MANAGER’S GUIDE TO THE DVA/AFGE MASTER AGREEMENT

Article Commentary with Appendix
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COMMENTARY FOR ARTICLE 1 - RECOGNITION AND COVERAGE

Section(s) with new language: 3A (last sentence), 3B, 3C, 5, 6, 7

Commentary for Section 1

The purpose of Article 1 is to explain who is in the bargaining unit represented by the American Federation of Government Employees (AFGE) and how to deal with issues concerning the eligibility of employees to be in the AFGE bargaining unit. See 5 USC 7103(a)16 for more information on “exclusive representative.”

Commentary for Section 2

This contract applies solely to AFGE bargaining unit employees (BUE).

The Federal Labor Relations Authority (FLRA) determines who is in the bargaining unit by means of a document called a “unit certification.” As a supervisor, it is your responsibility to make sure you know who is in the bargaining unit. To do this, you can refer to the unit certification or the position description’s bargaining unit status (BUS) code, which indicates the position’s bargaining unit status. If you are unsure as to what the BUS code number means, contact your Human Resources (HR) representative.

Commentary for Section 3

A bargaining unit is defined as the legally recognized employee group represented by a union. It may be easiest to discern who is a bargaining unit employee by understanding who is “not” a bargaining unit employee. A bargaining unit employee is not a manager, supervisor or confidential employee (e.g., Secretary to the Director).

AFGE bargaining unit employees are covered by all aspects of the Master Agreement whether or not they are a dues paying member. If you are unsure whether or not an employee is in the bargaining unit, refer to human resources for assistance.

Formal discussions are defined in Sections 3A and B of Article 1. They are also addressed in Article 49, Sections 2 and 3.

Commentary for Section 4

Decisions regarding inclusion into the unit should be made at the HR/Labor-Management Relations (LMR) level. If you have any questions about inclusion, consult HR/LMR.

Commentary for Section 7

This is a national level issue.
COMMENTARY FOR ARTICLE 2 – GOVERNING LAWS AND REGULATIONS

Commentary for Sections 1 and 2

The purpose of Article 2 is to clarify the relationship of the Master Agreement to other federal laws, government-wide rules and regulations, and to VA regulations and policies.

- This diagram provides a visual summary of the relationship of the contract to other federal laws, government-wide rules and regulations, and the Department of Veterans Affairs (VA) regulations and policies.

- In the Federal government, a collective bargaining agreement cannot override federal statutes or government-wide rules and regulations.

- Government-wide rules and regulations are passed by other agencies with that authority, not VA, such as the regulations issued by the Office of Personnel Management.

- Any collective bargaining agreement signed by AFGE and VA – such as this Master Agreement – must be consistent with federal statute and government-wide regulations in effect at the time the contract was negotiated.

- AFGE has the right to negotiate over certain aspects of VA regulations and policies. These have been delegated in the Master Agreement to local bargaining.

- Generally speaking, in those cases where union and management have negotiated over issues covered by VA policies, the Collective Bargaining Agreement (CBA) provisions concerning these issues take precedence over VA policies either at the national or local levels.

  - While exceptions to this do exist, they are rare. If you have questions about precedence of VA policy, contact your HR representative.

- Finally, VA policies come into effect if they’re not covered by the Master Agreement or a Local Supplemental Agreement (LSA).
COMMENTARY FOR ARTICLE 3 - LABOR-MANAGEMENT COOPERATION

Section(s) with new language: 1, 2, 3, 4E-H, 5 (all but item 1 are new), 6, 7, 8

Commentary for Section 1

The purpose of Article 3 is to describe and encourage effective labor-management cooperation. The Shared Values statement defines the desired relationship which is the basis of the Master Agreement.

Commentary for Section 3

While the parties are no longer required by Presidential Executive Order to engage in partnership the shared goals remain to improve service to veterans, ensure a quality work environment for employees and effect a more efficient administration of VA programs.

Commentary for Section 7

Section 7 deals with the use of time. The two types of time related to the contract are “official time” and “duty time.” Official Time is time which an individual receives to spend performing union duties. Duty Time is time that employees spend performing their normal position description duties.

Throughout the Master Agreement, some articles are explicit on whether they impact duty time or official time.

A: Where the parties establish labor-management forums, union representatives will be on official time. This official time will not be counted against any allocated official time as described in the Master Agreement.

B: Where the forums establish sub-committees and the parties determine that a Subject Matter Expert (SME) and/or union representative is needed on the sub-committee, the union will notify the Department of the person appointed and whether they’ll be acting as an SME or as a union representative.

- If acting as an SME, they’ll be on duty time.
- If designated as a union representative, they’ll be on official time. This official time will not be counted against any allocated official time as described in the Master Agreement.

Where the parties are engaging in pre-decisional involvement outside the forum (such as, committees, work groups, etc.), this would be considered official time that does come out of the allocations of official time.
COMMENTARY FOR ARTICLE 4 - LABOR-MANAGEMENT TRAINING

Section(s) with new language: 3C (first three sentences are new), 5

Commentary for Section 1

Training which relates to internal union business will not be conducted or attended on official time. This training would need to be conducted or attended on annual leave or leave without pay.

Where training can be conducted or attended on official time that official time does count against the allocation of official time.

How union representatives schedule their use of official time for training must follow the process determined in local negotiations.

C: What we are negotiating in 1C is the portion of the allocated amount that can be used for union-sponsored LMR training, not an additional amount.

For more information on official time, see Article 48 Official Time.

Commentary for Section 3

C: Note that the first three sentences in C are new and differentiate between trainers and attendees at joint labor-management relations training with respect to either receiving official time or attending on duty time.

Trainers appointed by the union for joint LMR training will be on official time. This official time will not be counted against any allocated official time as described in this agreement. Attendees at joint labor management training will be on duty time.

If the attendee is participating on behalf of the Department, the attendee is on duty time. If the attendee is participating on behalf of the union, the attendee is on official time. The official time will not be counted against the allocated official time.

Commentary for Section 4

See commentary for Section 1.

Commentary for Section 5

Section 5 is brand new and establishes a National Joint Training and Education Committee (NTEC) which will advise the Assistant Secretary for Human Resources and Administration on joint labor management training and education needs.
COMMENTARY FOR ARTICLE 5 - LABOR-MANAGEMENT COMMITTEE

This article is mostly rollover and is national in scope.
COMMENTARY FOR ARTICLE 6 - ALTERNATIVE DISPUTE RESOLUTION

Section(s) with new language: 2C, 3B, 3F, 4E, 5

The Master Agreement defines Alternative Dispute Resolution (ADR) as an informal process which seeks early resolution of employee, labor and management disputes. ADR methods may include but are not limited to: early neutral evaluation, mediation, interest-based problem solving, peer review, conciliation, facilitation and neutral fact-finding.

ADR is a non-adversarial process. The purpose of ADR is to de-escalate and potentially resolve work-related issues. Additional information on VA’s ADR program can be found at www.va.gov/adr or in VA Directive 5978.

Commentary for Section 1

ADR should be considered early and often, and the program and processes should be designed and implemented in a way that is satisfying to the participants.

Commentary for Section 2

The ADR process is voluntary for the employee and the Department. Review current Department policy for more information.

Commentary for Section 3

B, 3: The designated ADR form is a local facility form.

C: Egregious or frivolous matters are not suitable for ADR. Examples of matters that might not be suitable for ADR may include waste, fraud, abuse, criminal activity or patient abuse. Discuss with your ADR Program Manager if you think that ADR is not appropriate for the situation. Refer to these resource links for more information: http://www.va.gov/adr/ or http://www.va.gov/adr/Directive5978.asp.

D: GC must review and approve any settlement agreement before it is signed by the parties.

F: Once a bargaining unit employee elects to use ADR, the union must be notified of the request, usually by the local ADR program manager, and consent to the use of ADR to address the matter.

The union has the right to be present at and participate in ADR sessions involving bargaining unit employees even if the employee requests that the union not attend. The union representative also has a right to speak during the session. The union’s right to be present on behalf of the bargaining unit is in addition to the employee’s right to designate a representative. Therefore, both a designated representative and the union may be present in ADR sessions.
If there is a privacy concern, or the bargaining unit employee clearly and unmistakably indicates an objection to the union’s presence at ADR, contact your Regional Counsel.

**Commentary for Section 5**

B, 5: ADR programs and processes are subject to the confidentiality provisions of the Administrative Dispute Resolution Act ([http://www.adr.gov/pdf/adra.pdf](http://www.adr.gov/pdf/adra.pdf)) which defines what a neutral party or representative may or may not disclose.
COMMENTARY FOR ARTICLE 7 - QUALITY PROGRAMS

Section(s) with new language: 2A, 2C, 2D, 2F, 3 VII D 2 (last two sentences), 3 VIII G 2 (last two sentences)

Commentary for Section 2

C: Section 2C is new and explains the use of time for participation in quality initiatives. Bargaining unit employees who are appointed by the union to participate in Quality Programs are on official time. This official time does not count against allocated official time.

Bargaining unit employees appointed by management to participate in Quality Programs (for example as subject matter experts) will be on duty time, just as any other employee appointed by management.

D: This basically restates sentence 1 of 2C. That is, bargaining unit employees appointed by management to participate in Quality Programs will be on duty time. Bargaining unit employees appointed by the union to participate in Quality Programs will be on official time.

Commentary for Section 3

Section 3 VII A deals with local Facility Quality Councils. Facility Quality Councils deal with quality improvement changes that can be implemented at the local level.

Facilities which undertake a quality improvement activity should establish a quality council/work group to manage the activity following the procedures in this section. The union should be involved.

Section 3, VII D2 has a change in the use of time: union representative participation in quality councils/work groups shall be considered official time. This official time does not count against any allocated official time as described in the Master Agreement. This change also applies to Quality Improvement team participation (cf. VIII, G2).

Union representatives shall not be paid overtime for activities on official time regardless of whether it counts toward allocated time or not.
COMMENTARY FOR ARTICLE 8 - CHILD CARE

Section(s) with new language: 3D

This is basically a rollover article. The only new language is in 3D.

Commentary for Section 2

It should be noted that not all facilities have a child care center and nothing in this article mandates that each facility have on-site child care nor is having a local child care facility subject to local negotiations.

Commentary for Section 3

D: Section 3D is new. Bargaining unit employees who perform Child Care Committee functions in a nonrepresentational capacity will be on duty time. Bargaining unit employees serving in a union representational capacity will be on official time, not to be counted against any allocated official time as described in this agreement.

Commentary for Section 4

The language in Section 4 should be interpreted in accordance with Article 35 Time and Leave.
COMMENTARY FOR ARTICLE 9 - CLASSIFICATION

Section(s) with new language: 1C

This article establishes a manager’s responsibility to provide accurate position descriptions and an employee’s right to obtain a review of the classification of his or her position. Classification is excluded, by law, from negotiation and the grievance process. By law, the union cannot negotiate or grieve over matters relating to the classification of a position. In addition, the contents of the position description (PD) are not negotiable.

Commentary for Section 1

C: In Section 1C, everything after the first sentence is new. This is the only new language in the article and is a very important change. The language is summarized as follows:

- Management reserves the right to assign work that is not in the PD.
  - Employees cannot refuse to do work because it’s not in their PDs.
- If this happens on a regular basis, however, the PD must be revised.
  - The PD does not have to be revised every time the supervisor gives an employee something to do that isn’t in the PD.

Refer to VA Handbook 5003, Part I, 5. Position Descriptions, Paragraphs f and g:

“f. Supervisors are responsible for the continuing accuracy of descriptions of positions under their direction. Necessary and proper modifications of position descriptions will be made to reflect significant changes in duties and responsibilities as they occur. The frequency with which position descriptions will be rewritten will depend on the individual circumstances. However, position descriptions generally must be rewritten when new standards covering the classification of the positions are issued, and when, in the judgment of the appropriate supervisors, a revised position description is necessary to reflect material changes in the assignment.

g. Supervisors and managers shall review all position descriptions under their jurisdiction at least once every two years to ensure that they are current and accurate. Upon completion of the review, a written certification by supervisors and managers will be provided to the servicing human resources management office indicating that all position descriptions under their direction are accurate. This certification should list the title, position number, series and grade of each position reviewed. The servicing human resources management office shall establish local procedures to accomplish this certification.”

E: Employees can appeal the classification or job grading of their positions. Article 9 describes both an informal and a formal process. The informal process is covered in Section 1E. The
formal classification appeal process is outlined in Section 3. Note that the employee is not required to follow the informal process. At any time, he/she may file a formal classification appeal with either the Department or OPM, as appropriate. Here are the steps in the informal process as described in 1E:

- **Step 1.** An employee who is dissatisfied with the classification of his/her position should discuss the dissatisfaction with his/her supervisor.

- **Step 2.** If the supervisor cannot resolve the problem to the employee’s satisfaction, the employee can discuss the matter with appropriate Human Resources Staff who will explain the basis for the classification/job grade.
  - The employee and/or the local union can request and obtain any evaluation statement, organizational and functional chart, and other information related to the classification of the position.
  - This information process should be completed in a reasonable period of time.

- **Step 3.** If the employee requests a desk audit, the HR staff will conduct the audit at the employee’s workstation and complete it within 90 days of the request.
  - If the employee is dissatisfied with the outcome of the desk audit, he/she has the right to file a formal classification appeal with either the Department or OPM, as appropriate.
  - An employee can, at any time, file a formal classification appeal directly with either the Department or OPM whether or not he/she followed the informal review process.
  - In a desk audit, HR interviews the employee and the supervisor on the employee’s duties. HR then analyzes what they learn against the position’s classification.
COMMENTARY FOR ARTICLE 10 - COMPETENCE

Section(s) with new language: A (beginning of sentence 1, sentence 2), B, C (beginning of sentence 1), F, G (sentence 2), H

The purpose of this article is to explain rights and responsibilities related to the competencies established for an employee’s position. The content of competencies is not negotiable.

A: Management has an affirmative responsibility to train employees on all new equipment, technology changes, and clinical procedures related to the performance of their job. For example, when the Department buys new equipment, training to ensure competency in the use of that equipment is addressed in this section.

C: Employees assigned “out of the ordinary” duties are encouraged to self-review. They can also request a Departmental review without fear of reprisal. The Department will provide the review.

E: An employee not meeting a required competency can ask for and get remedial training.

G: Changes related to pure Title 38 employees’ professional competencies are not negotiable per Title 38 7422.

For all other employees, the content of the competency is not negotiable. However, the change in a competency could result in a change in a condition in employment which may trigger an obligation to negotiate.

For example, if management decides to amend an employee’s competency to include the use of a new piece of equipment, we would not negotiate over whether or how the employee will be required to use the equipment. We may have to negotiate over appropriate arrangements or procedures related to the change (impact and implementation, I&I). A negotiable arrangement might be, for example, a change in the tour of duty for the employee using the new equipment.

I: To take a performance action, you must use the employee’s performance standards not the employee’s competencies.
COMMENTARY FOR ARTICLE 11 – CONTRACTING OUT

This article addresses the contracting-out or public-private competitions for work currently being performed by Federal employees. As described in Section 1, these provisions are explicit to OMB Circular A-76. Coordination of facility initiatives with national activities is critical.

**Commentary for Section 3**

This section is triggered by the exercise of management’s reserved right under 5 U.S.C. 7106 a. (2) (B).

**Commentary for Section 5**

Providing the inventory of commercial activities to the union will occur, if requested, at the National level.
COMMENTARY FOR ARTICLE 12 – DETAILS AND TEMPORARY PROMOTIONS

Section(s) with new language: 1B (Sentence 1, addition of eOPF, last sentence), C, D1 (last sentence), D2 (in last sentence, everything after “criterion”), D3 (everything after “selected”), D5 (everything after “locally”), 2A (last three sentences), 2B (in sentence 1, everything after “procedures”), 5A (first four sentences, sentence 6), 5B, 6 (added “temporary promotions”)

The purpose of this article is to explain management’s rights to effect details to a higher, same grade, or lower graded work as well as unclassified duties and temporary promotions for Title 5, Title 38 and Title 38 Hybrid employees. It should be noted that for a temporary promotion, the employee should receive an SF 50 or other document evidencing the detail.

Note that the definitions of details and temporary promotions used in this article are different from the definitions contained in the Code of Federal Regulations (CFR). For AFGE bargaining unit employees, the definitions and timeframes contained in this article apply.

Commentary for Section 1

B: Prior to detailing employees for one week or more, contact HR to ensure you know and follow the process for documenting the detail in the employee’s electronic Official Personnel Folder (eOPF).

Commentary for Section 2

Details of 10 or more work days must go through the process described in Section 1.

If the detail is to higher grade work and is more than 10 work days, management also needs to temporarily promote the employee.

Note that the last three sentences in Section 2A are new and contain important provisions for Title 38 and Title 38 Hybrid employees.
Commentary for Section 5

B: This section does not provide the procedures for employees affected by job-related injuries or who request reasonable accommodation. Those subjects are addressed in other articles of this Agreement, such as Article 29 Safety, Health and Environment (Section 10), Article 19 Fitness for Duty, and Article 18 Equal Opportunity Employment (Section 3).
COMMENTARY FOR ARTICLE 13 – REASSIGNMENT, SHIFT CHANGES AND RELOCATIONS

Section(s) with new language: 1 (all but D are new), 2, 3 (sentence 2), 4, 5, 7 (sentence 1), 9A (changes to sentence 1, new sentence 2, added “medical sufficiency” to sentence 3), 9B (sentence 2), 9C

The purpose of this article is to explain the rights and responsibilities related to voluntary or involuntary reassignments, including those that involve a shift change or a duty location change. This article can assist managers by clarifying what factors should be considered when conducting involuntary reassignments or handling employee reassignment requests.

Some actions are not reassignments under Article 13 but are covered under other articles or procedures.

- For Title 38 employees:
  - Reassignments in connection with reductions in force for Title 38 staffing adjustments are governed by procedures similar to Title 5 Reduction in Force (RIF) procedures.
  - If a reassignment, shift change, or relocation of a Title 38 employee involves an issue of professional conduct or competence, then 38 USC 7422 applies.

- For all other employees:
  - Article 13 does not cover reassignments related to Discipline, Investigations, Performance, Workers’ Compensation, reductions in force (RIF), or Reasonable Accommodation.
  - Management authorities, responsibilities and procedures for those types of reassignments are located in their respective articles of the Master Agreement.

Commentary for Section 1

D: This provision does not preclude the use of reassignments in disciplinary or adverse action situations since those actions are intended to correct conduct, not punish. The procedures for involuntary reassignments would have to be followed unless undertaken as a voluntary action.

- For example: Two employees have engaged in verbal disputes on a number of occasions. Management decides to separate the employees by reassigning one to another shift.

- This can be done, but you must follow the process in Section 5:
  - Notify the union 30 days in advance
- If this is not possible, advise the union of the reason for shortened notice period
- Provide the union with:
  - Reason for reassignment(s)
  - Number and type of positions affected
  - What’s being done to minimize impact on employees
- If the union requests, engage in collective bargaining as appropriate

**Commentary for Section 3**

Note that Sentence 2 is new. There must, however, be a vacancy in the area where the employee is requesting to relocate or there must be a vacancy on the shift to which the employee is requesting to be assigned.

The Department reserves the right to make the assignments based on other good faith considerations in assuring effective management of the work force. This means that management has the right to fill vacancies from any appropriate source, cf. 5 U.S.C 7106(a)(2)(C)(ii).

**Commentary for Section 4**

Management reserves the right to make reassignments based on considerations for ensuring effective management of the work force. If challenged, management must be able to clearly articulate the business-based reason for its decision to reassign an employee.

**Commentary for Section 5**

“Valid operational needs” is a new standard to support the need to make an involuntary reassignment. It is a case-by-case determination by the manager.

**Commentary for Section 9**

The rights and responsibilities for medical reassignments are the same as those for medical details:
- Employees have the right to request reassignment due to a medical condition.
- The employee must submit medical certification to support the request.
- Management can have a federal physician review the medical documentation and make a recommendation on the proposed request.
• The Department will consider such requests in accordance with applicable rules and regulations and medical recommendations.

• If it is operationally feasible, management will reassign the employee to an appropriate vacancy or duties and responsibilities within the employee's own service/section commensurate with the employee's limitations and qualifications.

Note that Section 9 does not provide the procedures for employees affected by job-related injuries (OWCP) or who request reasonable accommodations; those subjects are addressed in other articles of the Master Agreement.
COMMENTARY FOR ARTICLE 14 - DISCIPLINE AND ADVERSE ACTION

Commentary for Section 1

The requirement to meet “…just and sufficient cause…” is fact-driven, determined on a case-by-case basis. The language “…such cause as will promote the efficiency of the service” comes out of the Statute (5 U.S.C. 7503 & 7513).

Commentary for Section 2

The provision applying to Title 38 Employees applies only to non-hybrid Title 38 employees. Hybrid Title 38 employees are covered under Title 5 procedures.

Commentary for Section 4

See Article 13, Section 5 for the appropriate procedures for administrative reassignments.

Commentary for Section 5

Definition of progressive discipline:

Using the least severe action which, in the supervisor's judgment, will most likely correct the employee's misconduct is a commonly recognized principle. It is most applicable in repeated infractions of a minor nature (e.g., brief tardiness). However, it does not prohibit issuance of a more severe penalty (e.g., suspension or removal) prior to issuance of each and every lesser penalty. For example, it is not always appropriate to issue an admonishment and/or a reprimand prior to issuance of a suspension or removal. Sound supervisory discretion and judgment must be applied in all cases fully considering any aggravating and/or mitigating circumstances. The concept of progressive discipline and the recommended guidance provided by the VA’s Table of Offenses and Penalties is not intended to preclude the exercise of discretion in determining appropriate action, but rather to serve as an aid to maintaining consistency. The facts of the case, degree of willfulness of the employee's violation of VA conduct rules, and the seriousness of the misconduct and its resultant impact on VA operations, may be examples of reasons for necessitating consideration of more severe discipline (e.g., suspension without prior admonishment or reprimand).

Commentary for Section 7

A, Sentence 3: “The Department agrees that the employee shall be given up to eight hours of time…” Note that this does not guarantee a full eight hours. You should determine the appropriate amount of time on a case-by-case basis, based on the complexity of the underlying action as well as by relying upon what you have given other bargaining unit employees in like instances.

B: “…no later than 10 calendar days” means that once the eleventh day arrives you can make a determination subject to a timely request for extension.
Commentary for Section 8

A: The employee has 14 days to respond to the proposal letter (see 8B). The determination can be made after the 14th day but cannot be effectuated until the 30th day.

Employees may also be provided up to eight hours to review the evidence on which the notice is based. This does not guarantee a full eight hours. You should determine the appropriate amount of time on a case-by-case basis, based on the complexity of the underlying action as well as by relying upon what you have given other bargaining unit employees in like instances.

C: Timely requests for extensions should be reviewed and determined on a case-by-case basis.

D: If you have questions pertaining to the employee’s probationary status or trial period, refer to Article 33 Temporary, Part-time and Probationary Employees and/or Article 43 Grievance Procedures.

Commentary for Section 9

While titled Notice of Disciplinary Actions, these provisions have been generally applied to both Disciplinary and Adverse actions.

A: Regarding the provision requiring notice to the union, note that the Privacy Act prohibits notifying the local of the name of the employee or of any other personal identifying information (PII). (5 U.S.C. § 552a) In terms of delivering notice, follow the local practice unless or until that process is modified through local negotiations.

If the notice must be delivered by postal or commercial delivery, contact information for the supervisor should be provided to be able to discuss the action.

B: The employee may elect to have a union representative at the meeting with the supervisor. If you, as the supervisor, are aware that the employee has been previously represented on this matter, you should advise the employee of their right to union representation. If the employee declines the offer of union representation, document the declination.

Commentary for Section 10

The provisions in this section apply to both disciplinary and adverse actions.

In cases involving a potential disciplinary or adverse action, inquiry will be made into the incident or situation as soon as possible to obtain the facts and determine what action, if any, is warranted. Ordinarily, a preliminary inquiry will be made by the appropriate line supervisor. This is a routine fact finding and does not involve the term “formal investigation” as described in Article 22 Investigations, Section 2. The requirements of Article 22, Section 2 only come into play when the Department convenes an Administrative Investigation Board (AIB) pursuant to VA Handbook 0700.
The right to representation discussed in this section during questioning or an investigation is the employee’s right. See Article 22 for more information on employee rights during an investigation.

It is the requirement of the Department to inform the subject of the investigation, in advance, of their right to union representation. Other employees questioned in connection with the incident, who reasonably believe they may be subject to disciplinary action, have the right to union representation but only upon request.
COMMENTARY FOR ARTICLE 15 - EMPLOYEE ASSISTANCE

Section(s) with new language: 1, 2A, 3A, 4A (sentence 1), 5, 6

The Employee Assistance Program (EAP) is a professional counseling and referral service designed to help employees with their problems, both on and off the job. It is free, confidential within the limits of the law, and voluntary. The EAP provides employees with counselors who are prepared to help them deal with virtually any issue or problem that may arise. Some of the more common concerns relate to emotional issues, relationships, family matters, alcohol or drug use, and problems on the job. EAP is for all VA employees, not just AFGE bargaining unit employees.

Commentary for Section 1

Early intervention may be helpful in returning the employee to full productivity, therefore:

- Employees who suspect they may have such a problem, even in an early stage, are encouraged to voluntarily seek counseling and information on a confidential basis by contacting the individual(s) designated to provide EAP services.

- Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance and encourage the employee to seek EAP assistance.

Commentary for Section 5

Section 5 discusses the relationship of EAP to other actions related to the employee, specifically disciplinary action. It was designed to apply to competing interests – to preserve management’s right to discipline, to avoid “shielding” employees from the consequences of their behavior, and to help employees get well. This can be a delicate balance.

The provisions of this section only apply in the first instance of the problem(s) requiring EAP assistance and do not apply if severe, egregious or criminal misconduct is involved.

In order to best meet these competing interests, the Department agrees to hold in abeyance a proposed corrective action so long as the employee meets these three conditions:

- He/she participates in EAP
- He/she does not engage in new instances of misconduct or performance deficiency
- He/she successfully completes the treatment to which he/she is referred

If the employee successfully completes the treatment and does not engage in new instances of misconduct or performance deficiency, the proposed corrective action will be rescinded.
If, while the employee is in EAP, he/she engages in a new instance of misconduct or performance deficiency, you need to look at each offense separately. A second offense is not an automatic trigger to no longer hold in abeyance a corrective action. In looking at the new instance of misconduct or performance deficiency, take into account what the new misconduct is and what relationship it has to the original misconduct. Determine whether to continue to hold in abeyance corrective action. It’s also important to consider the impact of any action you would take on the successful completion of EAP. Each case will be different.

For example, an employee self-identifies as having an EAP qualifying issue. A corrective action was held in abeyance for excessive Absent Without Official Leave (AWOL). The employee is in EAP and now you have a new instance of misconduct - being disrespectful to the supervisor. In considering the new instance of misconduct, look at its relationship to the original misconduct, whether to continue to hold the corrective action in abeyance, and the impact any administrative or disciplinary action will have on the employee’s successful completion of EAP.

This provision does not apply to employees that test positive to a VA-administered drug test without self-identifying and entering EAP. For example, if an employee self-identifies as having a drug problem and goes into the EAP, and then prior to starting treatment fails a drug test, management will not take action in accordance with this section. If, however, the employee fails the drug test and is not in EAP, management can take corrective action. Please see VA Handbook 5383.1 Appendix B for further guidance.

To learn more about EAP, contact your facility’s Human Resources office.
COMMENTARY FOR ARTICLE 16 - EMPLOYEE AWARDS AND RECOGNITION

This is a rollover article. It defines rights and responsibilities related to the employee recognition and awards programs at VA.

Union officials on 100% official time who do not perform any VA duties may not be considered for any cash or time off award, including annual performance awards, special advancement for performance, or special contribution awards relating to management-assigned duties. Union officials on less than 100% official time may be eligible to receive awards for time spent on management-assigned duties.
COMMENTARY FOR ARTICLE 17 - EMPLOYEE RIGHTS

Section(s) with new language: 1A (change to sentence 1), 1F-H, 2 (last sentence), 3 (additions to sentences 2 and 3, last two sentences all new), 4 (sentence 1, everything after “law enforcement investigations”, sentence 2, 3 and 5), 6 (sentence 1, last five sentences), 7B, 7C, 9, 10 (sentence 1, last two sentences), 11 (sentences 2 and 3), 12, 13, 14 (everything after sentence 1), 15

Commentary for Section 1

This section outlines specific employee rights concerning the environment and the tone of the “work climate” expected under the work contract.

1F, G and H are all new.

Commentary for Section 3

In Section 3, the Department recognizes an employee’s right to assistance and representation by the union, and the right to meet and confer with local union representatives in private during duty time, consistent with Article 48 Official Time and local supplemental agreements. The union representative is on official time, not duty time.

The last two sentences in this section are new. Note that there is also a requirement in Article 22 Investigations, Section 1C to inform employees annually of their right to union representation under 5 U.S.C. 7114(a)(2)(B).

Commentary for Section 4

New language in Section 4 says that all electronic recordings will be transcribed and a copy of the recording and its transcription provided to the employee for review.

If you record a conversation, it must be by mutual consent and you must provide a copy of the recording as well as a transcription of the recording to the bargaining unit employee.

The prohibition that no electronic recordings may be made without mutual consent applies to union representatives and employees as well as managers.

Commentary for Section 6

Section 6 has been updated to include electronic media.

Please note that Section 6 contains the following new Department obligations:

● Provide employees with copies of documents maintained in their electronic Official Personnel Folder (eOPF) or Merged Record Personnel Folder (MRPF).
- Provide employees with a list of systems of records in which their information is maintained and retrieved by some personal identifier

**Commentary for Section 7**

B and C create new obligations for the Department.

**Commentary for Section 9**

Section 9 is completely new.

Note that there is no expectation of privacy in the work area (e.g., cubicle, desk, file cabinet, etc.) or government-issued equipment (e.g., computer, laptop bag, cellphone, etc.).

Employee areas can be searched if there are reasonable grounds for suspecting the employee is engaged in work-related misconduct or for non-investigative work-related purposes.

Employees’ personal items (e.g., pockets, purses, backpacks, etc.) can be searched only if there is reasonable suspicion that criminal activity is involved. If there is reasonable suspicion that criminal activity is involved, contact appropriate law enforcement.

**Commentary for Section 10**

The last two sentences in Section 10 are new. Note that the 2nd to last sentence creates a new Department obligation.

**Commentary for Sections 12 and 13**

These sections are new.

**Commentary for Section 14**

New language in this section allows employees to request group meetings about workplace issues. You, as the supervisor, will consider and respond to the meeting request. If you approve the meeting request, then you may also have an obligation to notify the union in accordance with Article 49 Rights and Responsibilities.

**Commentary for Section 15**

This section is new.

**Commentary for Section 16**

In situations where oral and written counseling is involved, that counseling must be private, with union representation if requested and appropriate. The following is the Department’s interpretation of the word “appropriate” for both oral and written counseling:

When the Department counsels a bargaining unit employee, ordinarily there is no right to union representation. For example,
A meeting in which an employee was made aware of performance deficiencies is a counseling session and does not give a right to union representation.

Additionally, a meeting held for the purpose of warning an employee against acts of misconduct does not give a right to union representation.

A meeting held to convey a decision already reached does not automatically give rise to the right to union representation.

Conversely, in instances where the supervisor questions the employee regarding the underlying issue for the counseling, the employee may have the right to a union representative.

For example, during an oral counseling session with an employee you change from explaining performance expectations to asking the employee about their conduct, questions that the employee can reasonably believe may lead to disciplinary action, you need to advise the employee of their right to union representation at that point. When an employee has a right to union representation, they shall be advised of that right at the same time they are advised of where and when the meeting is scheduled. This is consistent with Article 33 Section 1B and 1C regarding the counseling of temporary, part-time and probationary employees.

Please note these two exceptions:

1. If there is to be more than one Department official involved in the counseling session, the employee will be notified in advance and may have a union representative present at the counseling.

If you intend to counsel an employee on conduct and the conduct is the subject of a pending grievance, the meeting constitutes a formal meeting and you must meet the requirements of Article 49, Section 3.
COMMENTARY FOR ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

Section(s) with new language: 3B, 3C, 3N, 4D, 4E, 6A, 6C, 7A-C, 8, 9

The purpose of this article is to lay out management’s agreements with the union as it relates to union involvement in the administration and implementation of the Department’s Equal Employment Opportunity (EEO) Program under federal law and government-wide regulation.

It is to be understood that there is more to EEO programs and EEO claims than is covered in the Master Agreement, which only deals with labor-management responsibilities under EEO. Article 18 is not that actual policy or the EEO program but describes management and the union’s involvement in those programs.

Note that although sexual orientation is not one of the categories under the EEO laws, the Department’s policy prohibits discrimination on the basis of sexual orientation.

Commentary for Section 3

C-E, Reasonable accommodation process:

- Requests should be made in accordance with VA Handbook 5975.1 or the local facility’s approved EEO policy.
- The Department should process requests in as short a timeframe as is reasonable, within 30 calendar days, when possible. The statute requires an interactive process between the agency and the employee. Management should, therefore, keep the employee informed of the status of their request.
- The specific accommodation, if any, should be determined on a case-by-case basis. The same condition could be accommodated differently for different employees.
- The Department is not required to provide the employee’s accommodation of choice. The mandate is to provide an effective accommodation.
- If a non-probationary employee cannot be accommodated in their current position:
  - The Department shall offer reassignment
  - To a vacant, funded position
  - For which the employee is fully qualified

Commentary for Section 8

B: Note that 8B contains a new requirement to provide Special Emphasis Program Managers (SEPMs) with their duties and responsibilities in writing.
COMMENTARY FOR ARTICLE 19 - FITNESS FOR DUTY

Section(s) with new language: 1

Commentary for Section 1

5CFR339.301 Authority to require an examination.

(a) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

(b) Subject to Sec. 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under this part.
(2) A psychiatric examination or psychological assessment authorized under (i) or (ii) above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

Commentary for Section 3

B: The contract states that we may offer a fitness for duty (FFD) examination when the employee requests something based on a medical condition and we do not have enough information on which to base a decision. However, it is the employee’s responsibility to provide administratively acceptable medical documentation in support of the request.

Commentary for Section 4

A: Employees are entitled to union representation. We have to notify employee of this right to representation before any discussion with a Department official related to the FFD examination.
COMMENTARY FOR ARTICLE 20 - TELEWORK

Section(s) with new language: 1A, 1C, 2, 3, 4, 5 (all but a few sentences in A are new), 6, 7, 8, 9, 10, 11B, 13, 18, 19

For more information, refer to the Telework Enhancement Act.

Commentary for Section 1

A: Note that new language in Section 1A states that telework must not be used as an alternative to or in lieu of dependent care (i.e., child care, elder care, or care of any other dependent adults).

Additional new language states that employees who telework will be permitted to take care of personal matters in the same way as employees who do not telecommute. This means they can attend to them similarly to how they would if they were in the office.

C: C is new and relates to the following statutory language:

“Teleworkers and non-teleworkers are treated the same for purposes of:

A. periodic appraisals of job performance of employees

B. training, rewarding, reassigning, promoting, reducing in grade, retaining and removing employees

C. work requirements, or

D. other acts involving managerial discretion.” 5 USC 6503 (a)(3)

Commentary for Section 2

C: “If the employee is scheduled to work at least twice each biweekly pay period on a regular and recurring basis at the regular worksite for the employee’s position of record, the regular worksite (where the employee’s work activities are based) is the employee’s official worksite. However, in the case of such an employee whose work location varies on a recurring basis, the employee need not work at least twice each biweekly pay period at the regular official worksite (where the employee’s work activities are based) as long as the employee is regularly performing work within the locality pay area for that worksite.” 5 CFR 531.605(d)(1)

Commentary for Section 3

In determining eligibility a key factor is that if the employee’s position is facility-based, meaning that the employee has to physically be every workday at the facility, the employee is probably not eligible. For example, the employee is a nurse who has to take blood or do patient intake. If the employee is able to do their work from another location, using a telephone or some other means, the employee may be eligible.
Subject to any applicable provision, management has the right and responsibility to determine which positions are suitable for telework. Approval for telework is not automatic. The guidelines for determining telework eligibility are based on but not limited to, the criteria in Section 3.

The Telework Enhancement Act, which passed after the Master Agreement was signed, sets forth additional limitations on who may telework. An employee may not telework if he/she has been officially disciplined for being AWOL for more than 5 days in any calendar year or officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties. 5 USC 6502(a)(2)

**Commentary for Section 4**

Section 4 is new.

A: Section 4A states that, if you are eligible for telework, the Department will provide you the equipment you need to perform your duties consistent with the Telework proposal.

If the employee needs to have a phone line installed, the Department will pay for installing the line but not for the recurring phone charges.

**Commentary for Section 5**

Section 5 deals with the Telework Program Agreement. The entire process for applying for telework is covered in Section 10.

Prior to participating in the Telework Program, employees will be required to complete a Telework Program Agreement. VA Handbook 5011 contains a sample Telework Program Agreement. If the local union requests to negotiate a form locally, the Department should use this form as the template for their proposal. Section 5D contains the minimum requirements for what must be included in the form.

The specifics of each particular telework agreement are between the employee and the supervisor. This is an “assignment of work” and is not subject to local negotiations.

Prior to entering into a written agreement to telework, the employee must have successfully completed telework training. 5 USC 6503(a)

Section 5E outlines the conditions for safety inspections. Note that safety inspections are not the only reasons the supervisor may make a visit to the employee’s ADS during the employee’s duty hours. The 5-day language for safety inspections has no bearing on the supervisor’s ability to meet with the employee at the ADS during duty hours for work-related issues.
Commentary for Section 6

This is another new section in the Telework article.

Commentary for Section 7

Section 7 is also new and deals with pay issues related to participation in the Telework Program.

If the teleworker’s ADS remains in the same locality area, the teleworker will receive the same pay and entitlements. For example, if the employee is entitled to a shift differential, he/she will still receive it, assuming that the employee works the same schedule.

If the teleworker’s hours or locality area changes, however, this may affect entitlements and pay. For example, if the employee used to commute to and work in Washington, D.C. and then changed to teleworking from Delaware, the change in location may affect the employee’s pay rate.

Employees will be notified by the Department prior to accepting Telework of any consequences to their pay entitlements that will result from it.

Commentary for Section 8

Section 8 is new and, in summary, says teleworkers must have the same performance standards as non-teleworkers in the same position.

Commentary for Section 9

Section 9 deals with the temporary recall from telework.

A: The employee can be temporarily recalled from telework, which means to be taken off for certain reasons. Examples might be to attend training, conferences or meetings that cannot be attended otherwise.

B: The employee can also be asked to report in to perform short term agency work that can’t be performed at the telework site.

In both cases employees should be given reasonable notice and be provided a reasonable time to report in.

Note that there is a difference between a virtual worker and a teleworker.

- A virtual worker is generally not expected to come in since their position is permanently off-site and they may be far from a facility.

- A teleworker is subject to recall and is usually within commuting distance.
**Commentary for Section 11**

Approval or disapproval for telework is not subject to local negotiations. Employees may be removed from telework if they do not follow the terms of the Telework Agreement.

Employees may also request to be removed from telework, using the procedure discussed in B. Employees must give the Department 30 calendar days notice to accommodate their return. The employee’s workstation and equipment may not be the same as those used prior to telework.

**Commentary for Section 13**

- **If both the main office and the ADS are affected:**
  
  Then the Department should grant the telecommuting employee excused absence as appropriate.

  Note that the teleworker does have to tell the supervisor about their situation.

- **If an emergency affects only the ADS for a major portion of the workday:**
  
  Then the Department can require the employee to report to the main office, get approved annual leave or leave without pay, or authorize an excused absence.

  The teleworker must tell the supervisor of the situation. The supervisor may call the teleworker in.

- **If an emergency affects only the ODS and work can proceed at an ADS:**
  
  Then the employee may not be excused from duty just because other employees elsewhere have been dismissed or excused.

  This means that even if it’s not the employee’s ADS day, the expectation is that if they’ve been equipped for work at home, the employee will work. This is part of the government’s continuation of operations principle.

In non-emergency group dismissals, the telework employee would have the same guidelines as other employees.

**Commentary for Section 18**

Section 18 sets forth the items in this article that are subject to local negotiations. Note that the parties cannot renegotiate eligibility criteria.
**COMMENTARY FOR ARTICLE 21 - HOURS OF WORK AND OVERTIME**

**Section(s) with new language:** 1B (last sentence), 2A, 2C 2 [a, c, d (last sentence), e, f (last sentence), h, i], 2D 1 [a (last sentence), b], 2D 2d, 2G (2, 7, 8, 9), 3C ("fourteen" is new), 3K, 3L (last sentence), 4E-H, 5A 3, 5B, 6

**Commentary for Section 1**

The supervisor retains the authority to assign break times because those are paid duty time.

**Commentary for Section 2**

C, 2, a: If the supervisor denies a request for a compressed work schedule (CWS), the supervisor must explain to the employee in writing the reason for the denial. Note that decisions on CWS must be based on valid operational needs.

C, 2, i: Employees will not be precluded from participating in CWS based solely on their position.

G, 9: This language is contrary to VA Policy. See VA Handbook 5011, Part II, chapter 2, paragraph 11(f) Flextime (3) Time and Attendance (g) CWS (4) Absence and Leave (a), p. II-22. The language is consistent with OPM policy. See OPM Fact Sheet [Federal Holidays – Work Schedules and Pay](#) which states:

"In Lieu of" Holidays

All full-time employees, including those on flexible or compressed work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a nonworkday. In such cases, the employee’s holiday is the basic workday immediately preceding the nonworkday. A basic workday for this purpose includes a day when part of the basic work requirement for an employee under a flexible work schedule is planned or scheduled to be performed.

There are three exceptions:

1. If the nonworkday is Sunday (or an "in lieu of" Sunday), the next basic workday is the "in lieu of" holiday. (See section 3 of E.O. 11582, February 11, 1971.)

2. If Inauguration Day falls on a nonworkday, there is no provision for an "in lieu of" holiday.

3. If the head of an agency determines that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact," he or she may designate a different "in lieu of" holiday for full-time employees under compressed work schedules. (See 5 U.S.C. 6131 (b).)
An employee is not entitled to another day off as an “in lieu of” holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed on a holiday.

**Commentary for Section 3**

C: Note that previously this provision was seven consecutive days.

J: Under the Caregiver’s Act, nurses are allowed to work any combination of six 12-hour tours within an 80-hour pay period.

L: The second sentence in this item is new and applies to uniformed employees only. See Article 38 Section 11.

**Commentary for Section 4**

E: Overtime for nurses is limited to certain circumstances described in the Caregivers & Veterans Omnibus Health Services Act of 2010, PL 111-163, Sec. 602, §7459.

For other employees, the language “reasonable effort” and “will endeavor” indicate that one cannot assume their request will be automatically granted or that they will not have to work overtime.

F: This section contains new language concerning compensatory time in lieu of overtime.

Those employees eligible by Title 5 or Title 38 can accrue and use compensatory time when approved by the Department. Supervisors cannot require that these employees take compensatory time in lieu of overtime pay.

G: Section 4G is new.

Normally, compensatory time off shall be granted before annual leave is approved. If annual leave would otherwise be forfeited, the annual leave shall be granted before compensatory time off.

Any Fair Labor Standards Act (FLSA) non-exempt employee who is unable to use compensatory time within 26 pay periods shall receive overtime pay instead. Supervisors should be aware of the potential budget impact of converting unused compensatory time to overtime of FLSA non-exempt employees. You as the supervisor should ensure compensatory time is used before approving annual leave to avoid the overtime issue.

Please note that for many employees, such as professional employees who are FLSA exempt employees, unused compensatory time will be forfeited if not used within 26 pay periods.
COMMENTARY FOR ARTICLE 22 – INVESTIGATIONS

Commentary for Section 1

A: Weingarten rights guarantee an employee the right to union representation during an investigatory interview. These rights were established by the Supreme Court in 1975. Under Weingarten Rights when an investigatory interview occurs, the following rules apply:

- Rule 1 - The employee must make a clear request for union representation before or during the interview.

- Rule 2 - After the employee makes the request, the supervisor has three options
  - Grant the request and reasonably delay the interview until a union representative arrives
  - Deny the request and end the interview immediately
  - Give the employee the choice to proceed without union representation or end the interview

- Rule 3 - If the supervisor denies the employee’s request and proceeds with questioning, the supervisor does so at his/her own peril.

D: The Department has expanded Weingarten protections through this provision.

Commentary for Section 2

Section 2 applies to “formal investigations.” A formal investigation is one that is initiated under VA Handbook 0700, in which an Administrative Investigation Board (AIB) is appointed by the appropriate convening authority.

Informal fact-finding/investigations may take place prior to a formal investigation and may, under appropriate circumstances, give rise to the right to union representation. See Article 14 Discipline, Section 10.

A: Before Department employees conduct a formal investigation they must be properly trained. The phrase “properly trained,” as defined in the contract, means that employees have either completed training in VA’s Talent Management System (TMS) or have completed other Department-provided training.

D: The Department must inform the subject of the investigation, in advance, of their right to union representation. In a formal investigation, every bargaining unit employee who is questioned is entitled to union representation.
Although only required for the subject of the investigation, it is recommended that advance notice be given to any bargaining unit employee being questioned in a formal investigation in order to prevent delays in the scheduled questioning of employees.
COMMENTARY FOR ARTICLE 23 - MERIT PROMOTION

Section(s) with new language: 7E

This article applies to Title 5 employees only.

Commentary for Section 1

The last sentence in this section states that “This article sets forth the merit promotion system, policies, and procedures applicable to bargaining unit positions in the Department.” If the position is not a bargaining unit position, this article does not apply even if there are bargaining unit employees among the applicants.

Commentary for Section 4

C: Refer to Article 12 Section 2A for more information on temporary promotions.

Commentary for Section 7

This list of exceptions allows you to recruit and select from any sources without regard to the procedures contained in this article.

Commentary for Section 8

Unless management utilizes one of the exceptions under Section 7, the provisions of this section must be followed.

Note that the Veterans Employment Opportunity Act (VEOA) requires that, when the Department accepts applicants external to the Department, VEOA applicants who make the best qualified list must be referred in the initial referral list.

There has also been confusion about how Veterans’ preference applies. Veterans’ preference only applies to external candidates applying under OPM or Delegated Examining Unit (DEU) announcements. Veterans’ preference does not apply to announcements under this section.

In addition, you may post internal and external vacancy announcements concurrently pursuant to 5 USC 7106(a)(B)(ii). However, if you announce concurrently you must refer veterans pursuant to VEOA as described above.

B and C: The first area of consideration refers to all employees internal to the facility not exclusively AFGE bargaining unit employees. See 5 USC 2302(b)(6) and (12).

D: According to a Memorandum of Understanding (MOU) signed 3/30/2010 between the Department and AFGE on the Implementation of USA Staffing (see Appendix p. A-1), employees may continue to submit manual applications, as provided in Article 23, or they can submit their
application electronically via USA Staffing. To submit a manual application, the employee may choose to turn it in to the appropriate HR office to be scanned in.

**Commentary for Section 10**

The USA Staffing MOU states that nothing in the application of USA Staffing will affect the use of panels. The only “sorting” of applicants under USA Staffing will be for determining which applicants are minimally qualified for a vacancy.

A: “Subject to Paragraph C” should read “Subject to Paragraph D.”
COMMENTARY FOR ARTICLE 24 - OFFICIAL RECORDS

Article 24 is a rollover article.

Commentary for Section 4

A: Supervisors may maintain general (not individual) files for legitimate supervisory purposes as long as they are not retrievable by the employee’s personal identifying information (PII). For example, a supervisor may have general files for “Customer Recognitions,” “Concerns,” “Suggestions.” In those files, individual documents may include PII.

C: You are not prevented from taking disciplinary action in the absence of supervisory notes.
COMMENTARY FOR ARTICLE 25 - OFFICIAL TRAVEL

Section(s) with new language: 1A (last 2 sentences), 1B-G, 3 (last sentence), 4B (last sentence), 5A-C, 5D (sentence 1), 5E, 6 (last sentence), 9

Commentary for Section 1

Compensatory time for official travel is an entitlement for eligible employees. As long as an employee is eligible, their compensatory time for travel must be approved.

Union representatives traveling for union business are not entitled to compensatory time for travel, overtime or compensatory time.

Employees are required to submit their documentation for compensatory travel time in a timely manner consistent with VA Handbook 5007.

Managers will administer compensatory time off for travel consistent with VA Handbook 5007, Part VII, Chapter 15. This may include making determinations on what is creditable as “usual waiting time” and “approval of excess waiting time due to interrupted travel.”
COMMENTARY FOR ARTICLE 26 - PARKING AND TRANSPORTATION

Section(s) with new language: 8

This article contains only one new section: Section 8, Transit Subsidies.

Commentary for Section 8

Section 8 can be summarized in two key points:

1) Transit subsidies do not apply to all facilities.

2) If your location is eligible for transit subsidy, you must qualify (that is, you must use public transportation).

B: For example, if an employee commutes to work by car every day and parks in a garage near the facility, he or she does not get the subsidy since it is only for public transportation. On the other hand, if an employee lives in a metropolitan area with subway service and drives to the subway garage, where he/she parks and takes the subway in, he/she gets the subsidy for the subway portion of the trip but not for the parking.
COMMENTARY FOR ARTICLE 27 - PERFORMANCE APPRAISAL

Section(s) with new language: 3D (last two sentences)

This article was negotiated in the mid-term, 2006. The only item that has changed significantly is Section 3D.

Commentary for Section 2

2N: The contract uses language that does not match the regulations or VA Handbook 5013. The language in the Handbook and in the regulations (see below) refers to “Unacceptable” instead of “Unsatisfactory” as a summary rating. These mean the same thing. When you assign summary ratings, use “Unacceptable” which is consistent with the regulation.

5 CFR 430.208(d)(2)(i) states:

“(i) Level 1 through 5 are ordered categories, with Level 1 as the lowest, and Level 5 as the highest

(ii) Level 1 is ‘Unacceptable’

(iii) Level 3 is ‘Fully Successful’ or equivalent; and

(iv) Level 5 is ‘Outstanding’ or equivalent.”

Commentary for Section 3

D: If a union official does not spend a sufficient amount of time on duties for a fair rating against the standards, their performance evaluation for the appraisal period (their annual rating of record) will reflect they were not given a rating for that performance appraisal period.

The performance appraisal form should state that the employee was “not rated” and should provide an explanation as to why, such as “the employee was on 100% official time and could not be fairly rated against his/her performance standards” or “the employee did not spend sufficient time in the performance of regular duties to be fairly rated against his/her performance standards.”

For personnel actions where a rating of record is needed, the last rating will be used and considered. This does not mean that the union representative gets a “rollover rating.” For example, if a union representative is applying for a position in another agency and needs a performance rating, the last rating of record would be used.

“Sufficient amount of time” in the performance of regular duties during a performance period is 25% (90 days) over the appraisal year. These days do not have to be consecutive.
For more information, see the Human Resources Management Letter (HRML) No. 05-08-12 Instructions Concerning the Impact of Union Officials’ Use of Official Time on Pay, Performance Appraisals, Awards and Eligibility for Membership on Peer Review Boards, October 27, 2008. (See Appendix, p. A-4.)

**Commentary for Section 5**

A-E: Objective criteria will be used to the maximum extent feasible in establishing and applying performance standards.

The local union may provide input into when management changes, adds to or establishes new elements and performance standards. The Department cannot implement new elements or performance standards until it has given the union 15 days advance notice to provide this input. Once you have a final version of the performance standards, you should provide notice to the union and give them the opportunity to bargain if applicable.

Bargaining obligations (see 5E) arise only when the changes in the performance standards result in a change in the general conditions of employment for bargaining unit employees. For example, changing the production standards from 3 to 3.5 does not by itself constitute a change in the general conditions of employment.

**Commentary for Section 7**

D, 3: The contract uses language that does not match the regulations or VA Handbook 5013. The language in the VA Handbook and the regulations (see below) refer to “Unacceptable” instead of “Less Than Fully Successful” as a level of achievement. These mean the same thing. When you complete performance plans, use “Unacceptable” which is consistent with the regulation.

5 CFR 430.206(b)(8) states:

“Elements and standards shall be established as follows –

(i) For a critical element –

(A) At least two levels for appraisal shall be used with one level being ‘Fully Successful’ or its equivalent and another level being ‘Unacceptable.’”

**Commentary for Section 9**

D, 3: An employee does not have a right to a union representative during informal performance discussions. However, if during the informal performance discussion, management asks investigative questions or discusses general conditions of employment, the union may be entitled to be present because this may change the nature of the meeting into a Weingarten investigation or formal discussion. If you are not sure how to proceed, contact HR immediately.
Commentary for Section 10

A: Sentence 2, which refers to developing the Performance Improvement Plan (PIP) in consultation with “the employee and the local union representative”, means the employee and his/her designated union representative. If the employee does not designate the union as his/her representative, there is no obligation to consult with the union. There is also no obligation to advise the employee that they have the option to have union representation before you hold a meeting. This holds true as long as the meeting does not become an investigatory meeting.

Some facilities do consult with the local union representative by providing a draft PIP even in those circumstances where the employee has not designated the union as his/her representative. Some facilities have other practices, which may include notification, consultation, etc. If a past practice has been established, it should be continued until changed through bargaining.

Commentary for Section 11

This section includes language that could lead to the assumption that all performance issues must be dealt with through Title 5, Chapter 43 (Performance) and Article 27 procedures. It is possible under current case law to use Title 5, Chapter 75 ( Discipline and Adverse Action) procedures for performance matters (e.g., employee has a performance element to turn in reports by their suspense date. Employee fails to turn in reports timely. The failure, if a critical element, could be used as an example of a performance deficiency in a PIP. Alternatively, it could be used as a specification in a disciplinary charge of “failure to follow instructions.”) This section only says should, not must or shall.

H: Provides the employee’s rights to appeal or grieve a performance-based action.
COMMENTARY FOR ARTICLE 28 - REDUCTION IN FORCE

This is a rollover article.


Title 38 employees get the same RIF rights as the Title 5 employees (VA policy 5005, Part IV Chapter 2; Staff (Staffing Reductions)).
COMMENTARY FOR ARTICLE 29 - SAFETY, HEALTH, AND ENVIRONMENT

Section(s) with new language: 1B-C, 2, 3A (sentence 1), 3C (last 2 sentences), 3G 5, 4B (sentences 2-3), 5I, 6C, 8B (last sentence), 10C-D, 12, 13 (sentence 2), 15, 18A (added “weapons of mass destruction”), 20C 2-3, 20G-K, 21, 22D 1-3, 22E 5, 24D 6, 24E, 25A (last sentence), 26 (last sentence), 29F, 31-34

Article 29 is a lengthy article that is primarily technical in nature. Local safety committees should go through Article 29 jointly.

Regarding these areas management should consider union as a full partner. Note that there are requirements for notifications, joint development of training and strategies, reports and other requirements that call for collaboration or communication.

Commentary for Section 1

C: “Intermediate” refers to VISN-level, Office of Field Programs (NCA) and Area-level (VBA) committees.

Commentary for Section 3

B: Reference to duty time in this section is an oversight. It should be considered official time that does not count against any allocated official time described in the Master Agreement (see Article 48 Section 10).

H: “Facility” refers to the entire facility - the main facility and all satellites - represented by the local.

Commentary for Section 5

I: Item I is new and explains the process for submitting a formal report of an unsafe or unhealthy condition.

Commentary for Section 6

C: C is new and includes a reporting/posting requirement.

Commentary for Section 8

This section creates an obligation for the Department to provide employees and union reps with safety and health training appropriate to their work, including curriculum and materials. The union will participate in the development of safety and health training, including curriculum and training materials.
Commentary for Section 11

This section applies to indoor areas where there are concerns about adequate ventilation.

Commentary for Section 12

This section is new. It creates a reporting requirement.

Commentary for Section 13

The phrase “employees who are susceptible” means those who are exposed to extremely hot or cold temperatures while at work that make them susceptible to heat or cold illness (e.g., heat stroke, frost bite). The hazard assessment of the environment would identify the employee as susceptible to heat or cold illness based on the working environment.

Commentary for Section 15

This section is completely new.

Commentary for Section 20

Section 20 focuses on creating an ergonomic environment for employees. Depending on the facility, ergonomic assessments may be performed by the Safety and Health Representative or Occupational Health. The specifics of ergonomic assessments that are now in the contract have always been in VA policy.

A: “VDT” (Video Display Terminal) is a computer-like display which displays information on a television-like screen. All computer screens are VDTs.

F: If an employee works with VDTs (computer-like displays or television-like screens), they are entitled to a ten-minute break from VDT work for each hour of continuous use. Note that these are meant to be breaks from staring at the screen; they are not intended to be work-free periods. For example, the employee can make work-related phone calls, do filing, etc. If there’s something else to do, they should do it.

Commentary for Section 21

The Vision Program is only for employees in the AFGE bargaining unit who use a workplace VDT as part of their normal work and experience eye problems related to their use of the VDT. This program is not an eyeglass benefit.

A: If the employee is having eye problems related to VDT use, they must first explore the options in Section 20 (ergonomic adjustments, lighting, etc.).
B: If those options are not successful in addressing the issue, then they may be eligible for having the agency pay for the glasses. There is a process involved to determine if they are eligible.

D: Note that where D says that the Department will procure the eyeglasses/contacts of the employee’s choice it means the employee’s choice between glasses or contacts, not the eyeglasses of choice.

G: Since under this program, eyewear is considered to be Personal Protective Equipment (PPE), they remain government property. It is assumed employees will use them only at work and only for VDT use. Employees may be required to return them upon leaving VA (including unused disposable lenses).

Commentary for Section 24

D, 6, d: This section states the following:

“d. Employees may utilize wellness/fitness centers during duty hours infrequently, for short periods of time, for the participation in physical wellness activities, at no additional cost to the employees. Where existing methods are already in place, they will be continued, until changed through negotiations. This section is subject to local negotiations.”

This section does not prohibit facilities from charging a fee for the regular use of its fitness center. What the provision means is that if an employee is, for example, in need of a stress reliever during a particular day and the supervisor authorizes it, the employee may utilize the fitness center for that particular instance and for a short period of time without paying that fee.

Mission accomplishment is paramount when considering this section. Use of facilities is subject to workload considerations.

Commentary for Section 25

Employees are encouraged to report equipment, machinery or furniture that cause or have potential to cause injuries such as repetitive motion injuries. The Department agrees to investigate such reports expeditiously and to implement appropriate corrective action.

The last sentence in A is new: “Ergonomic assessments and/or recommendations shall be in writing and submitted to the local Safety and Health Committee.”

Commentary for Section 31

This section is new and contains a reporting/posting requirement.
Commentary for Section 32

This section is new and contains an information posting requirement.

Commentary for Section 34

This section does not apply to work-related injuries or reasonable accommodation requests. See Article 14 Fitness for Duty, Article 18 Equal Employment Opportunity and Article 41 Workers Compensation (light duty assignments) for more information.

Under the Health Insurance Portability and Accountability Act (HIPAA), the Department cannot contact the employee’s personal health care provider to discuss the employee’s medical condition without a signed release from the employee. However, the Department may contact the health care provider’s office to verify that the provider issued the medical documentation.

If a supervisor has questions about the information itself, he/she must ask the employee for more information or tell the employee the documentation is not administratively acceptable.
COMMENTARY FOR ARTICLE 30 - OCCUPATIONAL HEALTH

This entire Article is new. The health care provided in Occupational Health Units is not intended to replace employees’ private health care providers or private health insurance.

Commentary for Section 2

A: Note that employees may be billed for non-work related Occupational Health services rendered.

Commentary for Sections 5 and 7

A facility can mandate that all employees receive immunizations (See AFGE and US Department of the Army, 64 FLRA No. 185, June 30, 2010; NAGE, SEIU and DVA Boston Healthcare System, 64 FLRA No. 114, March 31, 2010). Per Section 7B, there are some exceptions:

1. No employee shall be forced to participate in an immunization program if that employee has a medical condition that would be adversely affected by the immunization and provides a statement to that effect from their health care provider.

2. An employee may also request an exemption based upon their religious beliefs. If the Department believes it would create an undue hardship to exempt the employee from the immunization requirement, it may deny the employee’s request for exemption subject to the provisions of 29 CFR 1605.2(b). (See EEOC Compliance Manual, Section 12 Religious Accommodation.)

While not specifically mentioned in Section 5, these exemptions also apply to immunizations.

Usually there are no charges for Department-provided immunizations. If a Department-provided immunization is offered at charge, employees will be:

- Notified in advance of the charge and the amount
- Given the option to accept or not accept the immunization/vaccination, and
- Provided information about other service providers who offer the immunization/vaccination
COMMENTARY FOR ARTICLE 31 - SILENT MONITORING

Commentary for Article 31

This is a rollover article.

When silent monitoring is used to evaluate performance, you must notify the employee in advance of the period during which silent monitoring will occur. This period shall not exceed one week. Therefore, if silent monitoring is done continuously, employees must be notified on a weekly basis.
COMMENTARY FOR ARTICLE 32 - STAFF LOUNGES

This entire article is new.
COMMENTARY FOR ARTICLE 33 - TEMPORARY, PART-TIME, AND PROBATIONARY EMPLOYEES

Section(s) with new language: 1A-D, 2A (last sentence), 2B 1-2, 2B 3 (sentence 1), 2B 4-7, 2C 1 (last sentence), 2C 2 (last sentence), 2C 4 (last sentence), 2C 6 (sentence 1), 2C 7, 3

This article sets forth the different provisions applicable to temporary, part-time, and probationary employees for Title 5, Title 38 Hybrid (Hybrid), and Title 38 employees. The provisions for each are discussed below.

Before you apply the provisions of this article, determine the employee’s bargaining unit status. Do this by checking the employee’s SF50 or contacting HR. Basic unit certifications are also included on the VA LMR website.

Commentary for Section 1

1B-D: B, C and D contain descriptions of the various types of management-employee meetings: counselings, Weingarten meetings and formal discussions.

These descriptions are included in this article to emphasize that these meetings not only apply to full-time employees but also apply to temporary, part-time and probationary employees included in the AFGE bargaining unit.

Although the descriptions included in this article apply specifically to temporary, part-time and probationary employees, they provide a very clear explanation of what these meetings are and what you should consider regarding union representation.

Commentary for Section 2

Section 2 introduces new responsibilities for management and HR regarding temporary and probationary employees. These new responsibilities start when the probationary employee comes on board and extend throughout the probationary period with specific milestones.

The following highlights new supervisory responsibilities in section 2B:

- Advise probationary employees in writing of their performance standards and conduct expectations within 30 days of their probationary period.
- Explain the position requirements and answer the employee’s questions.
- Maintain frequent communication throughout the probationary period regarding performance and conduct.
- Communicate deficiencies in a counseling and document in writing. Do not wait until the end of the probationary period.
After 90 days, you should receive a notice from HR regarding the employee’s progress in his/her probationary period. Complete and return this form to HR. If you do not receive this form, contact HR. If you note deficiencies on this form, meet with the employee and explore courses of action.

Do not retain probationary employees who have performance or conduct problems beyond their probationary periods simply because you missed one or more of the above steps.

C:

In any particular pay period, part-time employees may be required to work more than 32 hours. They just cannot have a regularly scheduled tour of duty that is more than 32 hours.

If the need for working a part-time employee beyond their regularly scheduled tour of duty continues beyond four pay periods, consider whether there is a need to establish a full-time position.

5 USC 7106(b)(2) or (3), cited in 2C7, refer to appropriate arrangements and procedures (I&I).

Commentary for Section 3

B:

Advise probationary Title 38 employees in writing of their performance standards and conduct expectations within 30 days of their probationary period.

Explain the position requirements and answer the employee’s questions.

Maintain frequent communication throughout the probationary period regarding performance and conduct.

Communicate deficiencies in a counseling and document in writing. Do not wait until the end of the probationary period.

If the employee’s adjustment and performance are not satisfactory, document the performance or conduct issue and submit a written request for a Summary Review Board to HR.

The Summary Review Board is the process for removal of probationary Title 38 employees when the basis for the removal is professional conduct and competence (PCC). If the basis for the removal is not PCC, then a Summary Review Board is not required.
Section 3 B6 states that an employee subject to Summary Board Review is entitled to personal representation but not union representation. A union representative can act as the employee’s personal representative, but not as a union representative at the review.

C1: There are Title 38 work schedules that provide for 72 hours within a pay period to be considered full-time employment.
COMMENTARY FOR ARTICLE 34 - JOB SHARING

This article is a rollover.
COMMENTARY FOR ARTICLE 35 - TIME AND LEAVE

Section(s) with new language: 1B, 1F, 1H-J, 2A (last sentence), 2C (last sentence and 1-3), 2D-G, 2I-M, 4A (last two sentences), 4D 3-6, 4E-H, 5A (parts of), 5B 2 (added “administratively acceptable”), 5C, 5E, 7 (“valid operational needs” and last sentence), 8B, 9D 3, 9E, 10B (last sentence), 10D, 11B-D, 11E (“should provide”), 11G-H, 12 (title), 13A-C, 13F-H, 14A (last sentence), 14D, 15A-L, 16D 3-4, 16E 6 a and d-g, 16E 9, 16I, 17, 19-20

Commentary for Section 1

D: If approval of the leave request would result in a negative leave balance, this section does not apply.

J: The operative word here is “solely.” Leave balances in and of themselves may not be used to support actions that adversely affect employees because an employee with a low leave balance may have been using his/her leave properly.

Commentary for Section 2

C: The use of “Valid Operational Needs” is a new standard from the 1997 contract. Management needs to be able to support the need. It is also referenced in 2E and 2F.

In considering “Valid Operational Need,” you need to decide what you need for coverage. If you refuse the leave request, you should be able to support the need. Do not refuse leave requests just because it is easier to run the unit with the requesting employee.

F: Even though F uses the same phrase as C, “valid operational needs,” the phrase has a different meaning in F. In order to cancel preapproved leave, management must show that circumstances changed after the leave was approved, the changed circumstances were unforeseen, and the changed circumstances impact coverage.

J: It was agreed that this requirement would be met by the information provided in the employee’s Leave and Earnings Statement and that no additional notice is necessary.

M: Vacation schedules can be an electronic posting that all employees have access to, such as a shared calendar in Outlook. Employees should not be individually identified.

Commentary for Section 4

A: The employee has to complete one phone call to the designated number or an alternate number. If the supervisor or designee is unavailable, in order to complete the call the employee may leave a voicemail indicating that they are incapacitated for duty and requesting the type of leave. This process is only for periods of incapacitation, not for regular requests for other types of leave.
• The call to request sick leave should be placed as soon as possible, which may be before the start of the employee’s duty day, and no later than two hours after the beginning of the tour of duty.

• The designated number may be any number provided by management.

• A completed phone call is one which results in the employee either speaking to the supervisor or designee, or leaving a voicemail.

• The one call is intended to be a process for the request of sick leave. The phrase in section 4A that refers to the “type of leave requested” applies to the type of leave the employee intends to use to cover the period of incapacitation for duty.

E: The items in E are not an all-inclusive list for Title 38 employees. Title 38 employees get the same family friendly items as Title 5. Refer to the VA Handbook for the full list.

G: Sick leave criteria cannot be used to grant an annual leave request, even if that request is made in lieu of sick leave. A request for annual leave or leave without pay (LWOP) to be used in lieu of sick leave is still a request for annual leave or LWOP and should be evaluated and approved using the criteria appropriate for that leave, not sick leave.

**Commentary for Section 5**

A: This section places an obligation on the employee, in appropriate circumstances, to furnish medical documentation beginning with his/her fourth consecutive workday of absence due to illness or incapacitation. This section does not say anything at all about the first three days of absence and it does not place any restrictions on management’s ability to require medical documentation in appropriate circumstances. If a manager has an objective reason to believe the employee is not incapacitated or ill, the manager may request medical documentation before the fourth day of absence.

A2: There may be circumstances where the employee’s self-certification is not administratively acceptable. “Administratively acceptable” means it meets the need of the supervisor to determine the validity of the illness.

E: This section does not prevent management from asking for medical documentation when the employee’s request for absence due to illness or incapacitation is questionable (see A above). The employee’s leave balance alone is not a sufficient basis for placing an employee on medical certification.

E, 1 and 2: Note the minor change in timeframes. Previously, management had to review employees’ medical certification status between four and six months after placing the employee on medical certification. Now, the employee may request review after three months, and regardless of whether an employee requests review, management must review the employee’s status at six months.
Commentary for Section 10

F1: The understanding is that the LWOP request is for the medical treatment of a service-connected disability.

Commentary for Section 11

C: Even though current OPM policy states that the Federal Government no longer closes during work hours, it is up to the facility to determine whether or not the facility will remain open.

Commentary for Section 13

This is an area with frequent changes. Consult the Vet Guide and Uniformed Services Employment and Reemployment Rights Act (USERRA). You can get both of these publications from OPM (see www.opm.gov).

Commentary for Section 16

This is an area with frequent changes. Consult with HR for the latest guidance.
COMMENTARY FOR ARTICLE 36 - TIMELY AND PROPER COMPENSATION

Section(s) with new language: 1A (last sentence), 1B, 3A (sentence 2)

Commentary for Section 1

B: The last sentence conflicts with federal regs which provide specific criteria for hardship exemptions (31 CFR Part 208.4).

This regulation implements the provisions of section 31001(x) of the Debt Collection Improvement Act of 1996 (Act) that require that, subject to the authority of the Secretary of the Treasury (Secretary) to grant waivers, all Federal payments (other than payments under the Internal Revenue Code of 1986) made after January 1, 1999, must be made by electronic funds transfer (EFT). This regulation establishes the circumstances under which waivers are available; sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open a low-cost Treasury-designated account at a financial institution that offers such accounts; and sets forth the responsibilities of Federal agencies and recipients under the regulation.

This is not permissive, see 31 CFR Part 208.4. The final reg was published on December 22, 2010.
COMMENTARY FOR ARTICLE 37 - TRAINING AND CAREER DEVELOPMENT

This is a rollover article and has no change from the old Master Agreement.

Commentary for Section 4

Article 13 covers the process for conducting administrative reassignments while this article applies to any training related to reassignments.
COMMENTARY FOR ARTICLE 38 - UNIFORMS

This article is new.
COMMENTARY FOR ARTICLE 39 - UPWARD MOBILITY

This is a rollover article.
COMMENTARY FOR ARTICLE 40 - WITHIN-GRADE INCREASES AND PERIODIC STEP INCREASES

Section(s) with new language: 1A 2, 2

Commentary on Section 2

Section 2 addresses periodic step increases for Title 38 employees. This section applies to any physician, dentist, optometrist, podiatrist, RN, PA, Expanded Function Dental Auxiliary (EFDA), or chiropractor who is receiving less than the maximum rate of his/her grade.

VA Handbook 5007, Part III, Chapter 5, Section 1, and VA Handbook 5013, Part II, Paragraph 12, should be referenced in connection with this section.

Denial of WIGI for Title 38 employees must be documented in writing. The reconsideration process is found in VA Handbook 5013, Part H, Paragraph 12.
COMMENTARY FOR ARTICLE 41 - WORKERS’ COMPENSATION

Section(s) with new language: 1, 2A 5, 2B, 3B (sentence 2), 3B 1-2 (first sentence in each), 3B 3-8, 3C (last 2 sentences), 3D-F, 5A-B, 6C (sentence 2-3), 6D

 Commentary for Section 2

B: This new language creates a requirement to respond to employees who have alleged the Department has mishandled their Workers Compensation claim.

 Commentary for Section 3

F: This language is new and contains a notification requirement when a claim is filed.

 Commentary for Section 5

E: If the employee’s claim for compensation is disallowed by DOL, the employee may or may not be eligible for sick leave. Supervisors should evaluate whether or not the employee meets the criteria for sick leave approval.

 Commentary for Section 6

C: Supervisors should reassess light duty assignments on a regular basis to determine if they are still appropriate.

Light duty assignments are not reasonable accommodations. They may also include reduced hours or changing the employees scheduled tour of duty without loss of pay. Employees have a responsibility, when requesting transitional (light) duties, to provide management with supporting medical documentation.
COMMENTARY FOR ARTICLE 42 - AFFILIATIONS

This is a rollover article.
COMMENTARY FOR ARTICLE 43 - GRIEVANCE PROCEDURE

Section(s) with new language: 1 (“Title 5, Title 38 Hybrids and Title 38 bargaining unit employees”), 3C (last sentence), 5 (“in accordance with Section 7”), 7A, 7 Note 1 (last sentence), 7 Note 8

Commentary for Section 1

Section 1 does not prohibit use of the VA’s Administrative Grievance Procedure as appropriate.

Commentary for Section 2

Note 1: If applicable, refer to the Secretary’s 7422 Decision Document on the VA LMR web site.

Commentary for Section 3

C: Note that the last sentence in C is new and states that, for purposes of an EEO action, the time limit for filing a grievance will be extended by 30 days, beginning with the employee’s receipt of a notice of the Right to File a Formal Discrimination Complaint. This creates an automatic extension during the informal pre-complaint EEO process which may include ADR and mediation.

Commentary for Section 4

If a matter is non-grievable or non-arbitrable, it should be stated by management in the grievance response no later than Step 3. Failing to do so may impact your ability to claim non-grievability or non-arbitrability at a later time.

Examples of matters that may be non-grievable or non-arbitrable include, but are not limited to, procedural deficiencies such as timeliness, probationary employee terminations, matters brought before another venue such as the Merit Systems Protection Board (MSPB), and any other matter excluded by negotiated agreements or statute.

Section 4 does not apply if the issue is related to 38 USC 7422. A claim of non-grievable or non-arbitrability can be raised anytime if the issue involves one of the three 38 USC 7422 exclusions. However, if there is a possibility of a 7422 exclusion to make a matter non-grievable or non-arbitrable, the Department should not delay in addressing the matter.

Commentary for Section 5

An employee may have an attorney or other outside representative only if local AFGE gives permission in writing. Once the union approves the attorney or outside representative, that person acts on behalf of the union.
An employee may be accompanied by one union representative or a representative approved by the union. New language in Section 7A, however, provides that the union is entitled to have an equal number of representatives as management officials at each step of the grievance process.

**Commentary for Section 7**

A: Section A contains the following new language, “Grievance meetings under this procedure will be face-to-face at the location of the grievant. By mutual agreement, the parties to the grievance may agree to teleconference the grievance meeting.” This is a new obligation on the Department, regardless of convenience or cost. However, facilities should consider delegating the authority to hear grievances at Steps 2 and 3 to a management official located closer to the grievant’s duty station to minimize travel costs.

Additional new language in A states, “The union is entitled to have an equal number of representatives at all steps of the grievance procedure as the Department.” This is a new obligation on the Department to provide equal numbers. This needs to be considered in advance of the grievance meeting. The grievant does not count as a representative for AFGE.

Step 2: Although Step 2 is silent on a meeting, the Step 2 meeting still occurs.

Step 3: Please refer to Section 4 regarding the need to state in the grievance response whether an issue is non-grievable or non-arbitrable no later than Step 3. Failing to do so may impact the ability to claim non-grievability or non-arbitrability at a later time.

Note 8: This is a new obligation on the Department to provide information to the local union when the employee files a grievance on his/her own behalf.

**Commentary for Section 9**

The language in Section 9 replaces the automatic remedy language of the 1997 agreement. Regardless, management officials should not unnecessarily delay in the processing of a grievance and should follow the time limits in this article.
COMMENTARY FOR ARTICLE 44 - ARBITRATION

Section(s) with new language: 2B

The only new language in this article is Section 2B, the rest is rollover from the previous agreement.
COMMENTARY FOR ARTICLE 45 - DUES WITHHOLDING

Section(s) with new language: 3B, 3D-F, 4 (sentence 4), 5 (sentence 2), 6A (sentence 1-2, 4), 7B, 8

Commentary for Section 3

D: This is new language and creates a new obligation on the part of the Department.

Commentary for Section 6

Employees who have questions related to Section 6 should be referred to the union.

B: Local union representatives are on official time while receiving and processing the SF 1188. This official time counts against the allotment.
COMMENTARY FOR ARTICLE 46 - LOCAL SUPPLEMENT

This is a rollover article. The purpose of this article is to delineate the role of and establish the ground rules for local supplemental agreements to the Master Agreement.

Commentary for Section 1

There is a difference between a Local Supplemental Agreement (LSA) and a local Memorandum of Understanding (MOU) or local Memorandum of Agreement (MOA) which are not part of the LSA. Local MOUs/MOAs are contracts in and of themselves, with their own terms and provisions for reopening. They are not automatically reopened by this article. However, if a local MOU/MOA has a provision that is in conflict with the Master Agreement, that provision is not enforceable.

Refer to the Appendix, p. A-10, for a list of all the issues identified in the Master Agreement for local negotiations.
COMMENTARY FOR ARTICLE 47 - MID-TERM BARGAINING

Section(s) with new language: 2B (sentence 1), 2D (sentence 2), 4D

Commentary for Section 1

A: While the parties are encouraged to use an Interest-Based Bargaining (IBB) approach in mid-term negotiations, it is not required. Local facilities may decide to use other approaches.

Commentary for Section 2

Section 2 establishes ground rules for national mid-term negotiations.

Commentary for Section 3

Section 3 refers to changes in working conditions at the intermediate level, such as the VISN, NCA’s Office of Field Programs and VBA’s Area office level. The notice for intermediate-level changes should go to the NVAC president or designee. Currently, the designee is Oscar L. Williams, Jr.

Your notice should provide the union enough information to understand what the change is. Generally, you should provide any previous policy, the new policy, and any relevant documents that have been relied upon to make the changes. You should also provide the name of a point of contact (POC) and/or subject matter expert who can answer questions related to the policy. See Article 49 Section 4A for more information on notification on changes in conditions of employment.

Section 3 requires the establishment of ground rules at the intermediate level. If you have not yet established written ground rules, follow your past practice for notification and negotiations requirements. Generally, 20 work days have been considered a reasonable amount of time to allow the union to submit a demand to bargain.

Commentary for Section 4

B: Proposed changes affecting the interests of two or more AFGE locals within a facility require notice to a party designated by the NVAC President with a copy to the affected locals. Currently, the party designated by the NVAC President is Oscar L. Williams, Jr. The timeframes to submit a demand to bargain must be consistent with local negotiated agreements or local past practices.

Your notice should provide the union enough information to understand what the change is. Generally, you should provide any previous policy, the new policy, and any relevant documents that have been relied upon to make the changes. You should also provide the name of a point of contact (POC) and/or subject matter expert who can answer questions related to the policy.
See Article 49 Section 4A for more information on notification on changes in conditions of employment.

D: Section 4D requires the establishment of ground rules at the local level. If you have not yet established written ground rules, follow your past practice for notification and negotiations requirements.
COMMENTARY FOR ARTICLE 48 - OFFICIAL TIME

Section(s) with new language: 1A (sentence 1), 1B, 2A 6, 2B-D, 2G, 5A, 5B (last sentence), 6, 8, 10A-B, 10C 1-3

The official time (national or local) allocated in this contract is intended to include every activity for which official time is appropriate: negotiations, dispute resolution, representational activities and general labor management relations.

All official time used to engage in these activities, unless specifically excluded in the contract, comes from the allocated official time.

If the union exhausts its annual official time allocation, the union will be entitled by law only to the official time necessary to engage in collective bargaining (limited to the time at the table) or appear before the FLRA.

Although the union may designate any bargaining unit employee as a union representative, in rare circumstances it may not be possible to release certain individuals on official time because it may create extreme hardship in meeting the VA’s mission. In these rare cases, facilities should consult with VACO LMR before denying any designation of official time based on hardship.

Commentary for Section 2

National officers and representatives may delegate official time to a representative at their home station to perform the duties of the national position. The person to whom the official time is transferred may not re-delegate/transfer that time to anyone else. The Memorandum of Clarification on this issue is included in the Appendix (see p. A-17).

Commentary for Section 3

The accumulation and advancement of official time covered in this section applies to National Union representatives only. It does not apply to local union representatives. If you have a national representative at your facility who requests to transfer his/her national official time, contact VACO LMR.

Commentary for Section 4

The LMR Committee referred to in this section is the committee referred to in Article 5, which is the National LMR Committee.
Commentary for Section 5

A: Once official time has been authorized for a specific function, A describes the checkout procedures union representatives must follow when that function requires travel outside the employee’s duty station. The representative must:

- Provide the destination and the expected return date and time.
- Provide the category of representational activity involved (outlined in 1-4):
  - Negotiation of term collective bargaining agreements
  - Negotiating changes to conditions of employment
  - Dispute resolution
  - General labor-management relations

B: B states that, where travel to another location within the jurisdiction of a local union is necessary for representational activities, and transportation is otherwise being provided to the location for official business, the union will be allowed access to the transportation on a space-available basis. B also authorizes official time for local travel.

Commentary for Section 6

Pre-decisional involvement activities not related to the Forum or a Forum-created committee would be included in the official time allocation.

A union official designated as an employee’s personal representative is on duty time when preparing or presenting an appeal to the MSPB or handling a discrimination claim under EEOC procedures. A union official’s use of time under this provision is no different from that of any other employee who has been designated to represent a fellow employee in an EEOC or MSPB claim.

Commentary for Section 7

Refer to Article 27, Section 3D.

Commentary for Section 10

A: Article 48 Official Time, Section 10, addresses local official time allocations. Section 10 alternates between the terms “bargaining unit positions,” “bargaining unit employees” and “bargaining unit members.” A reference to “position,” “employee” or “member” means the number of encumbered (i.e., filled) bargaining unit Full Time Employee Equivalent (FTEE). For the purposes of calculating official time under Section 10, use bargaining unit FTEE to determine the local official time allocation.
Official Time – Minimum percentage allotments by Administration for VHA, VBA and NCA

1. For a local union that represents more than one administration, (e.g., one VHA and one VBA facility) that local will receive a minimum allotment equal to 4.25 official time (OT) hours per year for each bargaining unit FTEE represented by that local union.

   i. $4.25 \times \text{Total BU FTEEs represented by the local} = \text{OT Hours}$
   
   ii. After calculating the formula, if the number of OT hours is greater than the current OT allotment, the local union receives the new number of OT hours provided by the formula.
   
   iii. After calculating the formula, if the number of OT hours is less than the current OT allotment, the local union keeps the number of OT hours they currently have.
   
   iv. A local union representing more than one administration is not entitled to the minimum percentages for each administration described in Section 10 A (VHA & VBA 50%, NCA 25%).

2. For a local union that represents just one administration, either VHA or VBA, the local union is entitled to a minimum of 50% OT. Start with the formula:

   i. $4.25 \times \text{Total VHA or VBA BU FTEEs represented by the local} = \text{OT Hours}$
   
   ii. After calculating the formula, if the number of OT hours is greater than a 50% allotment, the local union receives the new number of OT hours provided by the formula.
   
   iii. After calculating the formula, if the number of OT hours is less than a 50% allotment, the local union receives the minimum of 50% provided by the Master Agreement, unless a prior agreement gives the local more than the minimum 50% but less than the number of OT hours provided the 4.25 formula.

3. For a local union that represents just NCA, the local union is entitled to a minimum of 25% OT. Start with the formula:

   i. $4.25 \times \text{Total NCA BU FTEEs represented by the local} = \text{OT Hours}$
   
   ii. After calculating the formula, if the number of OT hours is greater than a 25% allotment, the local union receives the new number of OT hours provided by the formula.
   
   ii. After calculating the formula, if the number of OT hours is less than a 25% allotment, the local union receives the minimum of 25% provided by the Master Agreement, unless a prior agreement gives the local more than the minimum 25% but less than the number of OT hours provided the 4.25 formula.

Official Time – Work Stations Greater than 50 Miles from a Facility

1. “Where a local represents employees at a CBOC, Consolidated Mail Out Pharmacy (CMOP), clinic, service center or successor, or a duty station greater than 50 miles from the facility, that local union will be allotted 25% official time at that duty station.”
The intent of this language is to give dedicated official time at distant locations so union representatives do not have to use large portions of OT in a travel status for a brief meeting.

If one of the work stations listed above currently has a union representative stationed at that location, that union representative is entitled to 25% OT. This 25% OT cannot be transferred back to the main facility.

1. BU FTEEs at this work station are not included in the overall calculation of 4.25 x BU FTEEs when determining the union OT allotment at the main facility.

If one of the work stations listed above currently does not have a union representative stationed at that location, the 25% OT allotment is not applied.

1. BU FTEEs at this work station are included in the overall calculation of 4.25 x BU FTEEs when determining the union OT allotment at the main facility
2. However, the union may designate a representative at the station at any time. That representative would then be entitled to the 25% OT, but the BU FTEEs at the station would no longer be included in the 4.25 x BU FTEEs calculation.

In no case should the union be receiving both 25% OT at a station over 50 miles from the main facility and including the BU FTEEs from that station in the OT formula of 4.25 x BU FTEEs. The union can choose either the 25% OT at the remote station or to include the BU FTEEs from the remote station in their 4.25 calculation, but not both. The union and management should jointly recognize which approach the union chooses.

C: The OT allocations provided by existing local agreements and past practices will remain in full force and effect where they are above the minimum 4.25 calculation. However, management may initiate local bargaining that results in a reduction of the official time allocation below the existing level, but not below the minimum 4.25 calculation.

For example, if by local agreement or practice, a facility has 10 union representatives on 100% OT but under the 4.25 calculation they would get only 5 union representatives on 100% OT, management may bargain to reduce it down from 10 but no fewer than 5.

Additionally, each March 15 and September 15, the local official time allocation will be recalculated.

D: Please note that the limitation in D applies only to the minimums provided in 10A. This section does not prevent local parties from negotiating for less official time than they currently have as long as they don’t go below the minimums in 10A (see commentary for 10C above).
E: Where arrangements for transfers of official time are not in effect, through local agreements or past practice, local union representatives cannot transfer official time until the local parties have negotiated such arrangements.
COMMENTARY FOR ARTICLE 49 - RIGHTS AND RESPONSIBILITIES

Section(s) with new language: 2A, 2C, 4A ("by U.S. mail, personal service, or electronically" and last sentence), 4B-F, 9 (sentences 6-7), 11

This article establishes rights and responsibilities related to the relationship between the union and the Department.

Commentary for Section 3

What constitutes “reasonable advance notice” depends on the specifics of the situation and the totality of the circumstances. The notice should provide the union with adequate time to be present, if they so choose.

Note that the right to a union representative in an investigation (Weingarten) is an employee right not a union right. The only time the Department has an obligation to inform the union about the investigation is when a bargaining unit employee is the subject of a formal investigation (AIB) under Article 22 Section 2. The Department also has an obligation to inform the subject of the investigation of his/her right to union representation prior to being questioned and give the employee a reasonable amount of time to secure representation.

For all other investigations, the Department does not have an obligation to inform the union. The Department only has an obligation to inform the subject of the investigation of his/her right to union representation prior to being questioned and give the employee a reasonable amount of time to secure representation. See Article 14 Section 10.

For additional detail, see commentary on Articles 14 and 22.

Commentary for Section 4

The parties have created a Memorandum of Clarification (MOC, see Appendix p. A-19) to explain the intent and meaning of this section.

A: A provides three ways to provide notification for changes in working conditions: U.S. Mail, personal service and electronically. Electronic means of notice includes e-mail or fax. Per the MOC, if any other electronic means of communication are to be used by the Department, the parties will negotiate over its use prior to implementation.

B: Per the MOC, e-mail certification/usage for notification will only begin once the union has either successfully completed training as described in Article 49 Section 4B or has been offered and declined the training. If the parties are unable to mutually agree on dates for training, the Department will provide five dates for training during duty hours and the union must choose one of those dates or it is deemed as declined. If the Department sets the dates for training, the Department will consider union availability.
C: The Department’s electronic signature utility in Outlook is not capable of permitting a recipient of an e-signed e-mail to e-sign upon receipt. If the capability is developed, the parties will negotiate over its use. (See MOC #8.)

E-signature is a button available in Outlook for VA employees. When the user clicks the e-signature button, a password dialog box displays. The user types in their logon password and clicks OK. Outlook “stamps” the e-mail with a statement that says the email was sent by you. E-signature is used on the outgoing e-mail. You can also set its use as a default so that your e-signature is automatically added to all your outgoing mail.

When you send an e-mail notification, you must use e-signature. If the union acknowledges receipt verbally, by e-mail, or by read receipt of their e-mail, the e-mail notification is presumed received on that date. If you do not receive any confirmation of receipt, an e-mail notification is presumed received five work days after it has been sent with e-signature. (See MOC #6.)

**Commentary for Section 5**

The union has the burden of showing a “particularized need” for requested information by 1) explaining, with specificity, why it needs the information, 2) explaining how it will use the information, and 3) stating how its use of the information relates to carrying out its representational responsibilities under the Statute.

**Commentary for Section 9**

Per the Statute, union representatives may not solicit members on official time or any other paid status. If they intend to solicit members during orientation, they can do so only if they use their lunch break or take leave. In addition, employees may not join the union while on duty time. They would also need to use their lunch break.

“Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.” 5 USC 7131(b)

This section does not address who may or may not be present during the union’s presentation. It does not, therefore, preclude the presence of an HR representative or any management official. However, if a facility has an established past practice it wishes to change, it must first provide notice and complete bargaining.

**Commentary for Section 11**

B: Note that this provision does not entitle the union to get the actual exit interview forms.
COMMENTARY FOR ARTICLE 50 - SURVEILLANCE

This is a rollover Article.

Section C: The union may negotiate over the impact and implementation of covert or hidden electronic camera surveillance, not whether the Department decides to use it.
COMMENTARY FOR ARTICLE 51 - USE OF OFFICIAL FACILITIES

Section(s) with new language: 1A (last two sentences), 1B, 3 (sentence 3), 4A 2-9, 4B, 4C (sentence 2), 4D, 7 (last sentence), 8 (last two sentences), 9A-B, 12G

Commentary for Section 1

A: Union office space shall be similar in size and furnishings to other administrative offices, such as the Service Chief/Service Line Director or HR Liaison.

The phrase “easily accessible” means accessible to bargaining unit employees. It does not mean you have to provide office space in every building.

C: This provision is intended for National and District Representatives, to give them a National office separate from the local office. It does not apply to local representatives to have multiple offices.

Commentary for Section 12

E: VACO LMR will not be issuing discs to local facilities. If an employee requests a disc of the Agreement, one must be produced locally and provided.
COMMENTARY FOR ARTICLE 52 - TITLE 38 ADVANCEMENT

This is a rollover article.
COMMENTARY FOR ARTICLE 53 - CLINICAL RESEARCH

This is a rollover article.
COMMENTARY FOR ARTICLE 54 - TITLE 38 NURSE PAY/SURVEY

This is a rollover article.

Commentary for Section 3

The Caregiver Act expands the payment of weekend and overtime pay under certain conditions. The Master Agreement does not include changes due to this act.
COMMENTARY FOR ARTICLE 55 - VHA PHYSICIAN AND DENTIST PAY

This article is new but the information was pulled right from the Handbook. It provides no new rights. The content is provided for information only. Title 38 compensation is excluded from negotiations.
COMMENTARY FOR ARTICLE 56 - TITLE 38 HYBRIDS

This article is new. Article 56, Title 38 Hybrids, covers the promotion, advancement, and reconsideration process for Title 38 Hybrid employees. Do not confuse the provisions of this article with those relating to full Title 38 positions.

Commentary for Section 2

D: This creates a new reporting requirement.

Commentary for Section 9

This section creates a new requirement to utilize Article 23 Merit Promotion procedures for the promotion of Hybrids above the full performance level.

Commentary for Section 11

The employee must provide information justifying his/her request for boarding before management is required to determine whether boarding is appropriate.

Commentary for Section 13

For the purposes of this article, functional statements and position descriptions are the same.
COMMENTARY FOR ARTICLE 57 - PHYSICAL STANDARDS BOARD

Section(s) with new language: 1 (paragraph 1), 2, 3, 4, 5 (last sentence), 6, 7 (all but sentence 1 is new)

The content is provided for informational purposes only. Check Handbook 5019 for the most current information before proceeding with a Physical Standards Board.
COMMENTARY FOR ARTICLE 58 - PROFESSIONAL STANDARDS BOARD

This is a rollover article.
COMMENTARY FOR ARTICLE 59 - PROFICIENCY

This is a rollover article.
COMMENTARY FOR ARTICLE 60 - TITLE 38 REPRESENTATION AT BOARDS OR HEARINGS

This is a rollover article.

B: An employee subject to the peer review process is entitled to personal representation but not union representation. A union representative can act as the employee’s personal representative, but not as a union representative at the review.

<table>
<thead>
<tr>
<th>Board</th>
<th>Personal Representative</th>
<th>Union Right to be Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Standards Board</td>
<td>Employee may have any representative, including a union rep acting as the employee’s personal representative</td>
<td>No</td>
</tr>
<tr>
<td>Summary Review Board</td>
<td>Employee may have any representative, including a union rep acting as the employee’s personal representative</td>
<td>No</td>
</tr>
<tr>
<td>Professional Standards Board</td>
<td>No, this is a paper review</td>
<td>No</td>
</tr>
<tr>
<td>Disciplinary Appeal Board</td>
<td>Employee may have any representative, including a union rep acting as the employee's personal representative</td>
<td>No</td>
</tr>
</tbody>
</table>
COMMENTARY FOR ARTICLE 61 - TITLE 38 VACANCY ANNOUNCEMENTS

This is a rollover article.
COMMENTARY FOR ARTICLE 62 - VETERANS CANTEEN SERVICE

Section(s) with new language: 1A 2, 1B-C, 2B, 5, 6

Commentary for Section 5

A: See the Human Resources Management Letter (HRML) No. 05-04-03, Veterans Canteen Service Employees and Employment in the Competitive Service, May 13, 2004. (see Appendix p. A-20.)

Commentary for Section 6

This section does give VCS employees Title 5 due process rights when they are terminated for misconduct (for example, a formal written proposal, the right to review evidence, the right to respond to the proposal, the right to appeal).

Similarly, an employee being considered for termination for performance does not have the right to a formal PIP.
COMMENTARY FOR ARTICLE 63 - RESEARCH GRANTS

This is a rollover article.
COMMENTARY FOR ARTICLE 64 - RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Section(s) with new language: 2D, 2E, 3 (last sentence)
COMMENTARY FOR ARTICLE 65 - WAGE SURVEYS

This is a rollover article.
COMMENTARY FOR ARTICLE 66 - TECHNOLOGY FOR ADMINISTERING, TRACKING, AND MEASURING VBA WORK

This article is new.

Commentary for Section 1

D: Note that, according to 1D, the type of technology used is not a mandatory subject of bargaining. Pre-decisional involvement, however, is recommended. The application of technology may be appropriate for impact and implementation bargaining at the local level.
APPENDIX
Memorandum Of Understanding

Implementation of USA Staffing

1. **Scope and Parties.** This MOU is entered to provide the conditions by which DVA can implement USA Staffing in the AFGE bargaining unit. The parties are the Department of Veterans Affairs (DVA) and the National VA Council (NVAC) of AFGE.

2. **Terms.**

   a. Employees will be advised they can continue to use manual applications as provided in Article 22 or can use USA Staffing.

   b. **Phased Implementation:** USA Staffing can be implemented in the following stages:

      i. *Pilot* — applies throughout the bargaining unit, and begins while the following union-proposed features are being implemented. These are:

         a. the system will not allow the applicant to move to the next screen or page until information necessary to assure the completeness of the application has been entered on the current page (screen);

         b. the system sends a reminder notice to the applicant to provide information that would disqualify the application from full consideration throughout the process;

         c. the system will notify the applicant when the application is complete or incomplete. The system will make this notification on the date of the applicant’s online submission;

         d. the system will provide each applicant a tracking number for the application;

         e. the system’s internal promotion feature will not allow local changes to the first or second area of consideration;

         f. the system will not modify the noncompetitive actions.

      g. the system will contain a feature for selecting within the second area of consideration candidates from DVA facilities only and will exclude external candidates. Second area of consideration is defined as any other promotion candidate – or candidate required to compete – from other VA facilities.

      ii. *Final* — when the above features have been added, the implementation of USA Staffing will become permanent.
iii. The NVAC reserves the right to address matters concerning conditions of employment relating to USA Staffing as they occur during and after the Pilot.

c. **Relationship to other authorities.** Nothing in USA Staffing, or its use in the AFGE bargaining unit, will detract from or otherwise affect the continued application of Article 22, Merit Promotion, of the parties' 1997 Master Agreement. Nothing in this MOU will detract from or otherwise affect the continued application of the parties' Ground Rules for the renegotiation of the Master Agreement, which were effective on July 17, 2003. Nothing in this MOU shall be precedential with respect to renegotiation of any Article except in accordance with the Master Agreement and the Ground Rules.

d. **Implementation.** The DVA may implement USA Staffing in the AFGE bargaining unit consistent with this MOU.

e. Applicants shall not suffer any disadvantage from using the manual application process for merit promotion, as opposed to using the additional procedures and methods that are available under USA Staffing.

f. **Modifications to USA Staffing in DVA.**

   i. Except as provided in 2.a. above, the DVA will not modify USA Staffing during the term of the current or next Master Agreement if such modifications conflict with this MOU or the Master Agreement.

   ii. Prior to implementing changes that do not conflict with this MOU or the Master Agreement, the DVA will notify the NVAC and afford it the opportunity to bargain concerning substantive changes to conditions of employment, procedures and arrangements, or both.

   ***The additional procedures and methods implemented under this MOU will be consistent throughout DVA; Administrations and facilities will not have administrative rights to modify the standardized system.***

g. **Evaluation of Effects.** Each calendar quarter, the DVA will provide the NVAC with the effects of adding USA Staffing to the merit promotion system on the Department's mission. This will include: the metrics of time required to place employees in positions as compared to historical methods of Article 22, Merit
Promotion; any reported problems with USA Staffing as raised by employees or union representatives; and any corrective action taken by the DVA in response to problems raised by employees, the NVAC, or DVA.

h. **Training of Union Representatives.** To allow AFGE representatives to become familiar with USA Staffing, union officials will be afforded the opportunity to attend the one-week USA Staffing training course. The training will be available on duty time and at DVA expense.

i. **Employee Training.** To allow applicants in the AFGE bargaining unit to become familiar with USA Staffing, each unit employee will be provided standardized training on USA Staffing, in a duty status sufficient to make applications online.

j. **Panels and Sorting.** Nothing in the application of USA Staffing will affect the use of panels; the only "sorting" of applicants under USA Staffing will be for determining which applicants are minimally qualified for a vacancy.

k. **Auditing.** Designated AFGE representatives shall be given access to the Applicant Document Viewer (ADV), vacancy announcement screen printouts (screen shots), and other documentation necessary to allow reconstruction of the action by NVAC and to resolve complaints or other concerns raised by employees.

3. **Effective Date.** If this MOU is effective upon execution.

![Signature for the DVA]

For the DVA  Date

![Signature for the NVAC]

For the NVAC  Date
HUMAN RESOURCES MANAGEMENT LETTER NO. 05-08-12

Instructions Concerning the Impact of Union Officials' Use of Official Time on Pay, Performance Appraisals, Awards and Eligibility for Membership on Peer Review Boards

1. Purpose: This Human Resources Management Letter (HRML) provides guidance and instructions for human resources staff, managers and supervisors concerning union official performance of union-assigned duties and how it impacts the official's pay, performance appraisals and awards, and eligibility for membership on peer review boards.

2. Discussions:

a. Question: Are union officials eligible for membership on Disciplinary Appeals Boards (DABs), Professional Standards Boards (PSBs) and Compensation Panels?

Discussion: Peer review panels such as DABs, PSBs and Compensation Panels serves as "agencies of the Under Secretary for Health" in matters within their jurisdiction. VA policy requires that employees who serve on such peer review bodies be impartial and able to represent the interests of VHA as a whole.

Because both elected and appointed union officials often represent the interests of individual bargaining unit employees in matters related to issues reviewed by DABs, PSBs or Compensation Panels, these officials have a potential conflict of interest that may preclude their service on DABs, PSBs and Compensation Panels. This potential for conflict arises because DABs and PSBs must determine the propriety of discipline and other management-initiated actions imposed on bargaining unit employees, while Compensation Panel members recommend market pay amounts and adjustments for providers within the bargaining unit. If a union official is called upon to represent the interests of

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1 For purposes of this HRML, "union officials" includes both elected union officers (e.g. local or national union presidents, vice presidents, etc.) and individuals appointed by the union to perform specific union functions (e.g. stewards).

2 See VA 5005, Part II, Chapter 3, Section C, paragraph 1a

3 See VA Handbook 5005, Part II, Chapter 3, Section C, paragraphs 1c, 4a and 6a; Directive 5021, Appendix A, Section C, paragraph 7e; VA Handbook 5007, Part IX, paragraphs 9d, 9e, 10a, 10b, 11 and 13.
bargaining unit employees in a grievance or a labor negotiation arising out of the same management action that is subject to peer review, that union duty may thus be in conflict with the duty of DAB, PSB and Compensation Panel members to act as agencies of the Under Secretary of Health.⁴

When a union official is authorized to spend 100 percent of his or her time on union duties, the conflict of interest is inherent because such union officials perform only union-assigned duties and cannot act as agencies of the Under Secretary. Moreover, in agreeing to allocate 100 percent of a union official's time to union representation, management has in essence waived the right to assign that employee any duties, including the management deliberative functions carried out by members of a PSB, DAB, or Compensation Panel.

Whether an employee who performs union duties less than 100 percent of the time may serve on a PSB, DAB or Compensation Panel requires a case by case analysis to determine whether the employee has an actual conflict of interest that might prevent him or her from being impartial about matters the board must consider. Actual conflicts of interest may arise where, for example, a union official has represented an employee in connection with a matter before the board; has grieved or otherwise challenged a management action subject to the board's review; has direct personal knowledge of the case or facts giving rise to such an action; or has a relationship (positive or negative) with an employee appearing before the board, or with officials involved in a management action subject to board review, that creates a question of bias or partiality.⁵

**b. Question:** Are union officials eligible to receive performance awards and performance ratings under the title 5 and title 38 performance systems?

**Discussion:** Union officials who are authorized 100 percent official time for union activities do not generally perform management-assigned duties.⁶ As a result, management cannot substantively assess these employees’ performance for purposes of a performance appraisal under title 5 or a proficiency rating under title 38. It is an unfair labor practice for management to rate union officials on

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⁴ Non-union officials may also be prohibited from serving on DABs, PSBs or Compensation Panels if their personal or professional relationships with individuals appearing before those boards render them unable to impartially represent VHA’s interests.

⁵ See VA Directive 5021, Appendix A, Section C, paragraph 7e (setting forth reasons for disqualifying DAB members) and VA Handbook 5005, Chapter 3, Section C, Paragraph 2d (draft regulation, agreed to in hybrid collaboration process, setting forth reasons for terminating hybrid employees’ membership on PSBs).

⁶ In some facilities union officials who have been allocated 100 percent official time do perform some management-assigned duties outside of their regular duty hours. Those officials may be evaluated based on their performance of management-assigned duties if they have performed such duties for at least 90 days within the performance period. See VA Handbook 5013.
their union duties or to consider or reference union protected activity in a performance appraisal or performance discussions, even where such reference is non-judgmental. *Department of Health and Human Services, Social Security Administration, Baltimore and AFGE, 22 FLRA No. 10* (1986); see also *Department of Health and Human Services, Social Security Administration, Office of Hearings and Appeals and AFGE Council 215, 48 FLRA 357, 364* (1993). These employees, for that reason, should be given annual appraisal forms or proficiency reports that contain no substantive evaluation of their performance and no narrative comments except for a notation that the employee has performed only union representational duties throughout this performance period and is therefore not subject to a substantive performance evaluation by management. The notation may include when the employee's last substantive rating was issued and what the rating of record was at that time.\(^7\)

Union officials on 100 percent official time who do not perform any VA duties may not be considered for any cash or time off award, including annual performance awards, special advancement for performance, or special contribution awards relating to management-assigned duties. This is because the Federal Labor Relations Authority has ruled that that performance awards must be based on the performance of management-assigned duties. See *NAGE, Federal Union of Scientists and Engineers, Local R1-144 and Department of the Navy, Naval Underwater Systems Center, Newport, RI, 42 FLRA 1285, 1290-94* (1991), and *Social Security Administration Inland Empire Area and AFGE, 46 FLRA 161, 177* (1992).

In some cases union officials on 100 percent official time may agree to perform some non-union work outside their regular duty hours. For example, an employee who is subject to a 100 percent official time allocation as a local union president may be asked, and may agree, to serve on a local committee or task force because of his or her particular subject matter expertise. Such officials may qualify for performance-based awards based on their performance of management-assigned work.

Ratings for union officials who are allocated less than 100 percent official time must be handled on a case-by-case basis. If these officials perform sufficient regular VA duties over a sufficient portion of the performance period to be rated, they are eligible for a rating based strictly on those duties, without regard to any union work performed while on official time. See *NTEU v. Dept. of Treasury, IRS, 55 FLRA 1005, 1007-09* (1999). VA’s performance management policy requires a minimum performance period of 90 days before an employee may be rated. See VA Handbook 5013, Part I, paragraph 5h and Part II, paragraph 8f(2); see also 5 CFR § 430.206(a) (authorizing agencies to set the length of their own minimum performance periods). Consistent with this policy,\(^7\)

\(^7\) A performance evaluation of this type is not an official rating of record and cannot be used to support a performance award, promotion consideration, RIF status, etc.
union officials who perform management-assigned duties for at least 90 days within a performance period should be rated based on those duties. These employees may also be considered for performance awards based solely on their VA-assigned duties.

**c. Question:** Are union officials eligible for promotions?

**Discussion:** In most cases, an employee must have a current satisfactory performance rating and meet the applicable qualifications standard criteria to be eligible for promotion. As is noted above, union officials on 100 percent official time do not generally perform sufficient management-assigned duties over a sufficient portion of the performance period to be rated; as a result, they lack the current satisfactory performance rating that is necessary to be considered for promotion.

Union officials who are title 38 employees are not eligible for promotion because they are not performing VA duties that can be considered by a Professional Standards Board. Similarly, title 5 union officials on 100 percent official time cannot receive career ladder promotions since supervisors would not be able to evaluate their performance. A title 5 union official with less than 100 percent official time may be eligible for a career ladder promotion if he or she performs sufficient regular VA duties for the supervisor to determine if he/she meets the expectations for promotion to the next higher grade. Similarly, a title 38 union official may be eligible for promotion if he or she performs enough management-assigned duties to enable a Professional Standards Board to determine whether he or she meets the standards for the higher grade. All union officials, irrespective of their official time allocations, are eligible for within-grade increases, periodic step increases, and annual statutory pay increases.

**d. Question:** How might a title 38 or hybrid employee’s union activities impact his or her pay?

**Discussion:** Pay for nurses, physician assistants, expanded function dental auxiliaries, and employees in the hybrid occupations is not impacted by union activities except that these employees, like their colleagues in title 5 positions, may not receive performance-based awards for their performance of union-assigned duties.

Effective in January 2006, VA physicians and dentists are paid under a new title 38 pay system that provides three separate pay components: base (longevity) pay, market pay, and performance pay.

Base pay under the new system is based solely on the length of a provider's service with VHA. Time spent on union activities does not impact an employee’s ability to earn base pay.

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Market pay is pay that is intended to reflect the recruitment and retention needs for a particular medical or dental specialty at a particular facility. The pay statute and implementing regulations require that local Compensation Panels recommend a market pay rate for each provider based on the following factors:

(1) The provider's level of experience in the specialty or assignment;
(2) The need for the provider's specialty or assignment at the facility;
(3) The appropriate health care labor market for the provider's specialty or assignment;
(4) The provider's board certifications, if any;
(5) The provider's accomplishments in the specialty or assignment;
(6) The provider's prior experience, if any, as a VHA employee;
(7) Unique circumstances, qualifications or credentials, if any, and the comparison of these circumstances to the equivalent compensation level of non-VA providers in the local health care labor market; and
(8) Any non-foreign cost of living allowance the provider might receive pursuant to 5 USC § 5941.

The VA regulations that implement this part of the pay law include the following explanatory note:

NOTE: The law requires the Compensation Panel to consider all factors. When a provider spends a significant amount of time away from clinical duties within his/her specialty or assignment, the time spent away from clinical duties may impact on the provider's level of experience in the specialty or assignment, availability to work in the specialty or assignment, and/or accomplishments in the specialty or assignment, and may therefore be considered in connection with items (1), (2) and (5) above when recommending a market pay amount.

As this note makes clear, the time that a physician or dentist spends performing union duties, rather than practicing within his or her specialty, may impact the Compensation Panel's market pay analysis because such non-clinical time may be relevant to one or more of the factors the Compensation Panel is required to consider.

The final component of pay for physicians and dentists under the new system is performance pay. The pay statute provides that providers will earn

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11 See VA Handbook 5007, Part IX, paragraph 9e
performance pay, up to the lesser of $15,000 or 7.5 percent of the provider’s basic pay per year, “on the basis of the physician’s or dentist’s achievement of specific goals and performance objectives prescribed by the Secretary.” The statute also provides that the amount of performance pay a provider earns “may vary annually on the basis of individual achievement or attainment of the goals or objectives” set for the provider.\textsuperscript{13}

VA’s implementing regulations provide that each provider’s performance goals and objectives will be set locally and may address such issues as “outcomes, reduction of waiting times, patient panel sizes, research achievements, performance of compensation and pension exams or other additional tasks, timely completion of medical record documentation, adequacy of medical record documentation for billing purposes, customer satisfaction, conduct and ethical standards, innovations, national priorities, and other areas where improvements, efficiencies or increased effectiveness are identified.”\textsuperscript{14} The implementing regulations further provide that supervisors will evaluate “the degree to which each [provider] achieved the [performance] goals and objectives communicated at the beginning of the fiscal year” and recommend an amount of performance pay on that basis.\textsuperscript{15}

Under these rules, a provider’s performance pay may be impacted if the provider spends time on non-clinical or non-VA activities that might otherwise be devoted to meeting the provider’s performance goals and objectives. This is true whether the non-clinical or outside activities involve union duties, non-VA faculty duties at an affiliated medical school, non-VA research activities, or any other activity unrelated to the performance goals.

3. Questions relative to the contents of this HRML may be referred to the Labor-Management Relations Office, (LMR), Office of Human Resources and Administration at (202) 461-4122.

\textit{Willie L. Hensley}

Acting

\textsuperscript{12} 38 U.S.C. § 7431(d)(2).

\textsuperscript{13} 38 U.S.C. § 7431(d)(4).

\textsuperscript{14} VA Handbook 5007, Part IX, paragraph 12(e).

\textsuperscript{15} VA Handbook  5007, Part IX, paragraph 12(f).
The matrix below depicts each section in the Master Agreement where there is mention of subjects that are appropriate for local negotiations or bargaining. Subjects called out for pre-decisional involvement (indicated by shading) have also been included.

The description contained in this listing is not a replacement for the language of the Master Agreement nor does it create any greater rights or responsibilities than are provided under the Master Agreement. It is intended to provide a description of subjects for local negotiations for the use of management and AFGE in carrying out the provisions of the Master Agreement. The inadvertent omission on this listing of any right to local negotiations is not intended to preclude such negotiations if provided for in the Master Agreement.

<table>
<thead>
<tr>
<th>Article</th>
<th>Section</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>4. A</td>
<td>The Union will be predecisionally involved in bargaining unit determinations for position changes and establishment of new positions.</td>
</tr>
<tr>
<td>4</td>
<td>1. C</td>
<td>The amount and use of official time for LMR training, other than joint LMR training, is an appropriate subject for local negotiation.</td>
</tr>
<tr>
<td>6</td>
<td>4. A</td>
<td>ADR is an appropriate subject matter for local negotiations.</td>
</tr>
<tr>
<td>7</td>
<td>II. C</td>
<td>Neither the union nor the Department waives the right to bargain over quality initiatives which would otherwise be bargainable, nor do they waive any other legal, contractual, or past practice right.</td>
</tr>
<tr>
<td>10</td>
<td>G</td>
<td>Copies of competencies will be provided to the local union. When the Department changes an employee’s competency, the local union will be afforded a reasonable opportunity to bargain regarding negotiable matters related to the change.</td>
</tr>
<tr>
<td>12</td>
<td>D. 5</td>
<td>Seniority shall be defined locally through negotiations between the local union and the Department.</td>
</tr>
<tr>
<td>12</td>
<td>E</td>
<td>Details of less than 10 consecutive workdays shall be on a fair and equitable basis and procedures for such details will be a subject for local negotiations.</td>
</tr>
<tr>
<td>12</td>
<td>6</td>
<td>Local Negotiations - The parties at the local level may negotiate additional procedures for details and temporary promotions.</td>
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<tr>
<td>13</td>
<td>2</td>
<td>Parties agree that reassignment is a subject appropriate for local bargaining.</td>
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<tr>
<td>13</td>
<td>5</td>
<td>Department will provide the local union with 30 days’ notice, and bargain to the extent required by law and this agreement prior to effectuating the involuntary reassignment.</td>
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<tr>
<td>14</td>
<td>5</td>
<td>The parties agree to a concept of alternative discipline which shall be a subject for local negotiations.</td>
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<tr>
<td>16</td>
<td>4. B</td>
<td>Award panels will operate with parameters negotiated locally.</td>
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<td><strong>Article Section</strong></td>
<td><strong>Description</strong></td>
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<tr>
<td>18 7. D</td>
<td>The membership and operation of local committee(s), such as the EEO Advisory Committee, the Diversity Committee, etc., are appropriate subjects for local bargaining.</td>
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<tr>
<td>20 4.C</td>
<td>Agreements between the local union and the facility will address how the equipment will be assigned.</td>
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<tr>
<td>20 5. A</td>
<td>Prior to participating in the Telework Program, employees will be required to complete, on a one-time basis, a Telework Program Agreement that has been negotiated between the Department and the local union.</td>
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<tr>
<td>20 15</td>
<td>In the event of a local emergency situation such as a transit strike or a natural disaster which adversely affects an employee’s ability to commute to the workplace, the parties agree to immediately discuss possible temporary telework arrangements for affected employee(s).</td>
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<tr>
<td>20 18</td>
<td>Upon the effective date of this Agreement, the local parties may begin negotiations over the following issues:</td>
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<tr>
<td></td>
<td>A. Application and selection procedures for participation in the telework and the alternative work schedule and compressed work schedule. These procedures may include, but are not limited to, issues such as negotiating procedures for breaking ties if the number of applicants exceeds the number of opportunities available;</td>
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<td></td>
<td>B. Methods for resolving conflicting employee requests for specific work at home schedules;</td>
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<td>C. Methods for rewarding increased productivity of telecommuters;</td>
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<td></td>
<td>D. Procedures for disbursing excess equipment or furniture;</td>
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<td>E. Determining the eligibility of other positions, if any, for telework, alternative work schedules, and compressed work schedules that are not listed as currently eligible for telework;</td>
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<td></td>
<td>F. Determining the feasibility of establishing a local telework committee for oversight of telework; and,</td>
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<td></td>
<td>G. Any other issues affecting the bargaining unit not otherwise covered in this Article.</td>
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<tr>
<td>21 2. A</td>
<td>AWS is a subject for local bargaining consistent with this Agreement.</td>
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<tr>
<td>21 2. C. 2d</td>
<td>Employees who wish to terminate or change their participation in a CWS may do so at the beginning of any pay period after notifying their supervisor at least one pay period in advance or as negotiated locally.</td>
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<td>Location</td>
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<tr>
<td>21 2. G.1</td>
<td>If the Department proposes to make any change to the AWS Plan (including the CWS Plan and Flextime Plan) or the Credit Hour Plan of bargaining unit employees or to restrict the application of the plans to any new position, the local union shall be notified and given an opportunity to bargain.</td>
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<tr>
<td>21 2.H</td>
<td>The Department shall continue the existing lunch and break arrangements. If the Department determines that an adjustment to lunch and/or breaks is necessary to solve any significant public service or operational problems caused by the AWS Plan, the local union shall be given the opportunity to bargain on such changes in working conditions.</td>
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<tr>
<td>21 3. F</td>
<td>Rotation of weekends and holidays shall be on a fair and equitable basis within a group and may be a subject for local bargaining.</td>
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<tr>
<td>21 3. K</td>
<td>Alterations, procedures, and time frames for posting schedules shall be negotiated locally.</td>
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<tr>
<td>21 4. K</td>
<td>Rosters of employees will be utilized to determine voluntary or involuntary overtime. The mechanics and eligibility of the rosters are subjects for local negotiations and seniority will be the criterion.</td>
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</tr>
<tr>
<td>21 5. A. 5</td>
<td>If an on-call or standby tour of duty is terminated in a work unit, the decision and reason shall be specific and in writing and forwarded to the local union to fulfill bargaining obligations.</td>
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<tr>
<td>21 6</td>
<td>Those facilities having locally negotiated agreements will continue to honor those agreements so long as they do not conflict with the Master Agreement. A conflict shall be resolved in favor of the Master Agreement.</td>
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</tr>
<tr>
<td>23 9. C</td>
<td>If KSAOs for specific positions (i.e., position numbers) are changed after their initial establishment and used in a promotion action, the newly developed KSAOs will be sent to the local union in advance of any future vacancy announcements and handled by the parties in accordance with their bargaining obligations under 5 USC Chapter 71.</td>
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<tr>
<td>25 5. E</td>
<td>Travel and per diem is an appropriate subject for local bargaining.</td>
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<tr>
<td>26 1</td>
<td>The parties agree that parking is a substantive subject for local supplemental negotiations to the extent not specifically covered in this Agreement.</td>
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<tr>
<td>26 2</td>
<td>The parties agree that secure, adequate, and accessible parking for employees helps better serve customer needs and should be a consideration in local arrangements.</td>
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<tr>
<td>26 3</td>
<td>The Department agrees that if they relocate an office or should circumstances prompt changes in lease agreements, prior to the “solicitation for offers,” the Department will notify the local union and/or place the issue on the agenda of the local Partnership Council. Parking space for the local union is a subject for local bargaining.</td>
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<tr>
<td>26 5</td>
<td>Changes in the shuttle service used by employees are a subject for local bargaining.</td>
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<td>**Article</td>
<td><strong>Section</strong></td>
<td><strong>Description</strong></td>
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<tr>
<td>26</td>
<td>6. F</td>
<td>Problem Reporting - Local procedures will be negotiated for problem reporting, e.g., car lights left on, lights out on parking lots, damaged or obstructed signs, etc.</td>
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<tr>
<td>26</td>
<td>6. G</td>
<td>The provision of electronic security measures and security fencing are subjects for local bargaining.</td>
</tr>
<tr>
<td>29</td>
<td>3. I</td>
<td>The local union will be afforded representatives on such Committees, the number of which is subject to local negotiation.</td>
</tr>
<tr>
<td>29</td>
<td>4. D</td>
<td>Nothing in this section precludes local level negotiations.</td>
</tr>
<tr>
<td>29</td>
<td>12. C</td>
<td>These provisions are not a waiver of the local union’s right to request additional information, consultation, and bargaining.</td>
</tr>
<tr>
<td>29</td>
<td>16</td>
<td>Situations requiring employees to wear respirators for safety shall be a subject for local bargaining which will include a process for respirator fit testing.</td>
</tr>
<tr>
<td>29</td>
<td>19. A</td>
<td>The mechanics of the programs are an appropriate subject for local bargaining.</td>
</tr>
<tr>
<td>29</td>
<td>20. C. 3</td>
<td>The national parties agree to the process below for the purchase of furniture and office equipment to address individual requests for workstation modification. Options: a. Negotiate using a locally-developed, mutually-agreed process; b. Negotiate on a case-by-case basis; or, c. Use the Alternative below; Alternative: 1) The employee will be given an ergonomic assessment, which will identify the employee’s needs and the available modifications; 2) The employee will be provided a list of available furniture/equipment; 3) The employee and a representative of the local union will meet with a Department official to discuss and decide on the employee’s choice from among the available options; 4) The employee’s choice will be selected if it is reasonable, considering all the circumstances. The local parties also may agree to use the above procedure for furniture or equipment that is to be provided to a group of employees.</td>
</tr>
<tr>
<td>29</td>
<td>24. D. 6. d</td>
<td>Where existing methods are already in place, they will be continued, until changed through negotiations. This section is subject to local negotiations.</td>
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<tr>
<td>29</td>
<td>33. E</td>
<td>Implementation of this section also is appropriate for local negotiations.</td>
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<tr>
<td>30</td>
<td>8</td>
<td>Local bargaining on this article is appropriate so long as it does not conflict or interfere with, or impair implementation of, this Master Agreement.</td>
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<tr>
<td>32 2</td>
<td>Local bargaining to implement this provision is appropriate and will include, but not be limited to, arrangements in facilities where there is insufficient space for dedicated lounges. Other topics appropriate for local bargaining include, but are not limited to, access to microwaves, refrigerators, storage, coffee pots, and furniture. However, local agreements must be consistent with authorized use of appropriated funds.</td>
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<tr>
<td>33 2. C. 8</td>
<td>If the Department proposes to convert any full time positions to part time, that will be a subject for negotiations in accordance with 5 USC 7106(b)(2) or (3).</td>
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</tr>
<tr>
<td>33 3. C. 8</td>
<td>If the Department proposes to convert any full time positions to part time, that will be a subject for negotiations in accordance with 5 USC 7106(b)(2) or (3).</td>
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<tr>
<td>35 2. C. 1</td>
<td>The procedures for vacation leave will be appropriate for local negotiations; where current practices are acceptable to the local parties, such negotiations need not occur.</td>
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<tr>
<td>35 2. C. 2</td>
<td>The procedures for unplanned annual leave other than vacation leave will be appropriate for local negotiations; where current practices are acceptable to the local parties, such negotiations need not occur.</td>
<td></td>
</tr>
<tr>
<td>35 2. D</td>
<td>If scheduling conflicts arise among employees’ annual leave requests, they shall be resolved consistent with past practices or as otherwise negotiated in local supplemental agreements/MOUs insofar as they do not conflict with the Master Agreement.</td>
<td></td>
</tr>
<tr>
<td>35 2. G</td>
<td>The parties recognize that additional procedures for requesting and granting annual leave are appropriate for negotiation at the local level.</td>
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</tr>
<tr>
<td>35 11. B</td>
<td>The local union shall be informed by the appropriate Department official at the time the facility declares hazardous weather/emergency conditions. The method for such notification will be appropriate for local negotiations.</td>
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<tr>
<td>35 15. J</td>
<td>The method of communicating the needs of employees who may want to participate in leave transfer is an appropriate subject for local negotiation.</td>
<td></td>
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<tr>
<td>37 9</td>
<td>Procedures which ensure fair and equitable training opportunities are appropriate subjects for local bargaining.</td>
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<tr>
<td>37 10. C</td>
<td>Tuition support for upward mobility is a proper subject for local bargaining.</td>
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<tr>
<td>38 1</td>
<td>The Department shall issue uniforms in accordance with law, government-wide regulation, and VA policy. Nothing will prevent local negotiations on uniform issues.</td>
<td></td>
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<tr>
<td>38 8</td>
<td>Any proposed changes in the current style, color, texture, or design of uniforms currently in existence shall be forwarded to the Union at the affected level for bargaining.</td>
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</table>
### Location

#### Description

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<tr>
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<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>46</td>
<td>1</td>
<td>Recognizing that the Master Agreement cannot cover all aspects or provide definitive language for local adaptability on each subject addressed, it is understood that Local Supplements may include substantive bargaining on all subjects covered in the Master Agreement so long as they do not conflict, interfere with, or impair implementation of the Master Agreement. However, matters that are excluded from Local Supplemental bargaining will be identified within each article.</td>
</tr>
<tr>
<td>47</td>
<td>4. A</td>
<td>On all policies and directives or other changes for which the Department meets its bargaining obligation at the national level, appropriate local bargaining shall take place at individual facilities and may include substantive bargaining that does not conflict with negotiated national policy and agreements.</td>
</tr>
</tbody>
</table>
| 47      | 4. B-C  | B. Proposed changes in personnel policies, practices, or working conditions affecting the interests of one local union shall require notice to the President of that local. Proposed changes in personnel policies, practices, or working conditions affecting the interests of two or more local unions within a facility shall require notice to a party designated by the NVAC President with a copy to the affected local unions.  
C. Upon request, the parties will negotiate as appropriate. |
<p>| 47      | 4. D    | Ground Rules for local bargaining shall be established by the parties at the local level. |
| 48      | 10. E   | Where arrangements for transfers of official time among Union representatives are not in effect, they can be negotiated locally. |
| 49      | 9       | The scheduled starting time of the Union New Employee presentation will be a subject for local negotiations. |
| 50      | C       | The local union is not precluded from any further negotiations on the impact and implementation of covert or hidden electronic camera surveillances. |
| 51      | 4. A. 8 | Additional equipment and technology may be negotiated locally. |
| 51      | 5       | At each facility, the Union shall be provided bulletin boards in areas normally used to communicate with employees. Numbers and location of bulletin boards will be negotiated locally. |
| 51      | 8       | The Department agrees to provide adequate facilities for membership drives at locations that will provide access to unit employees during break and lunch periods. Detailed arrangements will be negotiated at the local level. |
| 51      | 10. C   | Associated per diem and other matters concerning transportation are appropriate subjects for local bargaining. |
| 51      | 11. A   | The Department will provide space for the purpose of distributing Union material. The space will be in prominent locations as agreed upon locally. |
| 61      | 1       | All Title 38 bargaining unit positions will be announced facilitywide with posting and/or distribution a proper subject for local bargaining. |</p>
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<tbody>
<tr>
<td>Article 1, D</td>
<td>Pursuant to 5 USC 7106(b)(1), technology is not a mandatory subject of bargaining. Under Executive Order 13522, employees and their Union representatives shall have predecisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 USC 7106(b)(1).</td>
</tr>
<tr>
<td>Article 2, C</td>
<td>The Department agrees not to enter into any research or demonstration project affecting unit employees without first meeting its obligation to consult or negotiate with the Union.</td>
</tr>
<tr>
<td>Article 4, C</td>
<td>The application of technology is an appropriate subject for bargaining at the local union level, on aspects not in conflict with this article.</td>
</tr>
<tr>
<td>Article 4, A</td>
<td>The Union will be predecisionally involved and may submit recommendations for criteria to be used in the development of all bargaining unit position qualifications.</td>
</tr>
<tr>
<td>Article 4</td>
<td>The availability of employee lockers or secure storage space for personal belongings is a subject for local negotiations.</td>
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</tbody>
</table>
Memorandum of Clarification

Between

Department of Veterans Affairs and the National VA Council, AFGE

The Department of Veterans Affairs and the National Veterans Affairs Council, AFGE enter into this Memorandum of Clarification (MOC) as follows:

1. The Parties agree that the provisions of this MOU serve as clarification to the meaning of the language found in Article 48, Section 2(A) in the Master Agreement between the Department of Veterans Affairs and the American Federation of Government Employees which reads:

   “These national Union representatives may designate a Union representative at their home station and transfer unused official time to that representative to perform the duties of the position for which official time is authorized.”

2. The parties agree that the Union officials referred to in Article 48, section 2(A) cannot transfer the authority (i.e., the official position or responsibilities) of the elected position to the union official receiving the unused official time.

3. The local representative will receive a delegation of specified duties of the national position. The delegated duties will be performed at the direction of the national official delegating such duties. The delegated duties may include any national or local duties that could have been performed by the national position.

4. The local representative may only use transferred official time that is required to complete the specified duties delegated by the national official.

5. The parties agree that this MOC does not authorize a local Union official who receives a transfer of official time from a national Union officer to transfer the time received to another individual.

6. The parties agree that the scheduling of transferred time will be determined at the local level between the parties. In addition to labor-management coordination at the local level, the national Union representative agrees to work with the Local Union president in the receiving facility to coordinate the assignment of union representational work.
Memorandum of Clarification
Between the Department of Veterans Affairs and AFGE NVAC #53
On Article 49 Section 4 Notification of Changes in Conditions of Employment

The National Veterans Affairs Council AFGE and the Department of Veterans Affairs agree to the following clarification of Article 49 Section 4:

1. The parties understand that for the purposes of Article 49 Section 4, electronic means of notice includes email or fax. If any other electronic means of communication is to be used by the Department, the parties will negotiate over its use prior to implementation.

2. Fax transmissions will be treated the same as U.S. mail.

3. Each party who is responsible for receiving email notice shall notify the other party of their unavailability and the person to whom email notice should then be sent. The local parties will work out their approach to unavailability for email notice consistent with this agreement.

4. It is understood by the parties that if email notification is sent to the designated union representative, that union representative is entitled to open that email at any location, including their worksite.

5. If the Department or the Union uses email to provide notice of changes in working conditions, the Department and the Union will use e-signature.

6. If emails are used for notification under this article, there is a presumption that it’s been received 5 work days after it has been sent with e-signature.

7. Email certification/usage for notification will only begin once the Union has either successfully completed training as described in Article 49 or has been offered and declined the training. The parties will mutually agree upon dates for training. If the parties are unable to mutually agree on dates for training, the Department will provide five dates for training during duty hours and the Union must choose one of those dates or it is deemed as declined. If the Department sets the dates for training, the Department will consider Union availability. Union officials will be on official time during the training. This time will not be charged to any allocation of official time.

8. The parties agree that Electronic Signature as used in Section 4 does not include “upon receipt” at this time because the Department does not have the capability for the recipient to sign by e-signature. If the capability is developed, the parties will negotiate over its use.

9. The parties agree that for these provisions with respect to the use of email to work effectively, the Union must have the equipment to send/receive email.

Chief Negotiator for Union Date: Chief Negotiator for the Department Date:

[Signature]
Alma Lee 1/22/11

Leslie Wiggins
MEMORANDUM FOR HUMAN RESOURCES MANAGEMENT OFFICERS

SUBJECT: Veterans Canteen Service Employees and Employment in the Competitive Service

Section 304 of P.L. 108-170 amended 38 U.S.C. 7802 to provide that a current Veterans Canteen Service (VCS) employee appointed under that section may be considered for an appointment to a VA position in the competitive service in the same manner that a VA employee in the competitive service is considered for transfer or placement to such position. The attached Human Resources Management Letter (HRML) provides guidance on these appointments.

The statute gives VCS employees the right to apply and be considered for positions in the competitive service as of the date of enactment – December 6, 2003. Vacancy announcements must provide fair and equal notice that VCS employees may apply. For those VCS employees who lost consideration for vacancies, including those announced under merit promotion procedures since December 6, 2003, appropriate redress should be taken to correct these actions. We strongly encourage you to contact VCS employees who were not considered for positions, including those who were not properly notified of their eligibility to apply for vacancies.

If a selection has been made, the corrective action should include giving priority consideration for the next equivalent or similar vacancy, or vacating the selection, re-announcing providing adequate notice to VCS employees, and completing the selection process again.

If a selection has not been made, you should re-announce the vacancy and include an appropriate statement that provides fair and equal notice to all VCS employees within the area of consideration, for example, the medical center or station, that they may apply for the position.

Please ensure that this memorandum receives the widest dissemination in your HR office. It is critical that we quickly resolve any corrective actions for VCS employees. Questions related to this section of the legislation may be referred to Recruitment and Placement Policy Service (059), Office of Human Resources Management, through email to staffingpolicy059/vaco@mail.va.gov, or by telephone to (202) 273-9827.

Attachment
May 7, 2004

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-03

Veterans Canteen Service Employees and Employment in the Competitive Service

1. Purpose. This Human Resources Management Letter (HRML) provides guidance to Department of Veterans Affairs (VA) servicing human resources (HR) officials on the appointment of Veterans Canteen Service (VCS) employees, appointed under 38 U.S.C. 7802, to VA positions in the competitive service under Title 5, U.S.C.

2. Background. Section 304 of P.L. 108-170 amended 38 U.S.C. 7802 to provide that a current VCS employee appointed under that section may be considered for an appointment to a VA position in the competitive service in the same manner that a VA employee in the competitive service is considered for transfer or placement to such position. The only limitations that may be imposed on a VCS employee appointed under 38 U.S.C. 7802 who applies for a competitive service position are the same limitations that would apply to a competitive service employee seeking transfer to that position. VCS employees may be considered for appointment to competitive service positions in any part of VA - the Veterans Health Administration, the Veterans Benefits Administration, the National Cemetery Administration, and staff offices - when all appointment, eligibility, and qualification requirements are met.

Section 304 of P.L. 108-170 (coverage) reads as follows:

Paragraph (5) of section 7802 is amended by inserting before the semicolon a period and the following: "An employee appointed under this section may be considered for appointment to a Department position in the competitive service in the same manner that a Department employee in the competitive service is considered for transfer to such position. An employee of the Service who is appointed to a Department position in the competitive service under the authority of the preceding sentence may count toward the time-in-service requirement for a career appointment in such position any previous period of employment in the Service."


a. Current VCS employees appointed under 38 U.S.C. 7802 to either management or non-management positions may compete, and be considered for, VA positions in the competitive service. Their applications and eligibility for employment are to be considered as if they are already in the competitive service. All other Title 5
competitive service eligibility requirements must be met, including U.S. citizenship, qualifications, employment of relatives restrictions, etc. Existing Title 5 regulations and policies should be followed in determining qualifications, setting pay, determining benefits eligibility, etc. No interchange agreement is needed for these conversions in VA since this eligibility is based on statute.

b. A current VCS employee on a permanent appointment may be considered for, and appointed to, permanent or term competitive service positions in VA in accordance with the merit promotion program and its requirements, including into positions with no known promotion potential via true reassignments (same exact salary) and changes to lower grade. However, a VCS employee on a new permanent appointment in VCS may not be moved from his/her position until 90 days have elapsed, in the same manner that an employee in the competitive service must wait 90 days after a competitive appointment before any substantial change in employment may be made, including duties, title, series, grade, work schedule, duty location, etc. Current VCS management employees are no longer required to serve continuously for at least 1 year in the VCS before they may be appointed to VA positions in the competitive civil service, as stipulated in the current interchange agreement. (NOTE: The existing interchange agreement covering VCS management employees is still applicable to their placements in other Federal departments and agencies.)

c. A current VCS employee on a temporary appointment may be considered for, and appointed to, temporary competitive service positions through appropriate competitive application and referral procedures. Based on 5 CFR 316.402(a), a current VCS temporary employee generally must apply and be selected through a Delegated Examining Unit (DEU) or Office of Personnel Management (OPM) competitive announcement in order to be considered for a temporary position (in the same manner that a Title 5 competitive service temporary employee would have to apply). However, if the current VCS temporary employee meets any of the eligibility requirements for a noncompetitive temporary appointment under 5 CFR 316.402(b), he/she may be noncompetitively appointed to a temporary competitive service position. A temporary VCS employee may not be appointed to permanent or term competitive service positions unless he/she has the same type of eligibility that would permit a temporary competitive service employee to be noncompetitively appointed to those permanent or term positions, or through the DEU/OPM competitive process.

d. According to P.L. 108-170, a VCS employee appointed to the competitive service in VA is to have any previous period of employment in the Canteen Service credited toward satisfying the service requirement for career tenure.

e. To ensure that all VCS employees are appropriately and uniformly advised that they may apply to internal merit promotion vacancies, vacancy announcements should include a statement such as the following:
Current [permanent and/or temporary, as applicable to the vacancy] Veterans Canteen Service employees may apply for consideration under this vacancy announcement.

f. A current permanent VCS employee who has completed a 1 year probationary period in the excepted service is not required to complete another 1 year probationary period upon conversion to the competitive service. A permanent VCS employee who is selected for a competitive service position and has not satisfied a full 1 year probationary period in the excepted service will be required to complete the remainder of the 1 year in a probationary status, upon conversion to the competitive service.

g. Time-in-grade restrictions generally do not apply to VCS employees appointed under 38 U.S.C. 7802 who apply for VA positions in the competitive service. Based on 5 CFR 300.603(b)(4), the advancement of an employee from a non-General Schedule (GS) position to a GS position is excluded from the provisions of the time-in-grade restrictions, unless the employee held a GS position under nontemporary appointment in the executive branch within the previous 52 weeks.

h. When a current VCS employee is selected for a competitive service position, use the following Nature of Action(s) (NOAs) and Legal Authority to process the conversion:

**NOA:**
- For Career Appointment: 500 – Conv to Career Appt
- For Career-Conditional Appointment: 501 – Conv to Career-Cond Appt

**Legal Authority:** ZLM (Cite: P.L. 108-170)

Under Remarks, cite any normally applicable remark(s) as you would for selection of a Title 5 employee, such as "Merit Promotion certificate #________ and (date)."

4. Questions. Questions relative to the contents of this HRML may be referred to Recruitment and Placement Policy Service (059), Office of Human Resources Management, through email to staffingpolicy059/vaco@mail.va.gov, or by telephone to 202-273-9827 for referral to a HR Specialist.

[Signature]

T. J. Hogan