and the Local support a zero-tolerance drug abuse policy.

Section 28.2 The BDO agrees to provide a written notice to an Employee within fourteen (14) calendar days of either designating a position as sensitive, subject to random drug testing or entry on duty to such a position. This notice will include information on the Drug Program policies, procedures, and appeal rights. Upon request, the Local will be provided lists of positions which are classified as sensitive and are included in the random drug testing program. Under no circumstances shall the test be used as a punitive measure.

Section 28.3 Test Procedures

A. If the test sample is to be provided off-site, the Employer will provide transportation to the site unless the Employee requests other arrangements. Travel to and from the laboratory will be on official time.

B. The BDO agrees to follow Health and Human Services (HHS) guidelines for performing all test procedures.

Section 28.4 Test Results

A. Employee will have an opportunity to provide medical documentation supporting legitimate usage of a specific drug upon a positive test result.

B. When an Employee is notified of a confirmed positive, the Employee shall be notified of their right to Local representation at any meetings with Employee concerning the test result. This right shall extend to meeting with any medical personnel.

C. An Employee who has a confirmed positive test may face severe disciplinary actions up to, and including, dismissal. The BDO will provide the Employee with information about, and access to, drug treatment and rehabilitation programs as described under DOI, HHS, and EAP guidelines. HHS guidelines state that supervisors are required to initiate removal of an Employee found to be using drugs illegally from Federal service for:

1. Failing to obtain counseling or rehabilitation, or
2. A second verified positive test or a second determination of illegal drug use.

D. Upon request, the BDO will provide available information on laboratory proficiency test results.

ARTICLE 29 CLIMBING

It is recognized that climbing is an inherently dangerous duty which sometimes results in the loss of life. The purpose of this Article is to reduce the hazard to the extent possible while allowing for the work to be accomplished in a safe and expeditious manner.

Section 29.1 Training and Regulations

A. Employees shall not be directed or allowed to climb when not certified as climbers under the appropriate authority, if any.

B. Tower climbing is a hazardous job, and, as such, shall be performed under the regulations of the Bureau of Land Management Telecommunications Tower Climbing and Fall Protection Policy, BLM Manual Handbook 1292-1.

C. Where regulations do not provide specific training requirements, training shall be provided, as appropriate, to those persons required to climb, by any available commonly recognized source, unless the climber has previously had such training.

Section 29.2 Climbing with Outside Agencies/Contractors

This section recognizes the value of all peoples lives, and is intended to reduce the hazard to the extent possible, whether the climber is an employee or a contractor.

Bargaining unit employees shall not climb with other climbers who are not certified under appropriate authorities, if any. Additional guidance in this matter shall be found in the Bureau of Land Management Telecommunications Tower Climbing and Fall Protection Policy Manual.

Section 29.3 Equipment

A. Climbers shall be provided with Personal Protective Equipment which is of the proper type for the use intended, which fits properly, meets the required standards, and which passes safety inspection. Wherever possible Employees shall be allowed to select their own Personal Protective Equipment.

B. Equipment which fails safety inspection shall be discarded, repaired, destroyed or replaced, and shall not be used, unless it passes a subsequent inspection.

C. Rescue equipment shall be provided, and must be on site whenever climbing work is being performed.

D. If requested the BDO shall pay for climbers to have their equipment safety inspected by a

qualified vendor at least once annually if so desired.

E. Equipment requiring regularly scheduled professional maintenance (such as automatic descent devices) shall be maintained to schedule. It shall be the climber's responsibility to have the maintenance performed.

Section 29.4 Climbing Conditions

In climbing situations where the employee has a reasonable belief that performing their duties poses imminent risk of death or serious injury, coupled with insufficient time to seek redress through normal abatement procedures, the employee may decline to perform the assignment. Such situations may include, but are not limited to:

1. Very cold conditions
2. Icy conditions
3. Windy conditions
4. Tower, structure or situation that may be unsafe
5. Inadequate, or questionable anchor points
6. Climber is sick or on medication which may cause sleepiness, dizziness or slow reaction times

Section 29.5 Health and Medical

If allowable under policy climbers shall be given the same opportunity to maintain health and fitness as are BDO firefighters.

ARTICLE 30 UNIFORMS

Section 30.1 General

Employees required to wear an official uniform shall receive an appropriate amount through the Uniform Allowance Authorization to purchase uniform components.

Section 30.2 Employees Required to Wear Uniforms

A. Law Enforcement Rangers are required to wear the Bureau of Land Management uniform. Their uniform requirements are contained in the Law Enforcement General Orders.

B. The uniform may be required to be worn when the BDO determines that the mission, identity, image and/or Employee pride in working for the Bureau of Land Management are furthered by the identification of the individual. Such occasions may include official functions after duty hours. The BDO will not require any Employee to wear a uniform either routinely or for special occasions without just cause. The Employer shall notify the Employee(s) of the uniform requirement as far in advance as possible for special occasions, and at least fourteen (14) calendar days in advance for a change in uniform requirements for routine use. The notification for a routine use change must be in writing and include the justification for the change. A copy must be provided to the Union.

C. Employees shall be allowed at least seven (7) work days to place an order, and use of the new or changed uniform may begin when the proper uniform is received.

Section 30.3 Wearing the Official Uniform

Employees may wear the uniform in the course of their personal business while commuting to and from their work location. However, Employees should be cognizant of the image portrayed while wearing the uniform during non-duty hours as they may be perceived as representing the Bureau of Land Management. Employees shall maintain the official uniform in good professional condition and appearance.

Section 30.4 Footwear

Footwear is an accessory component. Accessories are components that may be worn with the uniform. The recommended footwear is dark brown, taupe, cordovan or black dress shoes and/or boots, as appropriate with the type of uniform.

ARTICLE 31 DURATION OF AGREEMENT

Section 31.1 Effective Date and Term

The effective date of this Agreement, amendments and revisions, shall be the date it is signed by the Office of the Secretary of the Interior or thirty (30) calendar days after it is signed by the parties, whichever comes first, unless disapproved in accordance with law. This Agreement shall remain in effect for three (3) years and will be renewed for an additional year on the anniversary date thereafter unless between sixty (60) and one hundred and five (105) calendar days prior to any such date either party gives written notice to the other party of its desire to modify the agreement. The notice must be acknowledged by the other party within ten (10) work days. After two (2) automatic renewals and without any negotiating or formal Local activity, e.g., meetings or negotiations between management officials and Local officials, this Agreement shall become null and void on the next anniversary.

Section 31.2 Amendments and Revisions

This agreement may be amended and/or supplemented as follows:

- A. At any time by mutual agreement of both parties.
- B. Within a reasonable time after the enactment of any new law or regulation of appropriate authority which affects the provisions of this Agreement. A proposal by either party to negotiate such amendment(s) or supplement(s) shall cite the pertinent law or regulation and the article(s) of this Agreement affected. When such a proposal is submitted, representatives of the BDO and the Local shall meet within twenty-one (21) calendar days to negotiate the requested amendment(s) or supplement(s).
- C. In accordance with Article 7.

Section 31.3 Effective Date of Supplemental Agreements

Supplemental agreements shall become effective on the date signed by the appropriate Bureau official. They will remain effective concurrent with the basic Agreement, unless there is a mutually agreed expiration date.

APPENDIX A - GLOSSARY

- A -

Abeyance - The condition of being temporarily set aside; suspended.

ADR (Alternative Dispute Resolution) - Includes such processes as arbitration, conciliation, mediation, mini-trial, and MED-ARB. (Appendix B - ADR)

Advance Notice - In general, an announcement of an intention to carry out a certain action, given to an affected or interested party in sufficient time to prepare for the action.

Adverse Action - An official personnel action, usually taken for disciplinary reason, which adversely affects an employee and is of a severity such as suspend, demote, furlough, or removal. For most Federal Employees, an appeal system established by statute exists and the employee may choose to use the statutory procedure or, if coverage under the contract permits, the negotiated procedure, but not both.

Affirmative Employment Plan - A written program to actively eliminate employment standards and practices which tend to discriminate on the grounds of race, creed, sex, national origin or other lawful criteria.

Agency - For purposes of this contract, agency refers to the Bureau of Land Management, Department of Interior

Agreement - See Collective Bargaining Agreement.

Amicable - Characterized by or exhibiting friendliness or goodwill; friendly.

Appraisal period - The period of time for which an employee's performance will be reviewed. Also termed as the performance period.

Arbitrability - Refers to whether a given issue is subject to arbitration under the negotiated agreement.

Arbitration (ADR) - A process in which a third party(s) listens to the facts and arguments presented by the disputants and renders a decision. The decision may be binding or non-binding depending on prior agreement between the parties. Arbitrations are generally less formal than a court. This differs from arbitration hearings as specified in the Basic Agreement (IAMAW, NFFE FL-2052). In that case the arbitrator's decision will be final and binding and the remedy shall be affected in its entirety, provided it is in accordance with law, rule, and regulation. See **Binding Arbitration**

Arbitration Hearing - A hearing conducted under auspices of the basic Agreement (IAMAW, NFFE FL-2052) arbitration Article.

Arbitrator - An impartial third party to whom disputing parties submit their differences for decision.

Authority - See Federal Labor Relations Authority

Award - In Labor-Management arbitration, the final decision of an arbitrator, binding on both parties.

- B -

Bargaining - See Collective Bargaining.

Bargaining rights - Legally recognized right of the labor organization to represent specified employees in negotiations with BDO.

Bargaining unit - All professional, non-professional and non-managerial employees of the Bureau of Land Management, Boise District, Boise, Idaho, including employees of all branch offices, as defined in Article 1.

BDO (Boise District) - An organizational unit of the Bureau of Land Management in Idaho. In context of the Basic Agreement (IAMAW, NFFE FL-2052) refers to those management officials, supervisors and other employees of the BDO that are excluded from the bargaining unit by definition of 5 USC 7112.

Binding arbitrations - Method of settling employment disputes through recourse to an impartial third party (an arbitrator). The arbitrator's decision is usually final and binding. In the Federal Government binding arbitration is required as the final step in a negotiated grievance procedure. It may also be used to settle impasses if its use is approved by the Federal Labor Relations Authority.

BLM - An agency within the U.S. Department of the Interior known as the Bureau of Land Management

-C-

Call-back - The authorized return of an employee to duty from an off duty status.

Civil Service Reform Act of 1978 (CSRA): - Legislation enacted in October 1978 for the purpose of reforming and upgrading the federal civil service system and improving efficiency and quality of public service. The CSRA gives guaranteed protection of the basic rights of federal employees. In the labor-management relations area, CSRA is important because it gives federal employees legal basis for their right to organize, bargain collectively, and participate through labor unions in decisions which affect their working conditions.

Collective Bargaining (Collective Negotiations, Negotiations, Negotiation of Agreement) - The performance of the mutual obligations of BDO and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

Collective Bargaining Agreement (Agreement, Contract, Bargaining Contract, Negotiated Agreement) - A written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

Conciliation (ADR) - A form of dispute resolution similar to mediation in which the emphasis is not only on the resolution of specific issues in disputes but also in the repair or establishment of relationships between parties who had or need to have an ongoing relationship. Third parties who assist with conciliation need not necessarily be neutral, in contrast to mediation.

Conditions of employment - In the federal sector, this term means personnel policies, practices and matters whether established by rule, regulation or otherwise, affecting working conditions.

Contract (Agreement, Collective Bargaining Agreement, Negotiated Agreement) - See Collective Bargaining Agreement.

Contracting Out – Process of having certain steps in a work function performed by outside contractors, using their work forces.

Coworkers - A fellow worker; one that works with another. In BLM the term coworker is only minimally constrained by organizational or administrative definitions. For a given period of time a coworker could be from anywhere, geographically or administratively.

- D -

Disciplinary actions - BDO initiated actions designed to correct errant employee behavior.

Dispute - Any disagreement between an employer and a labor organization requiring resolution; for example, the inability to agree on contract terms or grievances.

Downgrade - Assignment of workers to positions classified at lower grade levels.

Dues allotment (dues withholding, dues check-off) - Practice whereby the employer, by agreement with the Union (and upon written authorization from the employee where required by law or agreement), regularly withholds Union dues from employee's wages and transmits these funds to the Union. In the Federal government dues allotment occurs without charge to the employee or the Union.

- E -

Early resolution - A course of action determined or decided on by the employee and BDO prior to pursuing a formal complaint or grievance procedure.

EAP (Employee Assistance Program) - An annual contract administered by the Idaho State Office to provide confidential counseling and social support services for employees.

EEO (Equal Employment Opportunity) - A general term applying to agency responsibility mandated by Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, The Rehabilitation Act of 1973, as amended, and by Executive Order 11478, of establishing and maintaining an affirmative employment program of equal opportunity within the agency.

EEOC (Equal Employment Opportunity Commission) - The main Federal agency responsible for investigating and resolving employees' discrimination complaints and appeals under the Federal anti-discrimination laws.

Emergency - A situation or occurrence that happens unexpectedly and demands immediate action. A condition of urgent need for action or assistance such as a situation which possesses immediate and/or unforeseen work requirements for the employer as a result of natural phenomenon or other circumstances beyond the employer's reasonable control.

Employee – An individual employed by the BDO who is included in the bargaining unit as described in Article 1.

Employee complaint - An allegation presented by an employee to a Local Representative or BDO in advance of a determination as to a final course of action by the Employee.

ERS (Employee Relations Specialist) - One who works with establishing and maintaining employer-employee relationships that contribute to satisfactory productivity, motivation, morale, and discipline. They provide guidance, consultation, and assistance to management and employees on employee relations matters and advice on grievances and appeals, adverse actions, employee discipline and related matters.

Exclusive recognition/representation - In the Federal government, the status conferred on a labor organization which (1) receives a majority of votes cast in a representation election and (2) is certified by the Federal Labor Relations Authority (FLRA) to represent all employees in an appropriate unit. Certification by the FLRA means that only this particular Union is authorized to act for the employees in the bargaining unit and negotiating agreements on their behalf. The labor organization enjoying this status is known as the Exclusive Representative.

Exigencies - The state or quality of requiring much effort or immediate action; a pressing or urgent situation; pressing need.

Expedited hearing under arbitration - An accelerated arbitration hearing process that utilizes telephone notifications, short turn around, hearings usually confined to one day and a decision rendered usually within fourteen (14) days of the hearing. Fee charges tend to be flat rates and a contractor frequently chooses the Arbitrator.

Expiration date - Formal termination date established in a collective bargaining agreement or the earliest date at which the agreement may be terminated.

- F -

Facilitation (ADR) - A process in which one or more individuals assist meeting participants in maintaining direction and focus on agreed upon agendas. Facilitators are often meeting managers whose skills are making adequate meeting arrangement, keeping track of proceedings and assisting the meeting director or moderator in conducting the meeting. The line between facilitation and mediation is often indistinct and the terms may be used interchangeably. It is common for a mediator to be a facilitator, but not the reverse.

Fact finding (ADR) - A process in which a neutral third party is retained by the parties or appointed by an appropriate authority to gather evidence and determine the facts in a dispute. Fact finding is an advisory and non-binding process, but the fact finder may be asked to provide recommendations.

Flexible Workplace - A coined term referring to a work place that is variable in location. A simple application would be where an employee works in an office setting at certain times and elsewhere, such as at home, for the remainder of a defined employment period. It is generally assumed that the arrangement would have mutual benefit for the employer and employee in terms of personal convenience and fiscal saving.

FLRA (Federal Labor Relations Authority) - An administrative body empowered by Title VII of the Civil Service reform Act of 1978 to provide leadership in Federal service labor-management relations matters by establishing policies and guidance.

FLSA – Fair Labor Standards Act.

FMCS (Federal Mediation & Conciliation Service) - An independent Federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on requests; and engages in various types of “preventive mediation.”

Formal discussion and grievance - Normally in writing, a formal grievance will address the nature and/or the reasons of the grievance and the remedy desired by the grievant. Discussion, as it occurs, is between one or more representatives of BDO and one or more employees or their Local representatives, in the context of the written documentation of the grievance.

FSIP (Federal Service Impasses Panel) - Organizational entity within the Federal Labor Relations Authority which resolves bargaining impasses in the Federal service. The panel may recommend procedures, including arbitration, for settling of impasses or it may direct settlement of the impasse itself.

- G -

Good faith bargaining - Defined by law as the obligation to approach negotiations with a sincere resolve to reach a collective bargaining agreement; to be represented by properly authorized Representatives who are prepared to discuss and negotiate; to meet at reasonable times and convenient places as frequently as necessary; to avoid unnecessary delays in negotiations.

Grievance - Any complaint by an employee or by any labor organization relating to the employment of the Employee(s). Also any complaint concerning the effect or interpretation or claim of breach of a collective bargaining agreement; or any claimed violation, interpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the grievance procedure.

Group Leader - Positions with project or program management responsibility that do not directly supervise the work of a recognizable work force on a regular and recurring basis. See **Work Leader and Team Leader**.

- H -

Head of Unit - Refers to the organizational head of the unit referenced such as the Area Manager, Assistant District Manager or District Manager.

Hearings (ADR) - Hearings in an ADR sense are informal dispute resolution forums in which a “hearings” officer is designated by appropriate administrative authority such as by city ordinance

or Federal statute. This differs from arbitration hearings as specified in the Basic Agreement (IAMAW, NFFE, FL-2052). In that case the arbitrator's decision will be final and binding and the remedy shall be affected in its entirety, provided it is in accordance with law, rule, and regulation.

Higher authority - Normally, an authority at the BLM or DOI level at least one additional step up the organizational ladder.

HRM (Human Resource Management or Manager) - In the Idaho State office the Branch of Human Resource Management includes Personnel and Employee Relations. A Human Resource Manager as currently defined with BDO is one who specializes in dealing with employee concerns, employee relations and related topics of counseling and ADR.

- I -

IAMAW – International Association of Machinists and Aerospace Workers.

Impasse - A situation that is so difficult that no progress can be made; a deadlock or a stalemate. In the Federal government, mediation is required before impasses can be referred to the Federal Service Impasses Panel.

Informal discussion and grievance - Refers to dealing with a grievance prior to taking the step of filing a grievance formally. **See Employee complaint and Formal discussion and grievance.**

ISO (Idaho State Office) - Organizational unit of the Bureau of Land Management encompassing the State of Idaho.

- J -

Just cause - Good or fair reasons to take action. Generally encompasses assumption of equity and impartiality.

- L -

Local - A labor organization representing a bargaining unit located in a particular area or establishment, which is chartered by a national or international Union. Also referred to as the Local Union or Union Chapter.

- M -

Major Duties – OPM’s definition contained within “Introduction to the Position Classification Standards” handbook is as follows. Major duties are those that represent the primary reason for the position’s existence, and that govern the qualification requirements. Typically, they occupy most of the employee’s time.

MED-ARB (Mediation-Arbitration) - A process in which the parties have agreed to first attempt to resolve their differences by using a mediator, and if unsuccessful, proceed to have the dispute arbitrated. The neutral(s) who serve as the mediator may or may not serve as the arbitrator, depending on the prior agreement between the parties.

Management - Broad term used to define any individual who represents the agency in an official capacity, most commonly, supervisors and managers.

Mediation (ADR) - A dispute resolution process whereby a neutral third party(s) acts to encourage and facilitate the resolution of disputes with the power to prescribe a solution. Mediation programs may be voluntary or mandatory. Mediator selection may be decided by the parties or imposed by prior agreement or by a court. Mediation processes are varied and are often the result of the style of the mediator. In the Federal government, mediation is required before impasses can be referred to the Federal Service Impasses Panel.

Mini-Trial - A very private, voluntary, generally non-binding procedure. It is an informal summary of the parties positions before a neutral moderator or advisor. A retired Judge is often used as the neutral advisor. The mini-trial is conducted in the presence of high-level management representatives who have the authority to settle the case. The purpose is to reveal the theories, strengths, and weaknesses of each side as an aid to resolve the case. Settlements often occur immediately after mini-trials.

MSPB (U. S. Merit Systems Protection Board) - An independent, quasi-judicial agency with a statutory mandate to adjudicate appeals from personnel actions. The Board’s mission includes protecting against abuses, maintenance of merit system principles and keeping agencies free of prohibited personnel practices.

- N -

Necessary - Required to achieve a certain result or effect.

Necessary for Functioning of the BDO - A phrase referring to that required to achieve a certain result or effect that is usually determined by prior conditions or circumstances, obligation or convention and usually related to the mission of the agency.

Negotiation (ADR) - The act or process of conferring with another or others in order to come to terms or reach an agreement. In the context of Alternative Dispute Resolution it is a form of resolution conducted directly between the parties or their agents. Negotiations are typically private and controlled by the parties as to content, timing and structure.

NFFE – National Federation of Federal Employees.

- O -

Official time - Duty time that is granted to a Local Representative to perform designated functions without loss of pay or charge to that Employee's leave account.

OPM – Office of Personnel Management regulates personnel administration for federal government agencies.

On-call - A work status wherein an employee is free to leave the duty station and go about most of their normal activities, but is required to return to the duty station when so notified, usually within a specified time interval.

OPF (Official Personnel File) - A collection of formal documentation regarding each employee maintained by the Idaho State Office, Support Services Division, Human Resource Management Branch (Personnel). Upon request employees may view the contents of their file.

Overriding - First in priority; more important than all others.

- P -

Panel - See Federal Service Impasses Panel

Past practices - Those work situation actions or habits, sometimes referred to as privileges, of employees which by custom, tradition and known occurrence have become an integral part of

their working condition. A past practice of procedure normally meeting the following tests: (1) are known to management, (2) responsible management knowingly allows to continue and practice, and (3) such practice continues for some significant length of time.

Performance Evaluation - An appraisal of work performance in comparison to standards that have been previously established.

Performance Evaluation initiation and Closeout – The beginning and ending steps of the performance evaluation. Initiation consists of the supervisor and employee establishing and documenting the expected performance standards for a defined period of employment. Closeout consists of documenting and providing feedback to the employee regarding their performance relative to those standards.

Performance Standard – A statement of the expectation or requirements established by management in consultation with the employee for a performance element within a position. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

PIP (Performance Improvement Plan) - A documented strategy that describes how an employee can improve their performance to an acceptable level. The PIP should address the critical elements the employee is failing on, what is needed to bring the performance up to acceptable level, what assistance is provided, and consequences of failing to improve during the defined opportunity period.

Project Leader - An employee with project responsibility who does not lead employees on a continuing basis. The title can be administrative in nature, meaning it is simply a title for the purposes of recognition by the customer. It is sometimes used in confusion with Team Leader and Work Leader which both have classification standards established by OPM. Project Leader has no such specific standards.

- R -

Rating supervisor (Rating Official) - That person who is evaluating and documenting the performance of an employee.

Reasonable - Governed by or being in accordance with sound thinking; being within the bounds of common sense; not excessive or extreme; routine, normal and fair.

Recognition - Employer acceptance of a labor organization as the one authorized to negotiate, usually for all members of a bargaining unit.

Representational activities - Activities performed by a Union (or the Union's Representative) on behalf of the employees the Union represents. Such activities include meeting and negotiating

with management, investigating problems, handling grievances, and policing the terms of the collective bargaining agreement.

- S -

Settlement - A form of dispute resolution that normally takes place after formal charges or complaints have been filed in court or with formal agency dispute resolution systems and before the adjudicator, judge or arbitrator has rendered a decision. See Award.

Stakeholder/affected party - Individuals, organizations and agencies who have a share, an interest or will be affected by decisions relating to an issue in dispute.

Standby - A work status wherein the employee is required to stay at the duty station and be ready for immediate assignment with a minimum of advance notice.

Statute - A law.

Substantial evidence - That degree of information which a reasonable mind, considering the records as a whole, might expect as adequate to support a conclusion that the matter asserted is true. (Article 6.6 (c) (1))

Supervisor - In the Federal service, means an individual having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline or remove Employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

Supplemental agreement - An agreement negotiated subsequent to the basic or initial agreement.

Suspension - Form of disciplinary action of a temporary nature, as in removing a worker from the job for a stipulated time with the consequent loss of pay.

- T -

Team Leader - One who spends 25% or more of their duty time performing leader duties over employees accomplishing two-grade interval work. Leader duties are defined by OPM in their 1998 General Schedule Leader Evaluation Guide.

Third party neutral - Individual(s) not aligned with, supporting, or favoring either side in dispute; belonging to neither side; indifferent.

- U -

Unfair labor practice - Action by either an employer or Union which violates the provisions of Title VII of the CSRA, such as refusal to bargain in good faith.

Union – The International Association of Machinists and Aerospace Workers, American Federation of Labor, Committee for Industrial Organization, Canadian Labour Congress, National Federation of Federal Employees, Federal Local 2052.

Union observer - Person present at an event but not participating.

USC – United States Code.

Use of official time - The arrangement for a Union Representative to use official time. Normally arranged by contract provisions or management directive to supervisors.

- W -

WAE (While Actually Employed) - A permanent employee whose annual term of employment is defined as other than 12 months. Such an employee accrues benefits at a rate proportional to the amount of time worked on an annual basis.

Wage grade employees - Federal government employees, in trades and labor occupations, whose rates of pay are determined on the basis of prevailing rates for comparable work in the area and fall under the coverage of the Federal Wage System.

Weingarten Right - Name taken from a private sector case. Refers to the right of a bargaining unit Employee to be represented by the Union under specific circumstances. 5 U.S.C. 7114 (a) (2) (B)

Work Leader - One who regularly performs leader duties for three or more employees in one-grade interval occupations as described in OPM's General Schedule Leader Grade Evaluation Guide.

APPENDIX B - ADR

Glossary of ADR Terms

Forms of Alternative Dispute Resolution (ADR)

Negotiations: Negotiation is a form of dispute resolution that is conducted directly between the parties or their agents. Negotiations are typically private and controlled by the parties as to content, timing, and structure.

Facilitation: Facilitation is a process in which one or more individuals assist meeting participants in maintaining direction and keeping participants focused on agreed-upon agendas. Facilitators are often meeting managers whose skills are in making adequate meeting arrangements, keeping track of proceedings and assisting the meeting director or moderator in conducting a meeting. The line between facilitation and mediation is often indistinct and the terms may be used interchangeably. It is common for a mediator to be a facilitator, but not the reverse.

Mediation: Mediation is a dispute resolution process whereby a neutral third party(s) acts to encourage and facilitate the resolution of disputes without the power to prescribe a solution. Mediation programs may be voluntary or mandatory. Mediator selection may be decided by the parties or may be imposed by prior agreement or by a court. Mediation processes are varied and often are the result of the style of the mediator.

Conciliation: Conciliation is a form of dispute resolution similar to mediation in which the emphasis is not only on the resolution of specific issues in disputes but also in the repair or establishment of relationships between parties who had or need to have an ongoing relationship. Third parties who assist with conciliation need not be necessarily neutral, in contrast to mediation.

Arbitration: Arbitration is a process in which a third party(s) listens to the facts and arguments presented by the disputants and renders a decision. The decision may be binding or non-binding depending on the prior agreement between the parties. Arbitrations are normally much less formal than a court.

Med-Arb: Med-arb is a process in which the parties have agreed to first attempt to resolve their differences by using a mediator, and if unsuccessful, proceed to have the dispute arbitrated. The neutral(s) who serves as the mediator may or may not serve as the arbitrator, depending on the prior agreement between the parties.

Fact finding: Fact finding is a process in which a neutral third party is retained by the parties or appointed by an appropriate authority to gather evidence and determine the facts in a dispute. Fact finding is an advisory and non-binding process, but the fact finder may be asked to provide recommendations.

Early Neutral Evaluation: Early neutral evaluation is a term described in the Department of Justice Guidance for the Use of ADR for Litigation in the Federal Courts. It is “an informal process, whereby the parties or the court select a third party neutral to investigate issues and submit a report or testify in court”. The neutral may help the parties develop a discovery plan, identify areas of agreement and disagreement, explore settlement opportunities or offer an overall evaluation of the case. The procedure is non-binding and, generally, the results are not admissible in court. This procedure looks a lot like a variation of fact finding although the DOJ guidelines specifically identify fact finding as a separate procedure. This is an example of the many variations in terms and procedures found under the ADR umbrella. It is essential that parties in a dispute and their representatives/advisors understand the differences in terms and procedures.

Summary Jury Trial: Summary jury trials (STJ) are court-run programs. The purpose is to give the parties a peek at how a real jury might decide their case without going to the expense and time of a real trial. It is short proceeding, generally one-half to one day, in which the attorneys for the parties to the dispute are each given about an hour to summarize their case before the jury and the judge gives a brief explanation of the law. The jury’s decision is non-binding unless the parties have agreed to accept it as binding ahead of time. One advantage of a SJT is that it gives parties who can’t afford a full trial their day in court. Settlements often occur immediately after SJT’s.

Mini-Trial: The mini-trial is a very private, voluntary, generally non-binding procedure. It is an informal summary of the parties’ positions before a neutral moderator or advisor. A retired judge is often used as the neutral advisor. The mini-trial is conducted in the presence of high-level management representatives who have the authority to settle the case. The purpose is to reveal the theories, strengths, and weaknesses of each side as an aid to resolve the case. Settlements often occur immediately after mini-trials.

Private Judges or Rent-A-Judge: This technique is a fairly new innovation by some private dispute resolution firms and some courts. Retired judges typically are used to hear these cases which would have been taken to a real court, and the parties agree in advance to accept the decision as if it were a real court decision. The advantages of this process are speed, privacy, and the ability of the parties to select a judge with expertise in the disputed matter.

Ombudsman: An Ombudsman may be appointed by ordinance, statute, an association, a particular business, a federal agency or other means. The Ombudsman serves as an investigator, red tape cutter and/or facilitator for complaints, questions or issues brought forward by clients, users, or employees of the Ombudsman’s employer.

Settlement: Settlement is normally described as a form of dispute resolution that normally takes place after formal charges or complaints have been filed in court or with formal agency dispute

resolution systems and before the adjudicator, the judge or arbitrator, has rendered a decision.

Settlement Judges: A settlement judge serves essentially as a mediator or neutral evaluator in cases pending before a tribunal. The settlement judge is usually a second judge from the same body as the judge who will ultimately make the decision if the case is not resolved by the parties. Magistrates in the Federal court system often serve as settlement judges and may compel attendance of senior officials and business heads who have decision making authority.

Consensus Building: Consensus building uses ADR processes such as negotiation, facilitation, or mediation to address issues before serious and protracted disputes arise. By bringing all affected parties (the stakeholders) into the process as early as possible the consensus building procedure has been effective in resolving major multi-party, multi-agency, multi-government environmental problems. The mediators in this form may take a proactive role in defining the stakeholders; getting stakeholders to agree to the mediation effort; guiding the process; and upon reaching resolution, administering the process of documentation by getting the final approval and signatures from authorized decision makers.

Convening: Convening helps to identify issues in controversy and the affected interests. The convener generally determines whether direct negotiations among the parties would be a suitable means to resolve the issues; and, if it is, the parties are brought together for that purpose.

Negotiated Rule-making (Reg-Neg): Negotiated rule-making is a process in which the content of a proposed rule is developed through negotiation by representatives of affected interests, including the agency. The Negotiated Rule-making Act of 1990, Public Law No. 101-648, which was made permanent in the 1996 Administrative Dispute Resolution Act, provides this authority.

Hearings: Hearings in the ADR sense are informal dispute resolution forums in which a “hearings” officer is designated by appropriate administrative authority such as a city ordinance or Federal statute. This differs from the formal hearings before an administrative or administrative law judge in formal administrative adjudication forums such as the Interior Board of Land Appeals.

Stakeholders: Stakeholders are all the individuals, organizations, and agencies that meet the definition of a “party” found in Title 5. In general, this means all citizens, businesses, and institutions, public and private, that have standing and will be affected by decisions relating to an issue in controversy.

APPENDIX C – PARTS OF TITLE 5 USC AS REFERENCED

4302. Establishment of performance appraisal systems

(a) Each agency shall develop one or more performance appraisal systems which-

- (1) provide for periodic appraisals of job performance of employees;
- (2) encourage employee participation in establishing performance standards; and
- (3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for-

- (1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;
- (2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;
- (3) evaluating each employee during the appraisal period on such standard;
- (4) recognizing and rewarding employees whose performance so warrants;
- (5) assisting employees in improving unacceptable performance; and
- (6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate performance.

4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled

to

(A) 30 days' advance written notice of proposed action which identifies-

(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

(D) a written decision which-

(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b) (1) (A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee-

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal may be based only on those instances of unacceptable performance by the employee-

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b) (1) (A) of this section in connection with the decision, and

(B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b) (1) (A) of this section, any entry or other notation of the unacceptable performance for which the

action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is-

(1) a preference eligible;

(2) in the competitive service; or

(3) in the excepted service and covered by sub-chapter II of chapter 75 and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit System Protection Board under section 7701.

(f) This section does not apply to-

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321 (a) (2) of this title,

(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

7102. Employee' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right:

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

7103. Definitions; application

(a) (10) “supervisor” means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighter or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority;

7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency-

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws-

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

(B) to assign work, to make determination with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointment from-

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating-

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology,

methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

7112. Determination of appropriate units of labor organization representation

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes-

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

7114. Representation rights and duties

(a) (2) (A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(a) (2) (B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if-

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) The employee request representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representative, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) the rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from-

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

7121. Grievance procedures

(a) (1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b) (1) any negotiated grievance procedure referred to in subsection (a) of this section shall-

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that-

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration

which may be invoked by either the exclusive representative or the agency.

(2) (A) the provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1) (C) (iii) shall, if or to the extent that an alleged prohibited personnel practices is involved, allow the arbitrator to order-

(i) a stay of any personnel action in a manner similar to the manner described in section 1221 (c) with respect to the Merit System Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215 (a) (3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A) (ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning-

(1) Any claimed violation of sub-chapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(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.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302 (b) (1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit System Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by a law administered by the Equal Employment Opportunity Commission.

(e) (1) Matters covered under section 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised this option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under section 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701 (c) (1) of this title, as applicable.

(f) In matters covered under section 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under section 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g) (1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under sub-chapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected-

(A) the remedy described in paragraph (3) (A) if such person has timely filed a notice of

appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3) (B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedures; or

(C) the remedy described in paragraph (3) (C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214 (a) (1).

7513. Cause and procedure

(b) An employee against whom an action is proposed is entitled to-

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) at reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

7701. Appellate procedures

(c) (1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision-

(A) in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a, is supported by substantial evidence; or

(B) in any other case, is supported by a preponderance of the evidence.

APPENDIX D - OTHER LAWS AND REGULATIONS

There are references to other laws and regulations throughout the Contract. The Local 2052 will have on hand all references afore mentioned; for your convenience you can access these via the Internet at the following addresses:

USC - United States Code all Titles.

<http://www.law.cornell.edu/uscode/5>

CFR - Code Federal Regulations

<http://www.access.gpo.gov/nara/cfr/index.html>

BLM Manual - <http://web.id.blm.gov/library/handbooks/index.htm>

DM Manual - http://elips.doi.gov/app_dm/index.cfm?fuseaction=home

IMs and IBs - <http://web.id.blm.gov/library/IMs&IBs/index.htm>

Federal Labor Relations Authority - <http://www.flra.gov/>

Federal Labor Standards Act - <http://www.dol.gov/esa/whd/flsa/>

Please note that only laws and executive orders are automatically binding on members of the bargaining unit. Regulations and policies issued or revised after November 13, 1998, are recognized only after the provisions of the contract are fulfilled.