

Listed Below are highlighted changes of the new contract between NTEU, Chapter 245 and the Patent and Trademark Office.

Article 4 Definitions

In the interpretation and application of this Agreement, the following words or terms shall have the following definitions:

1. "The Office" shall mean the U.S. Patent and Trademark Office.
2. "Department" shall mean the U.S. Department of Commerce.
3. "The Union" shall mean the Trademark Society, NTEU Chapter 245, or any of its officers, executive committee members or representatives, when acting in their official capacities.
4. "Negotiations" shall mean the process by which the Office and the Union present and consider proposals and counterproposals in good faith and as equals, under an obligation to attempt to reach an agreement.
5. "Consultations" shall mean the process whereby one party solicits and/or receives the timely submitted views of the other party and gives these views fair and serious consideration prior to making a final decision.
6. "The CSRA" shall mean Title VII of the Civil Service Reform Act of 1978 (Public Law 95-454).
7. "Computation of time": In computing any period of time prescribed or allowed in the Agreement, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. When the last day of any time period for taking action falls on a Saturday, Sunday, or holiday, or when the Office is closed for business for all or part of the day, the action may be taken on the next succeeding workday. "Day" means calendar day unless otherwise specified.
8. "***Alternate Work Schedule***" shall mean any working arrangement which enables a full-time employee to fulfill the basic work requirement of 80 hours per pay period in less than ten full work days; or the work requirement of 40 hours per week in less than five work days.
9. "Non-work day" shall mean any scheduled day off, which will normally be Friday, Saturday, Sunday, Monday or Wednesday.
10. "Flexitime" shall mean the opportunity for employees to report to work each work day at any time during the morning flexible band, be present during core hours, and leave any time after they accumulated eight hours of work, plus one half hour for lunch.

11. "Restricted flexitime" shall mean a limited form of flexitime which occurs when certain employees are not permitted to report at a time of their own choosing during the morning flexible band, but they may be required to report no earlier than a specified time during the morning flexible band.

Article 8 **Employee Obligations**

Section 1

All employees are presumed to know and expected to comply with all laws and duly published regulations and policies which relate to their employment and conduct. The fact that a particular law, regulation, or policy may not be called to their attention by the Office will not excuse any violation on their part.

Section 2

All employees are expected to observe Office hours and refrain from unauthorized absences and leave abuse.

Section 3

- A. Employees will make a good faith effort to return telephone messages when received the same work day or, if received after 2:00 p.m., not later than the next work morning.
- B. Bargaining unit members are responsible for setting up their outgoing voice mail messages properly.

Section 4

Unit employees shall provide a current mailing address and home phone number to their immediate supervisor.

Section 5

Each employee shall attempt to perform to the best of his or her capability.

Section 6

Employees are to maintain a neat, clean, business-like appearance during working hours. Clothing and behavior must be appropriate to the conduct of government business and shall not be of a kind that would reasonably bring criticism to the Office.

Section 7

In all contacts with the public and with other government employees, employees will be responsive, courteous and considerate. [Deleted “whether by telephone, by letter, or in person.”]

Section 8

Employees shall not intentionally falsify Office records. Falsification of any Office records may be the basis for disciplinary action.

Section 9

The employer is entitled to require truthful answers from employees in response to questions in matters of official interest. An employee who fails to provide such answers is subject to disciplinary action, including removal. An employee need not answer a question from a manager or management representative if it does not pertain to official business.

Section 10

Bargaining unit members will utilize electronic mail for the purpose of both receiving work related messages or information and for responding to work related inquiries made by electronic mail. Electronic messages will generally be reviewed at least once a day. *An employee may consult with his/her manager to determine how to appropriately respond to an external customer’s email.*

Section 11

The parties acknowledge that from time to time the Office issues electronic versions of Office policies and procedures that typically contain the most up-to-date and accurate data available and that such versions are the preferred source of guidance and should be utilized.

Article 11 Grievance Procedure

Section 1

The Office and the Union recognize and endorse the importance of considering employee complaints and grievances promptly and, whenever possible, informally. The parties agree that this grievance procedure will provide a mutually acceptable means of resolving

complaints and grievances at the lowest level possible, and the Office and Union agree to work toward this end.

Section 2

- A. The procedure described in these sections shall constitute the sole and exclusive procedure available to bargaining unit members for resolving grievances under this or any other negotiated agreement between the parties, e.g. flexitime.
- B. This procedure is available to any member of the unit, to the Union on its behalf or on behalf of member(s) of the bargaining unit, and to the Office. Any of the aforementioned parties making use of this procedure shall be referred to, for the purpose of this article, the Grievant.

Section 3: Definition and Scope

A grievance is any complaint:

- 1. by a member of the bargaining unit concerning any matter relating to the employment of that member; or
- 2. by the Union of the Office concerning any matter that relates to the employment of any bargaining unit member or group of members or that relates to the rights of the Union or the Office; or
- 3. by any bargaining unit matter that affects the member personally, or by the Union or by the Office concerning:
 - (a) the effect or interpretation, or a claim of breach of this Agreement;
 - (b) any claimed violation, misinterpretation, or misapplication of any law, regulation, or established personnel policy or practice affecting conditions of employment;
 - (c) any claimed discriminatory or inequitable treatment; any violation of the Merit System principles of 5 USC Section 2301; or any prohibited personnel practice of 5 USC Section 2302.

Section 4

The following matters are considered not grievable under the provisions of this procedure: Those matters excluded from coverage under 5 U.S.C. §7121(c) relating to:

- A. any claimed violation of prohibited political activities;
- B. retirement, life insurance, or health insurance;

- C. suspension of removal in the interest of national security;
- D. any examination, certification or appointment;
- E. the classification of any position which does not result in the reduction in grade or pay of an employee;

Section 5

The Office may cease to process and terminate a grievance upon:

- A. the Union's written request, when the Union is the Grievant;
- B. the voluntary termination of the Grievant's employment except where pay relief is involved;
- C. the death of a Grievant , except where pay relief is involved;
- D. failure of the Grievant or the Union to meet any of the time limits herein; or
- E. failure of the Grievant to properly set forth the substance of this grievance as required by section 11(A) of this article. However, if the Grievant has substantially complied with the provisions of section 11(A) but has omitted some material, the Office shall notify the Grievant at the first level of the grievance procedure and the Grievant shall have five (5) working days to provide the omitted material to avoid termination. The Office's period for response to the grievance shall be reset to start from the time the omission is corrected; or

F. the request of the grievant

Section 6

In the event the Office fails to meet the requirements of these sections, the Union or the grievant is permitted to proceed to the next step of the grievance procedure. However, if a decision is rendered after the time limit, that decision shall become a part of the record.

Section 7

In the event either party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. The earlier this declaration is made, the better. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold.

Section 8

When the Office and the Union agree that grievances should be combined, the Union will select one case for processing under the grievance procedure. The employees will be advised that in processing one grievance for the group, the decision of the case selected will be binding on all other cases. Names of all employees involved in this procedure will be made a part of the record of the case selected for processing, and when a decision is made on the grievance, each employee will be individually notified.

Section 9

A matter of concern or dissatisfaction orally expressed by an employee to his or her supervisor is not a grievance provided for by this section and is not subject to them.

Section 10

A Grievant shall have the right to represent herself/himself.

Section 11

The following steps constitute the required steps for processing grievances:

A. First Step

1. The grievance must be reduced to writing. The written grievance shall be submitted within (30) calendar days after the event or action prompting the grievance, or the date the Grievant became aware of, or should have become aware of, the event or action. ***If the grievant files a FOIA or information request simultaneously with the grievance and the information is received before a hearing occurs or a decision is rendered, the grievant, at his or her request, will be granted a five (5) working day extension to amend the grievance. However, such amendment must be within the scope of the original grievance and must be based upon the information received. The deciding official will be allowed five (5) additional working days to render a decision.***
2. The written grievance shall be submitted to the lowest level supervisor with authority to resolve the grievance (usually the employee's immediate supervisor), who shall render a written decision within five (5) working days. If the management official to whom the grievance is submitted believes that he or she does not have the authority to resolve the grievance, he or she will direct the grievance to the proper official within three (3) working days. ***If, because of the nature of the grievance, either the Union or the Office believes that the immediate supervisor is not the appropriate Step One official, that party may contact the Labor Management Relations (LMR) Office to discuss whether such supervisor should hear the grievance. LMR will consult with the appropriate official(s) and shall designate the Step One official. If an employee***

is grieving a performance rating and has already requested reconsideration by the approving official, the grievance will begin at Step Two. The proper official shall render a written decision within five (5) working days of receiving the grievance [~~deleted “from the management official”~~]. If the proper official is the Commissioner for Trademarks, second step procedures will be used.

3. In the case of an Office grievance, the designee of subparagraph A.4(f) of this section should be the employee who will handle the grievance for the Office and the Union President shall be the person to receive the written grievance.
4. The written grievance must contain the following information:
 - a) name, grade, title, and work unit of the Grievant, name of the person representing the Grievant, or name of the person representing the Union if it is a Union grievance;
 - b) the name and title of the official to whom the grievance is submitted and the date submitted;
 - c) a detailed statement describing the facts involved, the date the incident occurred which gave rise to the grievance, or the date the Grievant became aware of the incident;
 - d) the Agreement article(s) and section(s), law(s), regulation(s), rule(s) and/or other item(s) violated, misinterpreted or misapplied;
 - e) the remedy desired;
 - f) a statement that the Union, or its designee, is representing the Grievant, or that the grievant chooses self representation; and
 - g) the Grievant’s signature

B. If the first step fails to produce a satisfactory resolution, the Grievant may proceed to the second step.

C. Second Step

1. Within five (5) working days of the decision at the first step, the grievant must present in writing a request to proceed with the grievance to the Assistant Commissioner for Trademarks or a designated representative, who may not be the step one decision maker.
2. The written request shall include a copy of the original grievance, the step one decision and should specify that portion of the step one decision to which Grievant has objection.
3. The Commissioner for Trademarks or designated representative shall conduct an investigation which may include a conference with the Grievant, the Grievant’s representative, the Union, and/or witnesses, if requested and shall render a written decision. ***However, the Grievant may waive his or her right to have a conference at any time after the decision at the first step. If a conference is***

requested and later waived, the deciding official will have ten (10) working days from the waiver date to render a decision.

4. The Commissioner for Trademarks or designated representative shall render a written decision within ten (10) working days if no conference is held, or within ten (10) working days after any conference is held.
5. If the Grievant represents himself/herself, the Union shall have the right to have an observer at the conference.

D. Referral to Arbitration

In the event that step one in the case of an Office grievance, or step two in the case in the individual or a Union grievance, fails to produce a satisfactory result, either the Office or the Union may proceed to arbitration as provided in Section 14.

Section 12: Institutional Grievances

For institutional grievances, in lieu of step-by-step procedures outlined above, the Union may submit a written grievance to the Commissioner for Trademarks, or designated representative. Upon request of the Union, the Office and the Union shall meet within ten (10) working days to discuss the grievance. A written decision shall be rendered within ten (10) working days after the meeting or within ten (10) workind days of the filing of the grievance if no meeting is requested. If the Union is not satisfied with the decision, the Union may proceed to arbitration as specified in Section 14.

Section 13: Rights of Parties

- A. An employee is entitled to representation at any of the steps of the grievance procedure. However, nothing in this Agreement shall require the Union to represent an employee if the Union considers the grievance to be invalid, without sufficient merit, or for other good reasons (e.g., financial)
- B. A copy of any document becoming part of the grievance record under this article shall be furnished to the Grievant, Union, Offices, and parties (if combined grievance under Section 8) by the person presenting the document.
- C. The Office shall provide *requested information*, records and evidence under its control or in its possession *in a timely and accurate manner* in accordance with applicable law. *Such requests should be reasonable. If a dispute arises over access to information in connection with a grievance, it will be joined to the grievance unless the Union decides to pursue an Unfair Labor Practice (ULP) with the Federal Labor Relations Authority (FLRA).*

- D. Since dissatisfactions and disagreements may occasionally arise among people in any work situation, the Office agrees that no reprisal will be taken against any employee for initiating a grievance.
- E. The Union has the right to advance notice of and to be present at any Office initiated meeting with the Grievant or any meeting with the Grievant after the step one decision is rendered.
- F. If the Union is not the designated representative of the Grievant, the Union shall have the right to file an “amicus-type” statement for informational purposes. This statement shall become part of the grievance record.

Section 14: Arbitration

- A. The Union and the Office shall have the right to have a grievance submitted to binding arbitration. The Union or the Office shall initiate arbitration by filing written notice with the Chief of the Labor Relations Division or with the President of the Union, as applicable, of its desire to arbitrate within twenty (20) calendar days after the final Office or Union decision has been rendered. Arbitration may be invoked only by the Union or by the Office. An employee does not have the right to invoke arbitration.
- B. The parties shall attempt to select a mutually acceptable Arbitrator within ten (10) calendar days from the date of receipt of the notice in Section 13(A) by the other party.
- C. If the parties fail to agree on an Arbitrator within this time period, the parties shall request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service. Within fourteen (14) days of receipt of the list, the parties shall meet to choose an Arbitrator. The party to make the first strike shall be determined by a coin toss. Each party shall alternate in striking through the name of an Arbitrator until one Arbitrator remains.
- D. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an Arbitrator or allow one party to specify an Arbitrator to hear the case in the event;
 - 1. Either party refuses to participate in the selection of an Arbitrator; or
 - 2. There is inaction or undue delay on the part of either party
- E. Arbitration is provided in this grievance procedure as a means of obtaining the services of a third party, when necessary, to assist in the resolution of grievances. The arbitration procedure set forth herein shall not be extended to include matters related to changes or proposed changes in this Agreement, such changes being subject

to negotiation under the terms of this Agreement, nor shall it be extended to disputes over any matter excluded from the grievance procedure by this Agreement.

- F. The Arbitrator shall have the authority to interpret this Agreement as necessary to render a decision consistent with the provisions of this Article. The decision of the Arbitrator shall in no way change or amend this or any supplemental agreements or regulations which take precedence over this agreement.
- G. The Office and the Union shall attempt to agree in writing upon the precise issue(s) to be decided, and shall submit a joint statement to that effect in advance of any arbitration proceedings. If the parties are unable to concur, each party shall specify the issue in writing with copies to each other and to the Arbitrator. The moving party shall include with its statement of issues the redress it expects from the arbitration.
- H. The arbitration proceeding shall be held on premises provided by the Office.
- I. The Arbitrator shall be requested to render a decision to the Office and the Union no later than forty-five (45) days after the conclusion of the hearing or the Arbitrator's receipt of post-hearing briefs, if they are submitted.
- J. The prevailing party shall be entitled to all relief or remedies provided for under the law.
- K. Either party may file exceptions to the Arbitrator's award with the Federal Labor Relations Authority under the regulations prescribed by the Authority.
- L. Each party shall pay the expenses of its own witnesses, its own travel expenses and for any transcript or other record of the proceedings desired by the party.
- M. The Union and the Office shall share equally in the cost of arbitration.

Section 15

Absence of either party from the Office on approved leave for eight (8) consecutive hours or continuous eight (8) hour increment shall constitute an automatic extension of the time limit set forth herein for an equal period of time for the party who is absent. For the purpose of this Section, when the Union is the Grievant, the President of the Union is the party whose approved leave may extend the time limits. Automatic extension under this Section will be limited to fourteen (14) days.

Section 16

The Union and the Office agree it is mutually desirable to handle disputes amicably and in a fair and expeditious manner. To this end, this Article may be re-opened by either party, but not later than one year from the effective date of this agreement, to discuss an Alternate Dispute Resolution (ADR) procedure as an alternative resolution for grievances and EEO complaints. If one party requests the inclusion of ULP procedures in the discussion it will be included if both parties agree. If neither party re-opens within one year, then the re-opener option, as it pertains to this section, expires.

Article 12 **Promotion and Reassignment**

Section 1

All vacancies described in this article shall be filled on the basis of merit, fitness and qualifications and without regard to race, color, religion, national origin, personal favoritism, age, marital status, sex, physical handicap, political or employee organizational affiliation, except as may be authorized or required by law. The Office will select individuals for promotion and reassignment to positions in the bargaining unit in accordance with applicable laws and regulations so as to develop employee confidence.

Section 2

It is the right of the Office to promote and reassign employees consistent with the appropriate laws, regulations, policies and practices and the provisions of this Agreement.

Section 3

Sections 3-5 cover the following competitive actions or bargaining unit employees to classified bargaining unit positions:

- A. Competitive promotions;
- B. A temporary promotion over 90 days. All prior service at the higher grade level during the preceding 12 months including details to higher grade positions or temporary promotions must be counted as part of the 90 days.

A temporary promotion may only be made permanent without further competition if the fact that it might lead to a permanent position was originally made known to all potential candidates and the temporary promotion results from a competitive process;

- C. Reassignments to positions with known promotion potential to higher than the employee's current position.

Section 4

- A. The Office will send a vacancy announcement via electronic mail to each bargaining unit member to cover all vacancies that must be filled in accordance with the procedures of this Article. The announcement will be sent via electronic mail within a minimum of ten (10) days prior to the closing date.
- B. When announcements are issued they will contain:
 - 1. Announcement number;
 - 2. Opening and closing date;
 - 3. Position title, series and grade;
 - 4. Organization location and duty station;
 - 5. Known promotion potential/career ladder status where appropriate;
 - 6. Principal duties;
 - 7. Minimum qualifications required;
 - 8. Evaluations methods;
 - 9. Statement of equal employment opportunity;
 - 10. Selective placement factors, if any; and
 - 11. Number of positions to be filled.
- C. Applicants must meet all qualification requirements by the closing date of the vacancy announcement.
- D. Ranking factors must be job related and will not be tailored to fit the qualifications of a particular individual.
- E. Notice of all vacancy announcements subsequently cancelled will be sent to each bargaining unit member, via electronic mail.
- F. ***The Office shall individually notify all candidates as to whether they were selected or not. In addition, the Office will notify all applicants who have applied for a position which was announced and open but subsequently withdrawn.***
- G. If there are more than 8 candidates subject to panel evaluation, all eligible candidates will be evaluated and ranked in a fair and objective fashion.
- H. In order to provide a fair ranking of more than eight candidates subject to panel evaluation an evaluation panel will be utilized. The panel will be constituted in the following manner:

A panel for a particular position will consist of at least three members, selected by the Office of Personnel, one of whom shall be from an office or unit other than the one in which the vacancy is located. At least one of these members must be familiar with the work where the vacancy is located. When advice and guidance on the

interpretation of qualifications is considered essential, the selecting official may advise the panel but has no vote. Such advice should normally be provided before the panel receives the names and applications of the candidates.

- I. Within thirty days after the vacancy announcement has closed, the panel shall evaluate and rank the candidates as “Qualified” and “Best Qualified.” All eligible candidates will be evaluated on the basis of valid job-related criteria which measure the knowledge, skills, abilities and personal characteristics essential to successful performance in the position to be filled. The panel shall maintain a record of what points are credited to each candidate. Upon the filing of a grievance or formal complaint regarding the selection, records of the panel shall be available to the Union and the grievant in accordance with applicable law and regulation. These records shall be retained for two (2) years or until any grievance or formal complaint regarding the selection is finally resolved, whichever, is longer.
- J. Apart from documented cases of leave abuse, an employee’s accumulation or balance of annual or sick leave may be considered by the ranking panel or ranking official, selecting official or supervisor as a basis for selection for promotion.
- K. When all eligible candidates have been evaluated and ranked, the Office will promptly issue form CD-262, “Merit Assignment Program Certificate,” listing the names of the best qualified candidates in alphabetical order, to be considered by the selecting official.
 1. A Certificate will usually include the names of three to five best-qualified candidates for the vacancy to be filled. Additional candidates maybe certified where meaningful distinctions cannot be made. Ten the maximum number of best qualified candidates that may be referred to the selecting official, except as stated in subsection 3, but the number of candidates may be increased to the extent necessary to include all of the candidates available from other appropriate sources as “other appropriate sources” is used in 5 USC 7106 (a)(2)©(ii).
 2. In cases where meaningful distinctions of qualifications cannot be made through the application of quality ranking factors and an excessive number of candidates are considered equally qualified, up to 10 candidates may be listed on a certificate based on seniority with the Office.
 3. When there is more than one vacancy to be filled from a certificate, one additional candidate may be added to the certificate for each additional vacancy. In the event additional vacancy(is) occur within one month after an announcement has closed, the old announcement maybe used to fill the vacant position.

4. After all eligible candidates subject to panel evaluation are ranked, PTO employees will be considered for vacancies under the procedures of this article before any other candidates are considered.
 5. Once non-PTO employees are considered, PTO employees will be simultaneously considered.
 6. When a PTO employee is passed over for selection in favor of a non-PTO applicant, the former will be given a written explanation of all the reasons for non-selection.
 7. A Merit Assignment Program Certificate is valid for (30) calendar days from the date of the issuance. The certificates may be extended for 30 additional days upon a valid request by the selecting official.
 8. Interviews, with the selecting official are optional. If one member of the best-qualified group is interviewed, all must be interviewed.
 9. If the candidate selected is a unit employee, he/she shall be promoted at the beginning of the next pay period following completion of all necessary approvals and processing requirements. Under unusual circumstances, (e.g. permit arrangements to be made for the completion of essential assignments), this time period for promotions may be extended.
- L. When requested by a competing bargaining unit applicant, the Office shall furnish the following information after the action has been completed:
1. The name(s) of the individual(s) selected;
 2. Whether the applicant was found to be qualified;
 3. Whether the applicant was referred to the selecting official;
 4. Any other relevant and necessary information which is permitted by law, which the applicant may require to prosecute a grievance or other challenge; and
 5. In what area, if any, a bargaining unit employee may improve his or her qualifications to enhance chances for future selection. (This information normally will be furnished by means of a counseling discussion with either a representative of the Office of Personnel or a knowledgeable supervisor.)
- M. Upon request at completion of the selection process, a copy of the completed ranking and selection report shall be made available to the Union. The ranking and selection report will contain, at a minimum the following;

1. Announcement;
 2. Date of Report;
 3. Number of vacancies;
 4. Sanitized summary of the panel scores;
 5. The series, grade of the employee referred, if the candidates were within the bargaining unit;
 6. If candidates were not bargaining unit employees, this will be so designated;
 7. Selection action (i.e. clear indication of which candidates were selected);
 8. Date of selection action; and
 9. Date eligible for promotion.
- N. Grievances arising out of the application of the promotion plan shall be processed under the negotiated grievance procedure. It is understood that non-selection for promotion from a group of properly ranked and certified candidates is not grievable.
- O. Due consideration will be given to requests for voluntary downgrades.

Section 5

No member of the unit shall be placed in a disadvantageous position with regard to promotions by virtue of officially initiated service on a detail or work project.

Section 6

- A. This section covers temporary promotion actions to bargaining unit positions of 90 days or less.
- B. When an employee in the bargaining unit is temporarily assigned to another position in the bargaining unit classified at a higher level for more than thirty (30) days, a temporary promotion will be made under applicable rules and regulations.

Section 7

- A. This section covers career ladder promotions to positions through the GS -12 level. Employees in identified career ladder positions working below the GS-12 level will be eligible for promotion provided that the employees meet the requirements of the

position including satisfactory demonstration of ability to perform at the next higher grade and have a current Fully Successful performance rating, and there are sufficient funds and higher level work to be performed.

The effective date will be the beginning of the first pay period after all applicable regulations and approval requirements are met. Employees who meet the requirements for promotion and who are not promoted after meeting all applicable regulations and approval requirements and in accordance with the Back Pay Act, 5 USC 5596, 5 USC 550 subpart H, and relevant Computer General decisions, shall be entitled to back pay from the first pay period after meeting such regulations and approval requirements. Bargaining unit employees who are not promoted after completion of the minimum time in grade shall have the right to request and receive a written statement from their supervisor after face-to-face discussion between them. The supervisor's statement shall list the reasons for withholding the promotion and explain how the employee's performance can be improved to qualify for promotion.

Section 8

Approved leave, whether sick leave or annual leave or leave without pay shall not be used as a basis for determining ability to perform the job under the terms of this article unless the leave in of such duration that the employee has not adequately progressed in job knowledge or performance or unless there have been frequent instances of sick leave or tardiness which, though approved, have been the subject of counseling between the employee and supervisor. Five Hundred twenty-two (522) hours of leave in one year shall be considered prima facie proof of inadequate progress in job knowledge or performance for purposes of promotion.

Section 9

The Office shall consult semi-annually with the Union upon request regarding professional staffing goals and hiring plans.

Section 10

The Office hereby expresses willingness to consider promptly *written* requests *made to designated Office officials* for transfers or reassignments from all members of the unit. Requests for reassignment within one's series and grade will be honored subject to the needs of the Office. *If a request is denied, it must be denied in writing. Thereafter, management will consider the denied request to be ongoing and will approve the request as soon as practicable, subject to the needs of the Office. In any event, the Office will provide the status of an ongoing request to an employee once every six months or earlier upon an employee's request.* Nothing derogatory shall be connoted in any request for transfer or reassignment and the individual so requesting shall be free from discrimination or reprisal therefore.

Section 11

Request for personnel action will be processed promptly.

Section 12

The Office agrees that the promotion of an employee shall not be delayed only because the employee's supervisor has been newly appointed to that position and is unfamiliar with the employee's work.

Section 13

When it is necessary to reassign employees due to staffing imbalance, the Office will first ask for volunteers from among the qualified employees at the affected office. If there are too many volunteers, the employees with the oldest PTO service computation date shall be given first consideration for the reassignment, absent operational needs. If there are too few volunteers, employees with the most recent PRO service computation date will be given first consideration for the reassignment, absent operational needs.

Article 13 **Performance Appraisal**

Section 1

Employee performance evaluations will be conducted pursuant to the General Workforce Performance Appraisal Systems (GWPAS), attached as Appendix C. GWPAS is attached for reference. In the event of a conflict between GWPAS and the terms of this Article, the terms of this Article shall prevail.

- A. There will be appraisals for details after 90 days
- B. There will be a 45 day notice of a change in plans and a 15 day comment period.
- C. The Union will be notified of a change in plans before employees are notified.
- D. If the Office intends to change performance plans after performance plans for the rating year are in effect and the change is a temporary modification of the plan for one month or less, and is caused by an extraordinary business emergency, then the change may be implemented after a fifteen (15) day notice period. In such cases the impact and implementation bargaining, if requested, shall begin during the notice period.

E. The Union will be the exclusive employee representative to consult with the Office in the development of the performance plans. Individual employees will retain the right to dispute the application of the plan to their individual circumstances. This does not prejudice the Union's right to represent employees in grievances concerning performance appraisal.

F. If a rating official and an employee disagree over the application of any performance plan items, the rating official and the employee should attempt to resolve the disagreement through discussion. If discussion fails to resolve the dispute, either party may ask for a review of the dispute by the approving official. If the dispute remains unresolved, the approving official shall make the final decision regarding the content of the plan.

G. Normally, employees will get their plan at the beginning of the rating period.

H. In the event that application of this rating system leads to an unfair or unreasonable overall performance rating, the rating official shall have the ability to assign a performance rating that is fair and reasonable under the circumstances

I. All appraisals of performance will be made in a fair, reasonable and accurate manner, based upon the employee's performance during the appraisal period, using verifiable data.

J. All ratings must also be based on adequate observation and knowledge by the rating official of all factors affecting the employee's performance. If the rating official feels that he/she is not able to properly evaluate an employee's performance because of lack of opportunity to observe performance, the rating official may request an extension of the due date of an official rating for a period up to but not to exceed three (3) months. Adverse comments relating to an unsatisfactory rating made by the supervisor must be supported by appropriate and actual examples.

K. Management has determined that it will continue to apply supplemental standards

Section 2

A. An employee paid at less than step 10 of the grade of his or her position, shall earn advancement in pay to the next higher step of that grade upon meeting the following three requirements established by law:

1. The employee's performance of the duties and responsibilities of his or her assigned position, must be at an acceptable level of competence.

2. The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

3. The employee must not have received an equivalent increase during the waiting period.

B. At least ninety (90) days prior to the date that an employee is eligible to receive a within-grade increase, the employee's supervisor will notify the employee as to his or her performance. If the Office, through administrative oversight, fails to give this warning notice 90 calendar days in advance of the within grade increase due date, the within grade determination shall still occur on time and the Office shall still provide a 90 calendar day improvement period. If after the improvement period, the employee improves to an acceptable level of competence, the within grade increase may be granted at the beginning of the next pay period.

C. If the supervisor believes that the employee's work is not at an acceptable level of competence, the 90 day notice must outline all the reasons for the supervisor's belief, along with citations to relevant examples of poor performance.

D. If the final decision is to deny the increase, this must be stated in writing along with the reasons relied upon in making the final decision. The employee's right to appeal and the procedures for such will be outlined in the letter.

E. At any time after the increase has been denied, the employee has the right to the increase, when the Office determines that he/she has demonstrated sustained performance at the acceptable level of competence.

Section 3 : Action Based on Unacceptable Performance

If an employee's performance is at an unacceptable level, a reduction in grade or removal may be initiated. The procedures set forth in 5 USC Chapter 43 and GWPAS or 5 USC Chapter 75 may be followed, if appropriate, at the election of the office.

B. If the rating official believes that the employee could benefit from participation in the Office Employee Assistance Program, the rating official shall fully consider the program's provisions prior to taking action against the employee. However, employee participation in this program is strictly voluntary.

C. *An employee can request any other action to assist the employee in raising his/her performance level from his/her supervisor, Employee Relations, Office of Civil Rights, or other appropriate management official.*

D. If the employee's performance continues to be unacceptable, formal personnel action, in the form of reduction in grade or removal may be initiated. If this action is undertaken, the procedure set forth in 5 CFR 432 will be followed, if legally appropriate.

E. The actions covered by this section are reductions in grade and removals for unacceptable performance taken under 5 USC Chapter 43. All provisions of the Civil Service Due Process Amendments (Public Law 101-376), attached as Appendix D, apply, except as modified below.

1. A non-preference eligible (non-veteran) employee who has completed two years of current continuous employment in the same or similar positions against whom an action based on unacceptable performance has been taken may appeal the decision to the Merit Systems Protection Board, or with the consent of the Union, to arbitration under the terms of this agreement, but not both.

2. A preference eligible (veteran) employee who has completed one year of current continuous employment in the same or similar positions, and against whom an action based on unacceptable performance has been taken may appeal the decision to the Merit Systems Protection Board, or with the consent of the Union, to arbitration under the terms of this agreement, but not both.

F. Prior to proposing any action under 5 USC Chapter 43, the Office will provide a performance improvement period in accordance with Article 13, Section 3. If during the performance improvement period (PIP), the employee has demonstrated definite improvement, but not quite enough to meet the marginal level of performance, then management may extend the PIP for a reasonable time or propose a reduction in grade or removal as appropriate.

G. A meeting between an employee and his/her supervisor and/or other officials of the Office during which the principal topic of discussion is an action or potential action for unacceptable performance (i.e., a reduction-in-grade or removal for unacceptable performance) will entitle the employee involved to be accompanied by a Union representative during such meeting. If such a request is made, the supervisor or other line management official will honor the request. If after the proposal notice has been delivered and the employee has designated the Union as his/her representative, the employee shall have the right to have the Union represented at any discussion between the Office and an employee. The Union reserves its rights under Article 9, Section 4 and statute.

H. An employee whose reduction in grade or removal is proposed under this article shall be provided with at least thirty (30) days advance written notice of the proposed action that identifies:

1. the specific instances of unacceptable performance by the employee on which the proposed action is based;

2. the critical element(s) and standards of the employee's position involved in each instance of unacceptable performance.

3. the employee's right to reasonable time to answer the agency's notice of proposed action orally and/or in writing. Reasonable time shall normally be considered to be 14 calendar days from receipt of the proposal. Reasonable extensions of time will be granted if requested and for good cause shown;

4. the employee's right to representation by the Union, an attorney or other representative of his/her own choosing.

I. The employee will be provided copies of all documents, which contain evidence, relied upon by the Office in proposing the action. If any portion of an investigative report is to be used as evidence, that portion will be included, i.e., the employee will be presented with a proposal and supporting evidence that is identical to that transmitted to the deciding official. Nothing in this section is to be construed as a waiver of the employee's or the Union's right to request additional information under other authorization, such as the Freedom of Information Act, the Privacy Act, or the Civil Service Reform Act.

J. The employee shall have the right to be represented by the Union or by an attorney or other representative of his/her own choosing in connection with the oral and/or written reply.

K. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed action.

L. A proposed action may be based on instances of unacceptable performance which occur within a 1-year period ending on the date of the proposed action. The employee shall receive a written decision specifying the reasons for the action taken and addressing employee allegations of pertinent factual discrepancies. The decision will have the concurrence of an official at a higher level in the organization than the one who proposed the action. Copies of the decision will be served on the employee and the designated representative. The decision shall not be effective before the end of the 30 calendar day period.

M. Whenever management has decided to effect a reduction in grade or removal, the employee will be offered an opportunity to resign before the written decision is issued.

N. 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 advanced written notice provided for in Section 3H of this article, any entry or other notation of the unacceptable performance shall be removed from any Office record relating to the employee.

O. The Office shall provide a sanitized copy of all performance based proposals and decision letters to the Union simultaneous to their issuance to employees. Sanitized decision letters are not required when the Union has been served under Section 3L above.

Section 4

All scores given to employees other than fully successful, will be supported by written narrative justifications citing specific examples.

Section 5

Arbitrators will be free to change an employee's appraisal score in accordance with existing law.

Article 14 **Physical Facilities**

Section 1

The Office and the Union agree that a healthful environment is desirable. Therefore, the Office and employees will observe all applicable rules and regulations relating to safety and health in the work place.

Section 2

- A. The goal of the Office shall be to provide a private, wall enclosed (full ceiling height) Office to all employees. Toward that end, the Office agrees to provide the following or to make a good faith effort to secure space so as to provided the following:
1. a private office of at least **120** square feet to all GS-13 ***or above employees; except that employees who work at home or who work part-time may be required to double or share office space;***
 2. a work area of at least 65 square feet per person for all employees doubled in offices. ***[delete language, see below]***
- B. Should existing space prove inadequate to satisfy subparagraphs A1 and 2 above, the Office agrees to give good faith consideration to the reallocation of existing space and to the acquisition of additional space.
- C. The Office agrees to consult in good faith with the Union about any problems with respect to achieving subparagraphs A1 and 2. Further, the Office will keep the Union apprised of its efforts to gain additional space. The Office will bargain in good faith to the extent required by law with the Union with regard to any move to additional or new space.
- D. ***When doubling is necessary, it shall be structured as follows:***

1. it shall be done by seniority among employees on each floor, *except that part-time and Trademark Work at Home (TWAH) employees will be doubled before full-time employees working at the office;*
2. *before two full-time employees are doubled on a floor, the Office will double one full-time employee with one part-time or TWAH employee or have them share an office, when practicable;*
3. where two employees within the same law office request to be doubled in an office, their request will be honored, if practicable;
4. employees occupying interior offices will not be required to double in an office unless and until all exterior offices have two attorneys doubled in the space; more senior attorney with exterior offices on that floor will be given the option of either doubling in an exterior office or taking an interior office alone;
5. *employees shall be given two weeks notice that they are to be doubled. However, if 2 weeks notice is not practicable, then employees will be notified as soon as feasible. Employees will be notified as soon as practicable of the names of other employees who are to be doubled;*
6. *the Office may provide telephone headsets to doubled employees, upon their request, and if the Office determines that the costs are reasonable;*
7. *the Office shall collect and share with the Union within forty-five (45) days after the relevant period, data comparing the performance of employees who are doubled against employees who are not doubled as soon as ten (10) employees are doubled (e.g. five (5) doubled offices), excluding par-time or TWAH employees; production data will be collected quarterly and quality, phone percentage and docket management data will be collected semi-annually; the Office shall collect data by grade-level and will share sanitized reports and progress reviews with the Union; the Office shall consult quarterly with the Union concerning these activities, upon Union request; nothing herein prevents the Union from collecting its own data as it sees fit;*
8. the President and Vice-President of NTEU, Chapter 245 will not be doubled-up in their offices.

E. *The Office shall allow for intra-law office move to occur as follows:*

1. *employees may voluntarily move to an available office once per quarter, except that moves between window offices may not be made more than once every six (6) months; moving from an interior office to an exterior window office shall not be counted as a move;*

For example:

If an employee is hired on January 1, the employee may move from interior to exterior window office on April 1 and may move to another window office on July 1.

2. *the Office shall generally schedule set quarterly moving dates; however, if the Office decides to schedule moves prior to the normal quarterly date, any employee who would have been eligible to move on the normal date would be*

eligible to move on the accelerated date; in all cases, the Office shall notify employees in advance of upcoming move dates;

- 3. employees may not “bump” other employees out of their offices except if a vacancy occurs in a window office between regular move dates and a newer employee is placed in such office temporarily;*
- 4. an employee who voluntarily transfers into a law office loses his or her seniority for choosing an office for their initial office placement only; they subsequently regain their seniority, and the initial office placement is not considered a voluntary move for the purpose of subsection E1 above.*

- F. Management will provide a secured work space. Law Office suites will be secured via an electronic access system.
- G. Management will provide a Health Unit in the North Tower building which will offer services available to bargaining unit members, including screening and education programs, comparable to those offered at the Health Unit in Crystal Plaza Three.
- H. This Section shall be applicable except when doing so would preclude the Office’s implementation of the applicable Government-wide space utilization regulations.

Section 3

The Office agrees to continue to furnish the work areas in a manner appropriate to the legal profession. *The Office agrees to provide adequate storage space for the performance of job responsibilities.* The Union agrees that employees will maintain and decorate their work areas in a manner appropriate to the legal profession and consistent with the lease and GSA regulations.

Section 4

Smoking is prohibited by bargaining unit members in all buildings occupied by bargaining unit members.

Section 5

The Office agrees to allow access to the Trademark Law Library during non-operational hours.

Section 6

The Office and the Union agree that clean, well maintained areas in which members of the unit work are desirable. In this regard, the Office agrees to make reasonable efforts to enforce the lease requirements regarding the painting and cleaning of such areas.

Section 7

The Office shall have an annual health and safety inspection in each building that is occupied with bargaining unit employees. Such inspections shall be conducted by an Office designated official who shall be accompanied by a designated representative of the Union. Where this designated Union representative is an employee, the representative shall be on official time.

Section 8

When an employee becomes ill or is injured in the performance of his/her duty, the employee will be promptly referred to the Health Unit. Agency designated personnel will provide initial necessary OWCP claim forms. Employees must contact agency designated personnel to secure information concerning necessary claim forms and guidance on other filing requirements. Employees are responsible for providing timely and complete claim forms, and keeping agency designated personnel apprised of their status and estimated time for return to work.

Section 9

An employee will be permitted to review documents relating to his/her claim for compensation which the Office of Workers' Compensation Programs has authorized the Personnel Office to make available. The employee may be accompanied by his/her designated representative if so desired.

Section 10

Normally, no professional will be assigned or reassigned to office space until such time as the office space is substantially ready for occupation except that the installation of phones may not be completed in the new offices at the time of the move.

Section 11

A. The Office agrees that inadequate ventilation, heating, cooling, and lighting in areas of the office in which members of the unit work, contribute to inefficiency and further agrees to seek and request installation of adequate facilities to provide such ventilation, heating, cooling and lighting where it does not exist. In the event of failure of the air conditioning system, heating or lighting facilities, the Office agrees that those employees present may be excused from duty with no loss of leave or salary, except that the Office may relocate employees if alternative work stations are available. (Failure of the air conditioning system will be defined as any continuous period greater than four hours in which the employee's office temperature is greater than 87 degrees F. Failure of the heating facilities will be defined as any continuous four hour period in which the employee's office temperature is below 60 degrees F).

B. Each office will contain adequate controlled lighting, ventilation with proper dust filtration system, and heating, cooling and electrical outlets.

Section 12

The Office shall grant excused administrative leave when physical conditions at an employee's work station endanger the safety or health of an employee if the Office is unable to provide an alternative work station.

Section 13

Upon receiving new equipment which may impact on the work environment, the Office will make available to the Union, upon request, any data received from the manufacturer that shows environmental effects on both employees and the work area..

Section 14

A Safety and Health Committee is established for the purpose of advising the Office concerning work-related safety and health matters. Two members will be appointed by the Union and two members will be appointed by management. The committee will meet quarterly and at such other times it determines necessary.

Article 16 **Union Representation and** **Official Time**

Section 1

Union representatives shall be authorized a reasonable amount of official time not to exceed the amount calculated in section 2, with a maximum rollover of 250 hours per year, effective as of the effective date of this agreement, to conduct the following activities:

- A. to prepare, investigate, and represent employees in grievances, discrimination complaints, and to counsel employees;
- B. to prepare for consultations and/or meetings with the Office; However, in the interest of encouraging open and honest communication between the Union and the Office, and in the interest of avoiding conflicts, informal, mutually agreed upon meetings between Union representatives and designated Trademark management officials are excluded from this Section. For these informal meetings, the Office shall authorize non-official, actual time for both the meeting and for the preparation for the meeting, if appropriate. The appropriateness of the amount of preparation time will be determined by the Office and will be pre-approved upon request;

- C. review of and response to memoranda, letters, and requests from the Office, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions, except, as provided in Section 2A;
- D. to attend hearings or meetings in the capacity of an observer where an employee has elected to pursue a grievance without Union representation;
- E. consideration of all matters concerning the interpretation and/or application of this Agreement and/or the CSRA; and
- F. attendance by one (1) representative, as a member of the public, at Trademark Advisory Committee
- F. Use of official time will be measured on a fiscal year basis, and, for FY 1993, will be pro rated from the effective date of the Agreement.

Section 2

The maximum amount of time authorized in Section 1 shall be calculated as follows:

1500 hours + 1.5 times the number of bargaining unit employees.

The amount will be calculated at the start of the fiscal year (October 1). An adjustment will be made semi-annually on March 30, using the above formula. The average between the October 1 calculation and the March 30 calculation will be the actual number of bank hours for that fiscal year.

G. Section 3

Union representatives shall be authorized actual time for Office initiated meetings.

Section 4

All employees in the unit shall be granted one (1) hour of official time per year to attend Union meetings to discuss working conditions and/or other problems but not internal affairs.

Section 5

Time spent conducting internal Union affairs such as solicitation of dues or members shall not be conducted on official time.

Section 6

Management shall authorize a total of 144 hours of official time per year to the 4 Union officers or the designees for the purpose of attending Union sponsored training, providing the training is of concern to the employee in his/her capacity as a Union representative.

Section 7

During the first month of the contract, the Union may hold a one hour meeting on non-bank official time at which all employees may attend to discuss the terms of the contract.

Section 8

A. The Union President or his/her designee will approve all time charged to Union activities by initialing the employee's bi-weekly work sheet. The approval will be given to each employee, who will submit the work sheet in accordance with established procedures.

B. The Office will provide to the Union quarterly accounting of official time used by union representatives, broken down into bank and non-bank official time.

Section 9

It is agreed and understood that when Union representatives intend to conduct official union business, they will notify their supervisor by leaving a note on their desk indicating where they are and approximately how long they will be gone. If the presence of the representative would cause substantial disruption at that time, the supervisor may authorize an alternate time.

Section 10

A grievant shall be granted a reasonable amount of official time up to 6-hours for preparation of the grievance and/or to prepare for arbitration.

Section 11

The grievant, the Union representative and all relevant employee witnesses shall be on official time for the presentation of any grievance matter or at any arbitration hearing.

Section 12

Employees will be granted actual official time for any adverse action hearings or management investigations in which they are involved which may lead to disciplinary action being taken against them.

Article 18 **Leave**

Section 1: Sick Leave

A. Requests for and approval of sick leave shall be made as far in advance as practicable and shall be made directly to the employee's immediate supervisor or supervisor's designee(s) in the absence of the supervisor.

B. When it is necessary to request emergency sick leave, i.e., the need is not known in advance, the request to the supervisor or designee is to be made by the employee by 9:30 a.m., the first day of absence. Unless prior approval is obtained for absences of several days duration, sick leave must be requested by 9:30 a.m. each succeeding morning the employee is absent.

C. Sick leave requests shall be granted for purposes approved by law and government-wide regulations.

D. All requests for sick leave are to be made in writing, using a Standard Form 71, Request for Leave.

E. Sick leave must be used when unit employees go to the Health Unit for one hour or longer.

F. A person shall be placed on sick leave restriction only if there is evidence of sick leave abuse and the restriction is justified in writing. The mere amount of leave used for illness does not constitute abuse.

G. Where the Office has reasonable ground to believe that an employee has abused sick leave, a written warning may be issued informing the employee that if the described abuse continues, sick leave restriction may be imposed. If subsequently imposed, another written notice will be provided explaining that, for a stated period, but not to exceed 6 months, request for approval of sick leave must be accompanied by a medical certificate. At the end of the stated period, the Office shall review the employee's situation and shall give the employee notice of recession or renewal of the restriction due to continued abuse.

H. Requests for advanced sick leave will normally be granted in accordance with governing regulations when all of the following conditions are met:

1. the employee is eligible to earn sick leave;
2. the employee's request does not exceed 240 hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;
3. there is no reason to believe the employee will not return to work after having used the leave, and the employee has sufficient funds in his or her retirement account or any other source of monies owed to the employee by the Government to reimburse the Employer for the advance, should the employee not return to work;

4. the employee has provided acceptable medical documentation of the need for advanced sick leave; and

5. the employee is not subject to leave restriction.

I. 1. Employees shall not be required to furnish a medical certificate to substantiate requests for approval of sick leave unless:

(a) the leave exceeds 5 consecutive work days; or

(b) the employee has been placed on leave restriction.

2. However, the supervisor has the discretion to require medical certificates for sick leave of 4 or 5 consecutive days if he/she has reason to believe the employee is abusing the use of sick leave.

J. An acceptable medical certificate is a written statement signed by a registered practicing physician or appropriate medical practitioner certifying to the incapacitation, examination treatment, or the period of disability of an employee while he/she was undergoing professional treatment.

Section 2: Annual Leave

A. Employees are entitled to take annual leave subject to the operating needs of the Office.

B. Requests for and approval of annual leave shall be made as far in advance as practicable and shall be made directly to the employee's immediate supervisor or supervisor's designees(s) in the absence of the supervisor.

C. Employees, may be given advanced annual leave when:

1. they are eligible to earn annual leave;

2. they have served more than ninety (90) days in their current appointment; and

3. their request does not exceed the amount of annual leave they would earn during the remainder of the year.

D. When it is necessary to request emergency annual leave, i.e., the need is not known in advance, the request to the supervisor or designee is to be made by the employee by 9:30 a.m., the first day of absence.

E. All requests for annual leave are to be made in writing, using a Standard Form 71, Request for Leave.

Section 3: Maternity/Paternity Leave

A. In accordance with Government Wide Regulations, a female employee may be absent on leave for maternity purposes. The length of such absence shall be determined by the employee, her physician and her supervisor. [She may use sick leave, annual leave, or leave without pay to the extent that she has available annual and sick leave, provided however, that requests for advanced sick leave shall be treated by the Office the same as any other available annual leave time.] Any absence in excess of available annual, or sick leave time will be recorded and treated as leave without pay.

B. The female employee, her physician and her supervisor, shall decide when the absence will begin. On the employee's request and upon furnishing a medical certificate, absence will be charged to sick leave to the extent available. The employee should make known her intent to request leave for maternity reasons indicating the type of leave, approximate dates and anticipated duration, at least 30 calendar days in advance to allow the Office to prepare for any staffing adjustments which may be necessary.

No arbitrary date requiring a pregnant employee to cease work or to prevent her from returning to work after childbirth will be established. Normally these decisions will be made by the employee upon consultation with her physician. The Office may request the affected employee to provide medical certification to support the decision.

C. A male employee who has provided the Office with 30 calendar days of advance written notice may, absent an overriding need in his unit, be absent on annual leave or leave without pay up to (14) days for purposes of aiding, assisting or caring for the mother of his child or minor children while the mother is incapacitated for maternity reasons. This period of leave shall not be more than 30 days prior to the expected delivery date. A male employee may also request additional annual leave or leave without pay. Said request shall be considered under the same standards as any other requests for annual leave or leave without pay.

E. When a pregnant employee, after consultation with her physician, requests a temporary modification for her job duties, or a temporary assignment to other available work for which she is qualified, the Office shall make a reasonable, good faith effort to accommodate her request. The employee must present an acceptable medical certificate which supports her request.

Section 4: Compensatory Time

A. This section is for the purpose of setting forth the rules under which attorneys may work compensatory time in lieu of payment for overtime for purposes other than religious compensatory time and/or maternity/paternity policy on compensatory time.

B. Compensatory time will be available for employees whether or not paid overtime is available to those in their employment position.

- C. The requirements and standards for customer service and the returning of phone calls are the same whether or not an employee earns/uses compensatory time.*
- D. Since compensatory time is an alternative form of compensation to paid overtime, overtime policies in effect at any given time apply to compensatory time.*
- E. An employee must be at least fully successful to be eligible to earn compensatory time.*
- F. An employee must complete at least 6 months of employment to be eligible to earn compensatory time.*
- G. There will be two categories of compensatory time: regular and special.*
- 1) Regular compensatory time: The following rules apply to regular compensatory time:*
 - (a) An employee may use up to 80 hours consecutively*
 - (b) An employee may use up to 80 hours in a quarter (i.e. 320 hours in a fiscal year). There is no carryover limit during the fiscal year.*
 - (c) An employee cannot carry forward more than a cumulative of 80 hours of compensatory time, including all types, except religious compensatory time and special compensatory time, as discussed below, from one fiscal year to the next.*
 - (d) The effect of the foregoing is that no more than 400 hours can be earned during a fiscal year (assumes the maximum 320 hours are used, an additional 80 hours are earned, and no hours were carried over from the prior fiscal year). The 400 hours does not include those hours earned in the maternity/paternity, religious and special compensatory time programs.*
 - 2) Special compensatory time. Special compensatory time is compensatory time which can be used for maternity/paternity, FMLA, and adoption. The following rules apply to special compensatory time.*
 - (a) An employee may carry over up to 320 hours from one fiscal year to the next.*
 - (b) An employee may use up to 320 hours in any 12 month period.*
 - 3) There is no conversion of hours between regular compensatory hours and special compensatory hours.*
- H. The compensatory time program covers full-time and part-time employees in the bargaining unit. Compensatory time may be carried in accordance with the regulations governing the earning of overtime. Part-time employees may earn compensatory time only for hours of work in excess of scheduled 8, 9, 10 hours a day, or 40 hours in a week. Further, a part-time employee cannot carry forward more than a pro-rata share of 80 hours of compensatory time and a pro-rata share 320 hours of special compensatory time, from one fiscal year to the next. Religious compensatory time is excluded from carry over limitations. Part-time employees will be limited to earning a pro-rata share of 400 hours of regular compensatory time and a pro-rata share of 640 hours special compensatory time per fiscal year, excluding those hours*

earned under the maternity-paternity policy and the religious compensatory time regulation. The pro-rata share will be determined by dividing the number of part-time employee's regularly scheduled hours of work by forty hours.

I. The use of compensatory time will follow the same guidelines as annual leave in that the use of compensatory time must be approved in advance except when the government is on unscheduled leave.

J. The Office shall consider requests to earn compensatory time and may grant such requests in accordance with law and regulation.

K. Compensatory time off will be deducted from a bargaining unit member's production time for the bi-weekly period in which the time off was taken. The compensatory time worked will be added to the member's production time for the bi-weekly period in which the time was worked. Compensatory time must be earned in advance of being used.

L. The same pay cap limitations that apply to paid overtime apply also to compensatory time. Compensatory time by regulation cannot be earned for the hours when holiday premium pay is authorized. This program authorizes compensatory time as an alternate to regular overtime, but does not authorize compensatory time as an alternate to holiday premium pay. That is, an employee working compensatory time on a holiday, must do so either before or after the holiday premium pay hours.

M. Compensatory time may not be earned on a day when the employee is incapacitated because of sickness, or uses leave for the entire day.

N. An employee may not earn compensatory time on any normal business day until the employee has completed his/her normal work schedule. An employee may earn compensatory time on his/her alternate day off.

Section 5: Credit Hours

A. This section is for the purpose of setting forth the rules under which attorneys may work credit hours in lieu of payment for overtime for purposes other than religious compensatory time and/or maternity/paternity policy on compensatory time.

B. Credit hours are available to all full time employees, who are limited or barred from earning compensatory time due to the overtime pay cap, subject to the conditions below. Employees covered under this section would be all those who cannot work 32 hours of overtime in a pay period because of pay cap regulations.

C. Credit hours are available to all part-time employees but see section L below for further limitations unique to part-time employees.

D. To be eligible to work credit hours, a full time employee must be on a flexible five day – eight hour per day work week, a Flexible 5/4-9, or a Flexible 4-10 hour schedule. The law only provides for credit hours for those on flexible schedules (5 U.S.C. §§ 6121, 6122).

E. An employee may elect a Flexible 5/4-9 or Flexible 4-10 schedule wherein there will be no core hours on one or two of the workdays in the pay period and wherein a full time employee must work a basic work requirement of 80 hours in the biweekly pay period. An employee electing the Flexible 5/4-9 or 4-10 schedule will only earn 8 hours holiday pay on a holiday. This is set by statute (5 U.S.C. § 6124). An employee electing the Flexible 5/4-9 schedule will work eight hours on the last scheduled workday of the pay period.

G. Electing or switching work schedules:

- 1) An employee may elect to change to a Flexible 5/4-9 or Flexible 4-10 schedule option within one month after the effective date of this agreement. The schedule change will take effect the first full pay period after the election.***
- 2) After the one month time frame in paragraph F(1) above has passed, an employee will be permitted to request to switch to a Flexible 5/4-9 or Flexible 4-10 schedule option only during the last two weeks of the months of February, May, August, and November. Upon supervisory approval of the request, the employee will begin participating in the selected schedule option beginning the first full pay period in the next quarter of the fiscal year.***
- 3) An employee may switch to the five day – eight hour per day work week at any time by giving the supervisor two weeks advance notification.***
- 4) When circumstances arise which are both unusual and extenuating, an individual employee upon written request may, after obtaining appropriate supervisory approval, be permitted to amend his or her choice of an unscheduled work day to another day in the same pay period, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public, the Office, or other agencies of the Government.***

H. Electing Unscheduled Days Off

- 1) An employee, electing the Flexible 5/4-9 option, may elect a Monday, Wednesday or Friday as the unscheduled work day.***
- 2) An employee, electing the Flexible 4-10 schedule option, may elect to have Mondays, Wednesdays, or Fridays as the unscheduled work days in a pay period. The same day in each week must be elected as the unscheduled work day.***

I. Holidays On Unscheduled Work Days

- 1) When a holiday falls on a Monday unscheduled work day, the employee will be granted Friday as the holiday. When a holiday falls on a Wednesday unscheduled work day, the employee will be granted Tuesday as the holiday.**
- 2) When a holiday falls on a Friday unscheduled work day, the employee will be granted Thursday as the holiday.**

J. Holidays on Scheduled Work Days

When a holiday falls on a scheduled 9 or 10 hour work day for employees on the Flexible 5/4-9 or Flexible 4-10 schedules, as required by the statute (5 U.S.C. §§ 6124), the employee will only earn 8 hours holiday pay. Such employee will either have to take appropriate leave for the 9th and 10th hour or the employee may adjust his/her work schedule for that pay period only to work the additional hour(s). Such additional hour(s) must be completed during the regular or credit tour of duty hours that pay period (see paragraph J below). Any additional hour(s) worked under this situation will not be considered for purposes of the yearly cap.

K. Tour of Duty

- 1) Credit hours cannot be earned on scheduled work days until the end of the workday.**
- 2) Employees on the Flexible 5/4-9 or 4-10 schedules can earn credit hours on an unscheduled workday.**
- 3) Credit hours may be worked on a holiday for work in excess of the basic work requirement of 8 hours on a holiday. Since, under the law, holiday pay is limited to eight hours for those on a flexible schedule, a maximum of four (4) credit hours may be earned on any holiday, after the 8 hours of holiday pay is earned.**

L. Credit Hour Limitations

- 1) Limitations on credit hours earned and used are subject to the same provisions as apply to compensatory time and special compensatory time as set forth in Section 4 above.**
- 2) Credit hours must be earned before they are used except as provided for in paragraph I above.**
- 3) The performance eligibility standards for working credit hours will be the same as for compensatory time**

M. Credit Hours for Part-time employees

Part-time employees can earn credit hours as follows:

- 1) Part-time employees yearly allotment of credit hours is prorated the same as for compensatory time.**

- 2) *For carry-over purposes, a part-time employee may carry over credit hours from one biweekly pay period to a subsequent biweekly pay period, an amount equal to one-fourth of his/her biweekly work requirement. This is set by statute (5 U.S.C. § 6126(a)). For example, a part-time employee whose tour of duty is 60 hours in a pay period may not carry over more than 15 credit hours.*
- 3) *Part-time employees may earn credit hours after their scheduled work day until 8:00 p.m. or from 6:30 a.m. - 8:00 p.m. on their Monday - Friday unscheduled work days. A part-time employee's unscheduled Monday to Friday work days are part of the part-time employee's tour of duty for the purpose of earning credit hours. Part-time employees may not earn credit hours on the weekends or on holidays.*

N. Credit Hours Rules - - Miscellaneous

The rules applying to the accrual and use of credit hours are the otherwise the same for compensatory time as set forth in Section 4 above unless this Credit Hour section states to the contrary; these rules include:

- 1) *The use of credit hours will follow the same guidelines as annual leave in that the use of these hours must be approved in advance except when the Government is on unscheduled leave.*
- 2) *Credit hours may ordinarily not be earned on a day when the employee is incapacitated because of illness or uses leave for the entire day.*
- 3) *All credit hours must be used before starting a compressed schedule or before starting a fixed five day-eight hour per day work week.*

Section 6: Leave for Religious Observances

A. Consistent with the needs of the Office and in accordance with relevant law and regulations, an employee will be advanced compensatory time when his/her religious beliefs require abstention from work for certain period of the workday or work week.

B. An employee must eliminate an advanced religious leave balance within three months or such an employee shall not be authorized to work any non-religious compensatory time, overtime or credit hours until the advanced leave balance is worked off.

Section 7: Leave for Bereavement

In accordance with this Agreement and applicable regulations, and subject to workload consideration and staffing needs, an employee will be granted any combination of annual, sick, LWOP, or religious compensatory leave for up to five workdays where there has been a death in the employee's immediate family. The definition of the immediate family shall include the following: Mother, Father, Stepmother, Stepfather, Mother-in-

law, Father-in-law, Spouse, Brother, Sister, Brother-in-law, Sister-in-law, Child, Grandparents, and Grandparent-in-law.

Section 8: Miscellaneous

A. Leave records are of a personal nature and will not be publicized by the Office in any way. However, supervisors, managers and other officials with a need to know may be advised as to the contents of these records.

B. Infrequent tardiness of less than 1 hour may be excused by the supervisor if the reasons given are acceptable. An employee will not be denied any promotion or award due to such excused tardiness. If the decision is to charge the tardiness to leave or as absence without leave (AWOL), the employee shall not work the additional period covered by the leave charge and shall be required to leave the work area and report to work at the end of the period covered by the leave charge. Supervisors shall apply these rules in a consistent manner to encourage good working conditions for both the Office and the employees.

C. Any employee who is a member of the National Guard or other reserve unit of the Armed Forces may accrue up to a maximum of 15 days military leave for the fiscal year. The employee may carry over up to 15 days military leave into the next fiscal year.

D. When it is necessary to close the Office because of inclement weather or an emergency situation (e.g., heavy snow, severe icing conditions, flood, earthquake, hurricane, major fire, bomb threats, or massive power failures), employees, except for essential employees or employees in leave status, will be granted administrative leave.

Article 23 **Part-time Employment**

Section 1

The Office and the Union recognize the principles of Public Law 95-437, which provides for the expansion of part-time employment opportunities in the Federal service. *This article is for the purpose of setting forth the rules under which attorneys may work on a part-time basis.*

Section 2

Any attorney desiring to work part-time should submit a request for part-time status to the Commissioner or designee. Whenever feasible, requests should be made in writing thirty (30) days in advance of the date upon which the attorney wishes the part-time status to begin. The Agency will respond to the request in writing within fourteen days

of receipt. If a request is denied, the reason for the denial will be given. The Union shall be simultaneously served with a copy of all responses.

Section 3

An attorney may request to work between 16 to 32 hours per week. The attorney should indicate the number of hours per week requested and set forth a schedule of hours to be worked consisting of an equal or varied number of hours per day and including when the hours will be worked on the specified days. Part-time employees must be regularly scheduled to work at least eight hours between 8:30 a.m. and 5:00 p.m. and sixteen hours between 6:30 a.m. and 8:00 p.m., Monday through Friday, each week.

Section 4

The attorney should state whether he/she desires part-time status on a temporary or a permanent basis.

A. Requests for temporary part-time status must be for a maximum of six months. The request should indicate the general reason for the request, e.g. family responsibilities, education, retirement transition, handicap, etc. All requests to work part-time on a temporary basis will be given serious consideration and will be honored where consistent with operational needs. Temporary part-time status will be granted only once in a two year period. Temporary part-time status for attorneys will not be basis for change in employee's work location. Attorneys selecting to work on a temporary part-time basis may set their own schedule so long as it is not inconsistent with any other provisions of this article. A temporary part time employee may not convert to a permanent part time basis under this provision unless a request is made to do so within the first 3 months. Requests to have permanent status within the first 3 months will be handled in the same manner as other requests to work on permanent part time basis.

B. Requests for permanent part-time status will be granted subject to the attorney accepting a work schedule and law office which will permit Office space to be efficiently used. Permanent part-time attorneys may be required to share office space. A joint labor management working group will be established. It will consist of no fewer than two union representatives and one management representative. The working group will be responsible for formulating recommendations for matching permanent part-time attorneys so that Office space is efficiently utilized. When the number of part time employees is odd, the working group may allow one employee to be unmatched (i.e. not share office space with another part time employee).

Section 5

Rules regarding permanent part-time attorney placement and determination of schedules are as follows.

A. The working group will consider the following primary criteria, in order, in making recommendations for matching employees:

- 1. First come, first served basis**
- 2. Seniority**

The working group will also consider the following additional secondary criteria, in no particular order, in making recommendations for matching employees: Maintaining current manager; maintaining current classes of goods to be examined; maintain present office; choice of schedule; personal needs; burden on management.

B. The working group may engage in dialogue with part-time employee applicant and others in formulating their recommendations.

C. No full time person will be doubled or displaced from their Law Office to accommodate a part-time employee.

D. A full time employee may be required, as a last resort, to move to another office, including an interior office, within the same Law Office to accommodate a part time employee.

E. If there is more than one vacancy in the Law Offices in the South Tower, the full-time employee who will be required to move will be determined by reverse seniority among those Law Offices where there is a vacancy.

F. If only one vacancy, movement is still determined by reverse seniority in that one Law Office.

G. Reverse seniority for (E.) and (F.) above means “a junior employee sitting in a windowed office which may be doubled.

H. An employee cannot begin permanent or temporary part time (except FMLA) during their first year of employment.

I. A request for returning to work on a full-time schedule will be honored to the extent that there is a vacancy. There are no additional criteria for returning to a full-time schedule.

J. The Office has determined that if an employee moves in order to participate in the part-time program, the part-time employee is in the Law Office to which moved and the move is considered to be voluntary.

K. There will be at least two waiting lists

- 1. A list of employees who want to go back to the Law Office from which they were moved.**

2. *A list of desired schedules*

L. The working group will recommend schedules that the employees can agree to, taking into account employee preferences where feasible, but if the employees cannot come to an agreement, management will set the schedules for the employees.

M. The working group may recommend pairing up unmatched part-time employees to lessen need to double full time employees. The only time there would be expected to be more than one unmatched part-time employee would be when there is a part time employee attrition.

Section 6

A. Employees working on a part-time basis at the time this article becomes effective may choose between:

1. Reversion to full-time status

2. Participation in the new part-time program under the rules of this article, be given priority on a first come first-served basis and be guaranteed at least one of the following at the employee's choice:

a. Choice of schedule

b. Current floor and maintain current manager

B. Effort will be made to satisfy both (a) and (b) above, and to have the attorney remain in their current Law Office, subject to the other criteria of this article. It is recognized that not all employees in this group may necessarily be accommodated.

Article 26
Work Schedules

Flexitime Work Schedules

Section 1 Time Accountability

The T and A Sheet (Time, Cost, and Attendance Report, CD-238) shall continue to be used during the flexitime program and shall be the official form for recording, certifying, and reporting time and attendance.

Section 2 Criteria for Restriction or Denial of Flexitime

A. Consistent with the provisions set forth below, all employees shall be authorized the free use of flexitime each day during the course of the flexitime program.

B. Restrictions or denials on the use of flexitime by employees shall be based on one of the following:

1. operational considerations, related to the work situation only (not related to job performance);
2. abuse of flexitime, meaning misconduct of a serious nature during the flexible bands that would be alleviated by the presence of a supervisor;
3. participation during the hours required in a formal training program;
4. requirement for close supervision for the initial training required to understand and perform the duties of the position; or
5. the requirement for close supervision for employees with serious deficiencies in the performance of their primary tasks over a period of at least one quarter to the extent that the level of their performance would constitute grounds for an unsatisfactory performance rating. The intent here is that employees operating at this level would have the attention, to the extent practical, of their regular or acting supervisors during times that would not be available if the employee were participating in the flexitime program.

C. Justification for restricting or denying flexitime must be neither punitive in nature nor otherwise related to conduct or job performance except as discussed in Section 2B of this article.

D. All disapprovals or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the flexitime program. Copies of the justification shall be furnished to each employee affected at least two weeks prior to the time when the denial or restriction is to take effect unless the denial or restriction is caused by an emergency situation, affects a new employee, or when the nature of an office's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification.

E. Justification for restriction or denials shall be reviewed at the request of the employee upon a change in conditions. The appropriate supervisory official shall review the request and issue a written decision thereon within three (3) working days. A favorable decision shall entitle the employee to begin participation in flexitime the following work day.

F. Those employees who are not authorized or who elect not to work flexitime or restricted flexitime shall work their normal tours of duty.

Section 3 Operational, Flexible And Core Hours

A. Operational, flexible, and core hours from Monday through Friday will be;

Operational Hours	6:30 a.m. -- 8:00 p.m.
Morning Flexible Band	6:30 a.m. -- 9:30 a.m.
Afternoon Flexible Band	3:00 p.m. -- 8:00 p.m.
Core Hours	9:30 a.m. -- 3:00 p.m.

Appendix E-2 graphically illustrates the operational hours, public hours, flexible bands, and core hours. All employees must be present during core hours unless they are in an approved leave status.

B. Employees on flexitime may report at any time during the morning flexible band. From the time of reporting, they must remain at work for 8 1/2 hours in order to be credited with 8 hours of work and to cover their 1/2 hour for lunch.

C. With proper justification and in conformance with Section 2, some employees' participation in the flexitime program will be restricted. Instead of being able to report at any time during the morning flexible band, employees whose participation has been restricted may be required to report no earlier than a specified time during the morning flexible band.

Alternate Work Schedules

Section 4: Alternate Work Schedule Options And Scheduling Requirements

A. Four Day Week (4/10 Plan) - Under the four day week schedule, an employee will work four days each week, ten hours daily, thus satisfying the requirement for forty hours per week.

B. 5-4/9 Plan - This plan permits an employee to have one "extra" day off each pay period. To satisfy the 80 hour per pay period work requirement, the employee will work 8-nine hours days and 1-eight hour day. To simplify implementation and Time and Attendance record keeping for the 5-4/9 Plan, employees will be required to work the eight hour day on the last scheduled work day of each pay period. Therefore, the eight hour work day will always be the last Friday of the pay period unless the last Friday is a scheduled non-work day in which case the last Thursday will be an eight hour day.

C. Each employee will arrange his or her work schedule with the supervisor in advance for a period of one quarter of the fiscal year, identifying the day of the week which will be the employee's non-work day in the case of the 4/10 plan and the day of the bi-week which will be the non-work day in the case of the 5-4/9 plan. Employees are required to elect a single day which will be the non-work day for the entire quarter. Subject to supervisory approval, the employee may select any day as a non-work day, except for Tuesday and Thursday, which, during all work weeks, will be considered "core" work days. However, when a holiday falls on an employee's scheduled non-work

day, Tuesdays or Thursdays may be used "in lieu of" holidays if required by the chart in Section 5B.

D. All full-time unit employees may be required to elect, by use of the "Statement of Election" of Appendix E-3, one of the three options listed below:

1. Non-Participation (five day-8 hours per day week);
2. Four Day-10 Hour Day Alternate Work Week; or
3. 5-4/9 Alternate Work Week.

If either option (2) or (3) is selected, an election must also be made of a specific work schedule.

E. Employee participation in the Alternate Work Week Program is subject to supervisory approval. Restriction or denial of the program to employees is set forth in Section 6.

F. Employees who elect to participate in the Alternate Work Schedule program may withdraw from the program at any time, by giving the supervisor two weeks' advance notification. Employees who withdraw from the Alternate Work Schedule program will revert to a five day, eight hour per day work week. After withdrawal, employees will be permitted to rejoin the program only in accordance with Section 4I below.

G. New employees may begin participation in the Alternate Work Schedule program at the beginning of any pay period, subject to supervisory approval.

H. Employees transferring from one organization to another will be required to obtain approval from the new supervisor of their previous election or make a new election at the time of transfer. Upon supervisory approval, the employee can begin participation in the Alternate Work Schedule Program at the beginning of the next pay period. It is recognized that it is possible that the new position may be such that the employee must be denied the opportunity to participate or have his or her participation restricted.

I. Employees who wish to join the program, change options, or who wish to change their non-work day selection will be permitted to submit such a request only during the last two weeks of the months of February, May, August and November. Upon supervisory approval of the request the employee will begin participation in the compressed work schedule program or effect the desired change at the beginning of the first full pay period in the following quarter of the fiscal year.

J. Only full-time employees will be eligible for participation in the Alternate Work Week program.

K. An employee participating in a Alternate Work Schedule program and in a travel status or on Office business outside the Crystal City area will revert back to a non-

participating status for the period involved unless an alternative arrangement can be agreed upon between the employee and appropriate supervisory authority, which alternative arrangement does not increase the cost of the travel, training or other Office business to the Office or violate any rule, regulation or statute.

When an employee is on Office business away from the Office but in the Crystal City area and the duration of the business is less than the duration of the employee's normally scheduled work day, the employee must report to the Office and work for a period of time equal to the difference less reasonable travel time from the place of the other Office business to the Office.

L. An employee's elected schedule will remain in effect until the participant withdraws under Section 4F., or until the opportunity to change the program occurs as set forth in Section 4I.

When circumstances arise which are both unusual and extenuating an individual employee upon written request may, after obtaining appropriate supervisory approval, be permitted to amend his or her choice of a non-work day to another day in the same bi-week, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public, the Office and other agencies of the Government. Under no circumstances will such an amendment be permitted in two consecutive pay periods.

Section 5 Leave And Overtime

A. General leave - When an employee is absent from the job other than for a holiday, he or she will be charged with leave equal in hours to the scheduled length of the work day. Employees working a four day week will, therefore, be charged with 10 hours of leave (Annual, Sick, LWOP, AWOL, Administrative, etc.) whenever absent during a regularly scheduled work day. Employees working under the 5-4/9 Plan will be charged with nine or eight hours, depending upon the employee's schedule.

B. Holiday Leave - A full time employee who is relieved or prevented from working on a day designated as a holiday is entitled to pay with respect to that day for the number of work hours scheduled. The following rules apply when a holiday falls on a scheduled non-work day:

"When the holiday falls on the employee's first or second consecutive scheduled non-work day, the preceding work day shall be designated as the day off in lieu of holiday in accordance with the following chart."

"When the holiday falls on the third consecutive scheduled non-work day, the next work day shall be designated as the day off in lieu of the holiday in accordance with the following chart."

Employees' Non-Work Days Holiday falls on Holiday or Day Off in Lieu of

Day Off

Fri, Sat, Sun.	Friday	Thursday
Sat, Sun, Mon.	Monday	Tuesday
Sat, Sun, Wed.	Wednesday	Tuesday

C. Overtime Work - Authorized work performed outside an employee's compressed work schedule; i.e., in excess of 10 hours, 9 hours or 8 hours, depending upon the schedule; or in excess of 80 hours per pay period, or on any non-work day is overtime work. Employees are entitled to overtime compensation or compensatory leave as appropriate for overtime work in accordance with applicable provisions of law.

Section 6: Criteria For Restrictions Or Denial Of Alternate Work Schedule

A. Restrictions or denials on the use of Alternate Work Schedules by employees shall be based on one of the following:

1. operational considerations, related to the work situation only (non-related to job performance);
2. abuse of a alternate work schedule, meaning misconduct of a serious nature during the scheduled work days that would be alleviated by the presence of a supervisor;
3. supervisors may temporarily suspend employee participation in the Alternate Work Schedule Program for formal training;
4. requirement for close supervision for the initial training required to understand and perform the duties of the position;
5. the requirement for close supervision for employees with serious deficiencies in the performance of their primary tasks over a period of at least one quarter to the extent that the level of their performance would constitute grounds for an unsatisfactory performance rating. The intent here is that employees operating at this level would have the attention, to the extent practical, of their regular or acting supervisors during times that would not be available if the employee were participating in the Alternate Work Schedule program.

B. Justification for restricting or denying a alternate work schedule must be neither punitive in nature nor otherwise related to conduct or job performance except as discussed in Section 6A, of this article.

C. All disapprovals or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the Alternate Work Schedule program. Copies of the justification shall be furnished to each employee

affected at least two weeks prior to the time when the denial or restriction is to take effect unless the denial or restriction is caused by an emergency situation, affects a new employee, or when the nature of an office's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification. In such emergency cases, supervisors may reschedule day(s) off.

D. Justifications for restrictions or denials shall be reviewed at the request of the employee upon a change in conditions. Any changes will be effected as described in Section 4I.

E. Those employees who are not authorized or who elect not to work a Alternate work schedule shall work their normal tours of duty, but may participate in the Flexitime Program, in accordance with the terms of that program.

Section 7 Operational, Flexible, Core Hours And Core Days

A. Operational, flexible, core hours, core days and public hours from Monday through Friday will be:

Operational Hours	6:30 a.m. -- 8:00 p.m.
Morning Flexible Band	6:30 a.m. -- 9:30 a.m.
Afternoon Flexible Band	3:00 p.m. -- 8:00 p.m.
Core Hours	9:30 a.m. -- 3:00 p.m.
Core Days	Tuesday and Thursday
Public Hours	8:30 a.m. -- 5:00 p.m.

B. Employees on a alternate work schedule may report at any time during the morning flexible band consistent with being able to work the approved 8, 9 or 10 hour day within operational hours. From the time of reporting, they must remain at work for 8 1/2, 9 1/2 or 10 1/2 hours in order to be credited with the respective hours of work and to cover a 1/2 hour period for lunch.

Section 8 Time Accountability

A. *The T and A Sheet (Time, Cost, and Attendance Report, CD-238) shall continue to be used during the flexitime program and shall be the official form for recording, certifying, and reporting time and attendance.*

B. *All full time Office employees must complete and turn in to their supervisors the statement of election shown as Appendix E-3.*

Article 31
Performance Based Awards

H. Section 1

There is no entitlement to a performance award or other type of incentive award. All awards are subject to budgetary limitations and are paid at the discretion of the Office. The award plan will be in effect for the latter half of FY 01 and for all of FY 02 and years forward.

I. Section 2

The following are criteria for eligibility after a determination is made to provide performance awards:

- A. No award shall be given under this article unless the Trademark Examining Attorney is fully successful in all critical elements of the performance appraisal plan.*
- B. The employee must be employed by the Office on the last day of the performance appraisal cycle or productivity award cycle as applicable.*
- C. Approved overtime and compensatory time hours will be applied towards examination hours for the purpose of determining eligibility for awards.*

J. Section 3: Productivity Awards

- A. Any Trademark Examining Attorney receiving a rating of "5" in the Critical Element of Production and at least a rating of "3" in every other Critical Element, or any Trademark Examining Attorney working at the outstanding level of performance in Production as of mid-year and at least working at the fully successful level of performance in every other critical element as of mid-year, will be recommended for an award amount based on the productivity awards scale in Appendix X.*
- B. Two productivity awards may be paid each year; after the first six months of the fiscal year and at the end of the fiscal year.*
- C. Any Trademark Examining Attorney who receives a rating of "4" in the Critical Element of Production and at least a rating of "3" in every other Critical Element shall be recommended for an award if he/she attains a 105% - 109% quantity of production. Any Trademark Examining Attorney who is working at the Commendable Level of performance in production and who is working at the fully successful level of performance or better in every other critical element as of mid year shall be recommended for an award if he/she attains a 105% - 109% quantity of production. If the examining attorney examines over 300 examining hours in*

the six month award period, the recommendation will be the greater of the following:

- 1. one half the amount shown on the productivity awards scale in Appendix X; or*
- 2. ½% of salary, if more than 625 hours on primary duties; or*
- 3. ½% of salary, if less than or equal to 625 hours on primary duties, prorated as follows:*

$$\frac{\text{Number of Hours on Primary Duties}}{625} \times \frac{1}{2}\% \text{ of salary} = \text{Reduced Award}$$

A Trademark Examining Attorney must examine at least 300 hours during the six month award period to be eligible for an award under this paragraph.

D. No employee receiving an outstanding in production who examines at least 300 examining hours during a six-month award period will be recommended for an award lower than he/she would have been recommended for had the employee been merely commendable in production.

K. Section 4: Quality Awards

A. Any Trademark Examining Attorney who receives an average of "5" on the two Critical Elements of Quality and at least a rating of "3" on every other Critical Element shall be recommended for an award of 3% of salary.

B. No award shall be given under this section unless the Trademark Examining Attorney has examined at least 600 hours during the rating year. If an Examining Attorney examines more than 600 hours but less than 1250 hours in the rating year, the Examining Attorney's award shall be computed as follows:

$$\frac{\text{Number of Hours on Primary Duties}}{1250} \times \text{Award} = \text{Reduced Award}$$

C. Quality performance awards will be only be paid after the end of a full annual performance appraisal cycle.

L. Section 5: Mentoring Award

A. Any Trademark Examining Attorney who receives an average of "5" in mentoring and at least a rating of "3" on every other Critical Element shall be recommended for an award of 1/4% of salary for every month an employee mentors another

employee without partial signatory authority and/or 1/10% salary for every month an employee mentors another employee with partial signatory authority. The award amount is calculated by multiplying the % of salary times the number of employees mentored.

B. Mentoring awards will be only be paid after the end of a full annual performance appraisal cycle.

M. Section 6

A. All awards recommended under this program are subject to review and approval in accordance with 5 CFR 430.504(d). Such approval shall not be withheld unless the decision is based on criteria that are uniformly applied to all employees. Notices of disapproval must be in writing and explain the reason(s) for the disapproval.

If, due to a shortage of funds for awards, employees do not receive the full award for which they may be eligible, they will receive a pro rata share of the awards pool.

N. Section 7

Should the Office decide to change any portion of the performance appraisal plan which could result in a modification of the awards set forth in this article, the parties agree to reopen negotiations over the portion of the article affected by the change.

O. Section 8: Quality Step Increases

A. Criteria:

To qualify an employee must:

- 1. have a current summary rating of outstanding for the current appraisal cycle;**
- 2. have occupied the same grade and type of position for at least six consecutive months before the end of the appraisal cycle and be expected to continue at this high level of performance in the same grade and type of position for at least 60 days after the effective date of the increase;**
- 3. not be in the top step of his or her pay range;**
- 4. not have a promotion in progress or anticipated within 60 days after the effective date of the increase; and**
- 5. not have received a QSI within 52 consecutive calendar weeks preceding the effective date of the increase.**

B. If the employee satisfies the criteria outlined in A, the employee may receive the QSI; however, if the Office decides to grant the employee the QSI, the employee will have the option of electing between the QSI and the applicable cash award (SSP). The election need not be made until the amount of the cash award has been determined.

Article 37
Partnership

The parties both desire a good Labor Management (L/M) relationship and recognize that Partnership may be an effective means of establishing and furthering such a relationship. In order to promote L/M partnership, the principles embodied in Executive Order (E.O.) 12871, the parties have formed a L/M Partnership Council. Partnership recommendations developed under the Council's auspices may be submitted for acceptance by management. Neither party waives its rights under any recommendation accepted by management. In any event the parties by mutual agreement may meet in partnership to discuss issues of mutual concern.

APPENDICES

- Appendix A:** *MOU regarding the Agreement, agency head review, negotiability and appeals.*
- Appendix B:** *List of provisions declared non-negotiable by PTO, if applicable.*
- Appendix B-1:** *List of provisions declared non-negotiable by Agency, if applicable.*
- Appendix B-2:** *MOU to revise provisions declared non-negotiable by Agency, if applicable.*
- Appendix B-3:** *Agency approval of MOU on revision of non-negotiable language, if applicable.*
- Appendix C:** *GWPAS, attached for reference.*
- Appendix D:** *Public Law 101-376(Civil Service Due Process Amendments) and legislative history, attached for reference.*
- Appendix E:** *Alternate Work Schedule Election Form.*
- Appendix F:** *Awards scale, attached for reference.*

- Appendix G:*** ***Appendix K of NTEU 243 Contract – Pilot Transit Subsidy.***
- Appendix H:*** ***MOU regarding Pass/Fail Performance Appraisal System, Pilot Transit Subsidy Program, Parking Fees, and Alternate Work Schedules.***
- Appendix I:*** ***MOU for transition***