Date: September 7, 2018

From: Sheryl Williams Jones, Chief
Labor Employee Relations (LER) Division
Office of Human Resources

Subj: Notice of Implementation of Executive Order Nos. 13836, Developing Efficient, Effective, and Cost-Reducing Approaches To Federal Sector Collective Bargaining; 13837, Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use; and 13839, Promoting Accountability and Streamlining Removal Procedures Consistent With Merit System Principles

To: American Federation of State, County and Municipal Employees (AFSCME) Local 1418, AFL-CIO

NOTICE OF IMPLEMENTATION OF EXECUTIVE ORDERS

In accordance with the negotiated agreement between the American Federation of State, County and Municipal Employees (AFSCME) Local 1418, AFL-CIO, and the United States Agency for Global Media – Broadcasting Board of Governors (USAGM-BBG) (collectively, the Parties), this memorandum serves as notification of the implementation of three Executive Orders dated May 25, 2018:

1. No. 13836, Developing Efficient, Effective, and Cost-Reducing Approaches To Federal Sector Collective Bargaining;
2. No. 13837, Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use; and
3. No. 13839, Promoting Accountability and Streamlining Removal Procedures Consistent With Merit System Principles

USAGM-BBG's implementation of these Executive Orders, copies of which are attached hereto as Attachment A, with respect to the Negotiated Labor-Management Agreement (NLMA) dated February 2001, renders the following provisions of the NLMA null and void:

1. Phrase "except for the process of setting basic hourly pay rates" in Art. III, Sec. 1, pursuant to EO 13836, Secs. 5(f) and 5 U.S.C. § 7106(a)
2. Phrase "with a view of arriving at a formal agreement" in Art. III, Sec. 2(h), pursuant to EO 13836, Secs. 5(f) and 7(b) and 5 U.S.C. § 7106(a), (b)
3. Art. V(A), Secs. 1-3, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)
4. Art. V(B), Sec. 2(a), (c), pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a),
5. Third sentence in Art. V(B), Sec. 2(e), pursuant to EO 13836, Secs. 5(f) and 7(b) and 5 U.S.C. § 7106(a), (b)

6. Art. V(B), Sec. 2(f), pursuant to EO 13836, Secs. 5(f) and 7(b) and 5 U.S.C. § 7106(a), (b)
7. Art. V(C), pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)
8. Art. V(D), pursuant to EO 13836, Secs. 5(f) and 7(b) and 5 U.S.C. § 7106(b)
9. Art. V(E), Sec. 2, pursuant to EO 13836, Sec 7(b) and 5 U.S.C. § 7106(b)
10. Phrase "the supervisor who has the most frequent observation of the employee will be the Rater, but prior to writing the employee's appraisal he/she will solicit input from all other supervisors who have directly supervised the employee during the rating period" in Art. V(F), Sec. 3(d), pursuant to EO 13836, Sec 7(b) and 5 U.S.C. § 7106(b)
11. Phrase "a standard for fully successful performance is required" in Art. V(F), Sec. 4(e), pursuant to EO 13836, Sec. 5(f)
12. Last sentence in Art. V(I), Sec. 5, pursuant to EO 13836, Sec 7(b) and 5 U.S.C. § 7106(b)
13. Art. V(L), Sec. 2, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
14. Art. V(L), Sec. 3, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(1)
15. Phrases "BBG-IBB agrees not to involuntarily reassign any of the four (4) bargaining unit RBTs currently stationed in New York to duty locations outside the New York City commuting area. This provision applies only to the four (4) persons who occupy unit RBT positions in New York as of the date of this Agreement and in no way obligates the Agency to fill any vacant positions in New York or elsewhere when any of the New York positions become vacant. BBG-IBB also agrees not to involuntarily reassign the one (1) bargaining unit RBT currently stationed in Los Angeles to a duty location outside the Los Angeles commuting area. This provision applies only to the one (1) person who occupies a unit RBT position in Los Angeles as of the date of this Agreement" and "If the Agency decides to close either the New York or Los Angeles Bureaus, or both Bureaus, any of the five (5) unit RBT covered by this provision and on the rolls of the Agency at that time will be offered reassignment to equivalent positions in Washington, D.C" in Art. V(L), Sec. 5, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
16. Art. V(L), Sec. 6, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
17. First sentence of Art. V(L), Sec. 7, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
18. Art. VI(B), Sec. 1, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
19. Second sentence in Art. VI(B), Sec. 2, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
20. Art. VI(B), Sec. 3, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2)
21. Art. VI(C), Sec. 1(b), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b)
22. Phrase "but only in cases of unusual circumstances, and the Agency will make every effort to minimize these" in Art. VI(C), Sec. 1(c), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b)
23. First sentence in Art. VI(C), Sec. 1(d), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b)
24. First sentence in Art. VI(C), Sec. 1(g), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b)
25. Art. VI(C), Sec. 2(b), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b)
26. Phrase "and on the impact and implementation of all non-negotiable issues, before implementing any changes in personnel policies, practices and matters affecting working

conditions" in Art. IX(A), Sec. 2, pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(b)

27. Art. IX(A), Sec. 5(1), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(b)
28. Art. XI, Sec. 2, pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)
29. Second sentence in Art. XII, Sec. 1(b), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a)(2), (b)
30. Art. XII, Sec. 1(c), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a)(2), (b) and EO 13839, Sec. 2(c)
31. Art. XII, Sec. 3, pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a)(2), (b) and EO 13839, Sec. 2(c)
32. Phrase "and must be removed from the supervisor's file not more than one year from issuance if the employee's conduct has been satisfactory" in Art. XII, Sec. 6(a), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b) and EO 13839, Sec. 2(c)
33. Phrase "or management official and a copy is filed in the employee's official Personnel Folder (OPF). The reprimand will stay in the OPF for one (1) to three (3) years depending on the nature of the offense. At the end of the three (3) years, the reprimand must be removed from the OPF and disposed of in accordance with record disposal requirements. An employee may request the removal of the reprimand from the OPF at any time after one (1) year, and such a request will be considered favorably if the employee's conduct has been satisfactory since the date of the reprimand" in Art. XII, Sec. 6(b), pursuant to EO 13836, Sec. 7(b) and 5 U.S.C. § 7106(a), (b) and EO 13839, Sec. 2(c)

The foregoing are illustrated in a copy of the NLMA attached hereto as Attachment B.

Case No. 18-cv-1261 *American Federation of Government Employees, AFL-CIO, et al., v. Trump, et al.* (D.D.C. Aug. 25, 2018) declared invalid Sections 5(a), 5(e), and 6 of Executive Order No. 13836; Sections 3(a), 4(a), 4(b) of Executive Order No. 13837; and Sections 3, 4(a), and 4(c) of Executive Order No. 13839; and enjoined agencies from implementing or giving effect to them. USAGM-BBG shall implement them with respect to the NLMA when and to the extent permitted by future judicial rulings, which will render the following provisions of the NLMA null and void:

1. Phrase "will meet periodically to assess RBT and organizational training and technological needs and to plan the training and assignments necessary to maintain RBT technological currency. In addition, the committee shall be a forum to discuss the appropriate technology BBG-IBB should consider utilizing to meet its mission" in Art. V(K), pursuant to EO 13836, Sec. 6 and 5 U.S.C. § 7106(b)(1)
2. Phrase "or may file a grievance under the negotiated grievance procedures in Article XIII, but not both" in Art. XII, Sec. 7(d), pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2) and EO 13839, Sec. 3
3. Phrase "or may file a grievance under the negotiated grievance procedures in Article XIII, but not both" in Art. XII, Sec. 8(f), pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2) and EO 13839, Sec. 3
4. Word "removals" in Art. XIII, Sec. 2(a)(5), pursuant to EO 13836, Sec. 5(f) and 5 U.S.C. § 7106(a)(2) and EO 13839, Sec. 3

This a notification of USAGM-BBG's intent to implement Executive Orders 13836, 13837, and 13839, and the concomitant effect of such implementation upon specific provisions of the NLMA; consistent with the NLMA's notice provisions, USAGM-BBG will consider the foregoing provisions of the NLMA null and void on September 23, 2018.

If you have questions regarding the implementation of these Executive Orders or the NLMA, please feel free to contact me at (202) 382-7500.

ATTACHMENT A

Presidential Documents

Executive Order 13836 of May 25, 2018

Developing Efficient, Effective, and Cost-Reducing Approaches To Federal Sector Collective Bargaining

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to assist executive departments and agencies (agencies) in developing efficient, effective, and cost-reducing collective bargaining agreements (CBAs), as described in chapter 71 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Policy*. (a) Section 7101(b) of title 5, United States Code, requires the Federal Service Labor-Management Relations Statute (the Statute) to be interpreted in a manner consistent with the requirement of an effective and efficient Government. Unfortunately, implementation of the Statute has fallen short of these goals. CBAs, and other agency agreements with collective bargaining representatives, often make it harder for agencies to reward high performers, hold low-performers accountable, or flexibly respond to operational needs. Many agencies and collective bargaining representatives spend years renegotiating CBAs, with taxpayers paying for both sides' negotiators. Agencies must also engage in prolonged negotiations before making even minor operational changes, like relocating office space.

(b) The Federal Government must do more to apply the Statute in a manner consistent with effective and efficient Government. To fulfill this obligation, agencies should secure CBAs that: promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time; are consistent with applicable laws, rules, and regulations; do not cover matters that are not, by law, subject to bargaining; and preserve management rights under section 7106(a) of title 5, United States Code (management rights). Further, agencies that form part of an effective and efficient Government should not take more than a year to renegotiate CBAs.

Sec. 2. *Definitions*. For purposes of this order:

(a) The phrase ''term CBA'' means a CBA of a fixed or indefinite duration reached through substantive bargaining, as opposed to (i) agreements reached through impact and implementation bargaining pursuant to sections 7106(b)(2) and 7106(b)(3) of title 5, United States Code, or (ii) mid-term agreements, negotiated while the basic comprehensive labor contract is in effect, about subjects not included in such contract.

(b) The phrase ''taxpayer-funded union time'' means time granted to a Federal employee to perform non-agency business during duty hours pursuant to section 7131 of title 5, United States Code.

Sec. 3. *Interagency Labor Relations Working Group*. (a) There is hereby established an Interagency Labor Relations Working Group (Labor Relations Group).

(b) *Organization*. The Labor Relations Group shall consist of the Director of the Office of Personnel Management (OPM Director), representatives of participating agencies determined by their agency head in consultation with the OPM Director, and OPM staff assigned by the OPM Director. The OPM Director shall chair the Labor Relations Group and, subject to the availability

of appropriations and to the extent permitted by law, provide administrative support for the Labor Relations Group.

(c) *Agencies*. Agencies with at least 1,000 employees represented by a collective bargaining representative pursuant to chapter 71 of title 5, United States Code, shall participate in the Labor Relations Group. Agencies with a smaller number of employees represented by a collective bargaining representative may, at the election of their agency head and with the concurrence of the OPM Director, participate in the Labor Relations Group. Agencies participating in the Labor Relations Group shall provide assistance helpful in carrying out the responsibilities outlined in subsection (d) of this section. Such assistance shall include designating an agency employee to serve as a point of contact with OPM responsible for providing the Labor Relations Group with sample language for proposals and counter-proposals on significant matters proposed for inclusion in term CBAs, as well as for analyzing and discussing with OPM and the Labor Relations Group the effects of significant CBA provisions on agency effectiveness and efficiency. Participating agencies should provide other assistance as necessary to support the Labor Relations Group in its mission.

(d) *Responsibilities and Functions*. The Labor Relations Group shall assist the OPM Director on matters involving labor-management relations in the executive branch. To the extent permitted by law, its responsibilities shall include the following:

(i) Gathering information to support agency negotiating efforts, including the submissions required under section 8 of this order, and creating an inventory of language on significant subjects of bargaining that have relevance to more than one agency and that have been proposed for inclusion in at least one term CBA;

(ii) Developing model ground rules for negotiations that, if implemented, would minimize delay, set reasonable limits for good-faith negotiations, call for Federal Mediation and Conciliation Service (FMCS) to mediate disputed issues not resolved within a reasonable time, and, as appropriate, promptly bring remaining unresolved issues to the Federal Service Impasses Panel (the Panel) for resolution;

(iii) Analyzing provisions of term CBAs on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights. Such analysis should include an assessment of term CBA provisions that cover comparable subjects, without infringing, or otherwise affecting, reserved management rights. The analysis should also assess the consequences of such CBA provisions on Federal effectiveness, efficiency, cost of operations, and employee accountability and performance. The analysis should take particular note of how certain provisions may impede the policies set forth in section 1 of this order or the orderly implementation of laws, rules, or regulations. The Labor Relations Group may examine general trends and commonalities across term CBAs, and their effects on bargaining-unit operations, but need not separately analyze every provision of each CBA in every Federal bargaining unit;

(iv) Sharing information and analysis, as appropriate and permitted by law, including significant proposals and counter-proposals offered in bargaining, in order to reduce duplication of efforts and encourage common approaches across agencies, as appropriate;

(v) Establishing ongoing communications among agencies engaging with the same labor organizations in order to facilitate common solutions to common bargaining initiatives; and

(vi) Assisting the OPM Director in developing, where appropriate, Government-wide approaches to bargaining issues that advance the policies set forth in section 1 of this order.

(e) Within 18 months of the first meeting of the Labor Relations Group, the OPM Director, as the Chair of the group, shall submit to the President,

through the Office of Management and Budget (OMB), a report proposing recommendations for meeting the goals set forth in section 1 of this order and for improving the organization, structure, and functioning of labor relations programs across agencies.

Sec. 4. *Collective Bargaining Objectives*. (a) The head of each agency that engages in collective bargaining under chapter 71 of title 5, United States Code, shall direct appropriate officials within each agency to prepare a report on all operative term CBAs at least 1 year before their expiration or renewal date. The report shall recommend new or revised CBA language the agency could seek to include in a renegotiated agreement that would better support the objectives of section 1 of this order. The officials preparing the report shall consider the analysis and advice of the Labor Relations Group in making recommendations for revisions. To the extent permitted by law, these reports shall be deemed guidance and advice for agency management related to collective bargaining under section 7114(b)(4)(C) of title 5, United States Code, and thus not subject to disclosure to the exclusive representative or its authorized representative.

(b) Consistent with the requirements and provisions of chapter 71 of title 5, United States Code, and other applicable laws and regulations, an agency, when negotiating with a collective bargaining representative, shall:

(i) establish collective bargaining objectives that advance the policies of section 1 of this order, with such objectives informed, as appropriate, by the reports required by subsection (a) of this section;

(ii) consider the analysis and advice of the Labor Relations Group in establishing these collective bargaining objectives and when evaluating collective bargaining representative proposals;

(iii) make every effort to secure a CBA that meets these objectives; and

(iv) ensure management and supervisor participation in the negotiating team representing the agency.

Sec. 5. *Collective Bargaining Procedures*. (a) To achieve the purposes of this order, agencies shall begin collective bargaining negotiations by making their best effort to negotiate ground rules that minimize delay, set reasonable time limits for good-faith negotiations, call for FMCS mediation of disputed issues not resolved within those time limits, and, as appropriate, promptly bring remaining unresolved issues to the Panel for resolution. For collective bargaining negotiations, a negotiating period of 6 weeks or less to achieve ground rules, and a negotiating period of between 4 and 6 months for a term CBA under those ground rules, should ordinarily be considered reasonable and to satisfy the ''effective and efficient'' goal set forth in section 1 of this order. Agencies shall commit the time and resources necessary to satisfy these temporal objectives and to fulfill their obligation to bargain in good faith. Any negotiations to establish ground rules that do not conclude after a reasonable period should, to the extent permitted by law, be expeditiously advanced to mediation and, as necessary, to the Panel.

(b) During any collective bargaining negotiations under chapter 71 of title 5, United States Code, and consistent with section 7114(b) of that chapter, the agency shall negotiate in good faith to reach agreement on a term CBA, memorandum of understanding (MOU), or any other type of binding agreement that promotes the policies outlined in section 1 of this order. If such negotiations last longer than the period established by the CBA ground rules -- or, absent a pre-set deadline, a reasonable time -- the agency shall consider whether requesting assistance from the FMCS and, as appropriate, the Panel, would better promote effective and efficient Government than would continuing negotiations. Such consideration should evaluate the likelihood that continuing negotiations without FMCS assistance or referral to the Panel would produce an agreement consistent with the goals of section 1 of this order, as well as the cost to the public of continuing to pay for both agency and collective bargaining representative negotiating teams. Upon the conclusion of the sixth month of any negotiation, the agency head shall receive notice from appropriate agency staff and shall

receive monthly notifications thereafter regarding the status of negotiations until they are complete. The agency head shall notify the President through OPM of any negotiations that have lasted longer than 9 months, in which the assistance of the FMCS either has not been requested or, if requested, has not resulted in agreement or advancement to the Panel.

(c) If the commencement or any other stage of bargaining is delayed or impeded because of a collective bargaining representative's failure to comply with the duty to negotiate in good faith pursuant to section 7114(b) of title 5, United States Code, the agency shall, consistent with applicable law consider whether to:

(i) file an unfair labor practice (ULP) complaint under section 7118 of title 5, United States Code, after considering evidence of bad-faith negotiating, including refusal to meet to bargain, refusal to meet as frequently as necessary, refusal to submit proposals or counterproposals, undue delays in bargaining, undue delays in submission of proposals or counterproposals, inadequate preparation for bargaining, and other conduct that constitutes bad-faith negotiating; or

(ii) propose a new contract, memorandum, or other change in agency policy and implement that proposal if the collective bargaining representative does not offer counter-proposals in a timely manner.

(d) An agency's filing of a ULP complaint against a collective bargaining representative shall not further delay negotiations. Agencies shall negotiate in good faith or request assistance from the FMCS and, as appropriate, the Panel, while a ULP complaint is pending.

(e) In developing proposed ground rules, and during any negotiations, agency negotiators shall request the exchange of written proposals, so as to facilitate resolution of negotiability issues and assess the likely effect of specific proposals on agency operations and management rights. To the extent that an agency's CBAs, ground rules, or other agreements contain requirements for a bargaining approach other than the exchange of written proposals addressing specific issues, the agency should, at the soonest opportunity, take steps to eliminate them. If such requirements are based on now-revoked Executive Orders, including Executive Order 12871 of October 1, 1993 (Labor-Management Partnerships) and Executive Order 13522 of December 9, 2009 (Creating Labor-Management Forums to Improve Delivery of Government Services), agencies shall take action, consistent with applicable law, to rescind these requirements.

(f) Pursuant to section 7114(c)(2) of title 5, United States Code, the agency head shall review all binding agreements with collective bargaining representatives to ensure that all their provisions are consistent with all applicable laws, rules, and regulations. When conducting this review, the agency head shall ascertain whether the agreement contains any provisions concerning subjects that are non-negotiable, including provisions that violate Government-wide requirements set forth in any applicable Executive Order or any other applicable Presidential directive. If an agreement contains any such provisions, the agency head shall disapprove such provisions, consistent with applicable law. The agency head shall take all practicable steps to render the determinations required by this subsection within 30 days of the date the agreement is executed, in accordance with section 7114(c) of title 5, United States Code, so as not to permit any part of an agreement to become effective that is contrary to applicable law, rule, or regulation.

Sec. 6. *Permissive Bargaining*. The heads of agencies subject to the provisions of chapter 71 of title 5, United States Code, may not negotiate over the substance of the subjects set forth in section 7106(b)(1) of title 5, United States Code, and shall instruct subordinate officials that they may not negotiate over those same subjects.

Sec. 7. *Efficient Bargaining over Procedures and Appropriate Arrangements*. (a) Before beginning negotiations during a term CBA over matters addressed by sections 7106(b)(2) or 7106(b)(3) of title 5, United States Code, agencies shall evaluate whether or not such matters are already covered by the

term CBA and therefore are not subject to the duty to bargain. If such matters are already covered by a term CBA, the agency shall not bargain over such matters.

(b) Consistent with section 1 of this order, agencies that engage in bargaining over procedures pursuant to section 7106(b)(2) of title 5, United States Code, shall, consistent with their obligation to negotiate in good faith, bargain over only those items that constitute procedures associated with the exercise of management rights, which do not include measures that excessively interfere with the exercise of such rights. Likewise, consistent with section 1 of this order, agencies that engage in bargaining over appropriate arrangements pursuant to section 7106(b)(3) of title 5, United States Code, shall, consistent with their obligation to negotiate in good faith, bargain over only those items that constitute appropriate arrangements for employees adversely affected by the exercise of management rights. In such negotiations, agencies shall ensure that a resulting appropriate arrangement does not excessively interfere with the exercise of management rights.

Sec. 8. *Public Accessibility*. (a) Each agency subject to chapter 71 of title 5, United States Code, that engages in any negotiation with a collective bargaining representative, as defined therein, shall submit to the OPM Director each term CBA currently in effect and its expiration date. Such agency shall also submit any new term CBA and its expiration date to the OPM Director within 30 days of its effective date, and submit new arbitral awards to the OPM Director within 10 business days of receipt. The OPM Director shall make each term CBA publicly accessible on the Internet as soon as practicable.

(b) Within 90 days of the date of this order, the OPM Director shall prescribe a reporting format for submissions required by subsection (a) of this section. Within 30 days of the OPM Director's having prescribed the reporting format, agencies shall use this reporting format and make the submissions required under subsection (a) of this section.

Sec. 9. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

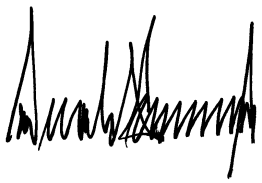
(ii) the functions of the OMB Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Nothing in this order shall abrogate any CBA in effect on the date of this order.

(d) The failure to produce a report for the agency head prior to the termination or renewal of a CBA under section 4(a) of this order shall not prevent an agency from opening a CBA for renegotiation.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
May 25, 2018.

[FR Doc. 2018–11913
Filed 5–31–18; 8:45 am]
Billing code 3295–F8–P

Presidential Documents

Executive Order 13837 of May 25, 2018

Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 7301 of title 5, United States Code, and to ensure the effective functioning of the executive branch, it is hereby ordered as follows:

Section 1. *Purpose*. An effective and efficient government keeps careful track of how it spends the taxpayers' money and eliminates unnecessary, inefficient, or unreasonable expenditures. To advance this policy, executive branch employees should spend their duty hours performing the work of the Federal Government and serving the public.

Federal law allows Federal employees to represent labor organizations and perform other non-agency business while being paid by American taxpayers (taxpayer-funded union time). The Congress, however, has also instructed the executive branch to interpret the law in a manner consistent with the requirements of an effective and efficient government.

To that end, agencies should ensure that taxpayer-funded union time is used efficiently and authorized in amounts that are reasonable, necessary, and in the public interest. Federal employees should spend the clear majority of their duty hours working for the public. No agency should pay for Federal labor organizations' expenses, except where required by law. Agencies should eliminate unrestricted grants of taxpayer-funded union time and instead require employees to obtain specific authorization before using such time. Agencies should also monitor use of taxpayer-funded union time, ensure it is used only for authorized purposes, and make information regarding its use readily available to the public.

Sec. 2. *Definitions*. For purposes of this order, the following definitions shall apply:

(a) Except for purposes of section 4 of this order, ''agency'' has the meaning given the term in section 7103(a)(3) of title 5, United States Code, but includes only executive agencies. For purposes of section 4 of this order, ''agency'' has the meaning given to ''Executive agency'' in section 105 of title 5, United States Code, but excludes the Government Accountability Office.

(b) ''Agency business'' shall mean work performed by Federal employees, including detailees or assignees, on behalf of an agency, but does not include work performed on taxpayer-funded union time.

(c) ''Bargaining unit'' shall mean a group of employees represented by an exclusive representative in an appropriate unit for collective bargaining under subchapter II of chapter 71 of title 5, United States Code.

(d) ''Discounted use of government property'' means charging less to use government property than the value of the use of such property, as determined by the General Services Administration, where applicable, or otherwise by the generally prevailing commercial cost of using such property.

(e) ''Employee'' has the meaning given the term in section 7103(a)(2) of title 5, United States Code, except for purposes of section 4 of this order, in which case it means an individual employed in an ''Executive

agency,'' according to the meaning given that term in section 105 of title 5, United States Code, but excluding the Government Accountability Office.

(f) ''Grievance'' has the meaning given the term in section 7103(a)(9) of title 5, United States Code.

(g) ''Labor organization'' has the meaning given the term in section 7103(a)(4) of title 5, United States Code.

(h) ''Paid time'' shall mean time for which an employee is paid by the Federal Government, including both duty time, in which the employee performs agency business, and taxpayer-funded union time. It does not include time spent on paid or unpaid leave, or an employee's off-duty hours.

(i) ''Taxpayer-funded union time'' shall mean official time granted to an employee pursuant to section 7131 of title 5, United States Code.

(j) ''Union time rate'' shall mean the total number of duty hours in the fiscal year that employees in a bargaining unit used for taxpayer-funded union time, divided by the number of employees in such bargaining unit.

Sec. 3. *Standards for Reasonable and Efficient Taxpayer-Funded Union Time Usage*. (a) No agency shall agree to authorize any amount of taxpayer-funded union time under section 7131(d) of title 5, United States Code, unless such time is reasonable, necessary, and in the public interest. Agreements authorizing taxpayer-funded union time under section 7131(d) of title 5, United States Code, that would cause the union time rate in a bargaining unit to exceed 1 hour should, taking into account the size of the bargaining unit, and the amount of taxpayer-funded union time anticipated to be granted under sections 7131(a) and 7131(c) of title 5, United States Code, ordinarily not be considered reasonable, necessary, and in the public interest, or to satisfy the ''effective and efficient'' goal set forth in section 1 of this order and section 7101(b) of title 5, United States Code. Agencies shall commit the time and resources necessary to strive for a negotiated union time rate of 1 hour or less, and to fulfill their obligation to bargain in good faith.

(b) (i) If an agency agrees to authorize amounts of taxpayer-funded union time under section 7131(d) of title 5, United States Code, that would cause the union time rate in a bargaining unit to exceed 1 hour (or proposes to the Federal Service Impasses Panel or an arbitrator engaging in interest arbitration an amount that would cause the union time rate in a bargaining unit to exceed 1 hour), the agency head shall report this agreement or proposal to the President through the Director of the Office of Personnel Management (OPM Director) within 15 days of such an agreement or proposal. Such report shall explain why such expenditures are reasonable, necessary, and in the public interest, describe the benefit (if any) the public will receive from the activities conducted by employees on such taxpayer-funded union time, and identify the total cost of such time to the agency. This reporting duty cannot be delegated.

(ii) Each agency head shall require relevant subordinate agency officials to inform the agency head 5 business days in advance of presenting or accepting a proposal that would result in a union time rate of greater than 1 hour for any bargaining unit, if the subordinate agency officials anticipate they will present or agree to such a provision.

(iii) The requirements of this subsection shall not apply to a union time rate established pursuant to an order of the Federal Service Impasses Panel or an arbitrator engaging in interest arbitration, provided that the agency had proposed that the Impasses Panel or arbitrator establish a union time rate of 1 hour or less.

(c) Nothing in this section shall be construed to prohibit any agency from authorizing taxpayer-funded union time as required under sections 7131(a) and 7131(c) of title 5, United States Code, or to direct an agency to negotiate to include in a collective bargaining agreement a term that precludes an agency from granting taxpayer-funded union time pursuant to those provisions.

Sec. 4. *Employee Conduct with Regard to Agency Time and Resources.* (a) To ensure that Federal resources are used effectively and efficiently and in a manner consistent with both the public interest and section 8 of this order, all employees shall adhere to the following requirements:

(i) Employees may not engage in lobbying activities during paid time, except in their official capacities as an employee.

(ii) (1) Except as provided in subparagraph (2) of this subsection, employees shall spend at least three-quarters of their paid time, measured each fiscal year, performing agency business or attending necessary training (as required by their agency), in order to ensure that they develop and maintain the skills necessary to perform their agency duties efficiently and effectively.

(2) Employees who have spent one-quarter of their paid time in any fiscal year on non-agency business may continue to use taxpayer-funded union time in that fiscal year for purposes covered by sections 7131(a) or 7131(c) of title 5, United States Code.

(3) Any time in excess of one-quarter of an employee's paid time used to perform non-agency business in a fiscal year shall count toward the limitation set forth in subparagraph (1) of this subsection in subsequent fiscal years.

(iii) No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.

(iv) Employees may not be permitted reimbursement for expenses incurred performing non-agency business, unless required by law or regulation.

(v) (1) Employees may not use taxpayer-funded union time to prepare or pursue grievances (including arbitration of grievances) brought against an agency under procedures negotiated pursuant to section 7121 of title 5, United States Code, except where such use is otherwise authorized by law or regulation.

(2) The prohibition in subparagraph (1) of this subsection does not apply to:

(A) an employee using taxpayer-funded union time to prepare for, confer with an exclusive representative regarding, or present a grievance brought on the employee's own behalf; or to appear as a witness in any grievance proceeding; or

(B) an employee using taxpayer-funded union time to challenge an adverse personnel action taken against the employee in retaliation for engaging in federally protected whistleblower activity, including for engaging in activity protected under section 2302(b)(8) of title 5, United States Code, under section 78u–6(h)(1) of title 15, United States Code, under section 3730(h) of title 31, United States Code, or under any other similar whistleblower law.

(b) Employees may not use taxpayer-funded union time without advance written authorization from their agency, except where obtaining prior approval is deemed impracticable under regulations or guidance adopted pursuant to subsection (c) of this section.

(c) (i) The requirements of this section shall become effective 45 days from the date of this order. The Office of Personnel Management (OPM) shall be responsible for administering the requirements of this section. Within 45 days of the date of this order, the OPM Director shall examine whether existing regulations are consistent with the rules set forth in this section. If the regulations are not, the OPM Director shall propose for notice and public comment, as soon as practicable, appropriate regulations to clarify

and assist agencies in implementing these rules, consistent with applicable law.

(ii) The head of each agency is responsible for ensuring compliance by employees within such agency with the requirements of this section, to the extent consistent with applicable law and existing collective bargaining agreements. Each agency head shall examine whether existing regulations, policies, and practices are consistent with the rules set forth in this section. If they are not, the agency head shall take all appropriate steps consistent with applicable law to bring them into compliance with this section as soon as practicable.

(e) Nothing in this order shall be construed to prohibit agencies from permitting employees to take unpaid leave to perform representational activities under chapter 71 of title 5, United States Code, including for purposes covered by section 7121(b)(1)(C) of title 5, United States Code.

Sec. 5. *Preventing Unlawful or Unauthorized Expenditures.* (a) Any employee who uses taxpayer-funded union time without advance written agency authorization required by section 4(b) of this order, or for purposes not specifically authorized by the agency, shall be considered absent without leave and subject to appropriate disciplinary action. Repeated misuse of taxpayer-funded union time may constitute serious misconduct that impairs the efficiency of the Federal service. In such instances, agencies shall take appropriate disciplinary action to address such misconduct.

(b) As soon as practicable, but not later than 180 days from the date of this order, to the extent permitted by law, each agency shall develop and implement a procedure governing the authorization of taxpayer-funded union time under section 4(b) of this order. Such procedure shall, at a minimum, require a requesting employee to specify the number of taxpayer-funded union time hours to be used and the specific purposes for which such time will be used, providing sufficient detail to identify the tasks the employee will undertake. That procedure shall also allow the authorizing official to assess whether it is reasonable and necessary to grant such amount of time to accomplish such tasks. For continuing or ongoing requests, each agency shall require requests for authorization renewals to be submitted not less than once per pay period. Each agency shall further require separate advance authorization for any use of taxpayer-funded union time in excess of previously authorized hours or for purposes for which such time was not previously authorized.

(c) As soon as practicable, but not later than 180 days from the date of this order, each agency shall develop and implement a system to monitor the use of taxpayer-funded union time to ensure that it is used only for authorized purposes, and that it is not used contrary to law or regulation. In developing these systems, each agency shall give special attention to ensuring taxpayer-funded union time is not used for:

(i) internal union business in violation of section 7131(b) of title 5, United States Code;

(ii) lobbying activities in violation of section 1913 of title 18, United States Code, or in violation of section 4(a)(i) of this order; or

(iii) political activities in violation of subchapter III of chapter 73 of title 5, United States Code.

Sec. 6. *Agency Reporting Requirements.* (a) To the extent permitted by law, each agency shall submit an annual report to OPM on the following:

(i) The purposes for which the agency has authorized the use of taxpayer-funded union time, and the amounts of time used for each such purpose;

(ii) The job title and total compensation of each employee who has used taxpayer-funded union time in the fiscal year, as well as the total number of hours each employee spent on these activities and the proportion of each employee's total paid hours that number represents;

(iii) If the agency has allowed labor organizations or individuals on taxpayer-funded union time the free or discounted use of government property, the total value of such free or discounted use;

(iv) Any expenses the agency paid for activities conducted on taxpayer-funded union time; and

(v) The amount of any reimbursement paid by the labor organizations for the use of government property.

(b) Agencies shall notify the OPM Labor Relations Group established pursuant to the Executive Order entitled ''Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining'' of May 25, 2018, if a bargaining unit's union time rate exceeds 1 hour.

(c) If an agency's aggregate union time rate (i.e., the average of the union time rates in each agency bargaining unit, weighted by the number of employees in each unit) has increased overall from the last fiscal year, the agency shall explain this increase in the report required under subsection (a) of this section.

(d) The OPM Director shall set a date by which agency submissions under this section are due.

Sec. 7. *Public Disclosure and Transparency*. (a) Within 180 days of the date of this order, the OPM Director shall publish a standardized form that each agency shall use in preparing the reports required by section 6 of this order.

(b) OPM shall analyze the agency submissions under section 6 of this order and produce an annual report detailing:

(i) for each agency and for agencies in the aggregate, the number of employees using taxpayer-funded union time, the number of employees using taxpayer-funded union time separately listed by intervals of the proportion of paid time spent on such activities, the number of hours spent on taxpayer-funded union time, the cost of taxpayer-funded union time (measured by the compensation of the employees involved), the aggregate union time rate, the number of bargaining unit employees, and the percentage change in each of these values from the previous fiscal year;

(ii) for each agency and in the aggregate, the value of the free or discounted use of any government property the agency has provided to labor organizations, and any expenses, such as travel or per diems, the agency paid for activities conducted on taxpayer-funded union time, as well as the amount of any reimbursement paid for such use of government property, and the percentage change in each of these values from the previous fiscal year;

(iii) the purposes for which taxpayer-funded union time was granted; and

(iv) the information required by section 6(a)(ii) of this order for employees using taxpayer-funded union time, sufficiently aggregated that such disclosure would not unduly risk disclosing information protected by law, including personally identifiable information.

(c) The OPM Director shall publish the annual report required by this section by June 30 of each year. The first report shall cover fiscal year 2019 and shall be published by June 30, 2020.

(d) The OPM Director shall, after consulting with the Chief Human Capital Officers designated under chapter 14 of title 5, United States Code, promulgate any additional guidance that may be necessary or appropriate to assist the heads of agencies in complying with the requirements of this order.

Sec. 8. *Implementation and Renegotiation of Collective Bargaining Agreements*. (a) Each agency shall implement the requirements of this order within 45 days of the date of this order, except for subsection 4(b) of this order, which shall be effective for employees at an agency when such agency implements the procedure required by section 5(b) of this order, to the

extent permitted by law and consistent with their obligations under collective bargaining agreements in force on the date of this order. The head of each agency shall designate an official within the agency tasked with ensuring implementation of this order, and shall report the identity of such official to OPM within 30 days of the date of this order.

(b) Each agency shall consult with employee labor representatives about the implementation of this order. On the earliest date permitted by law, and to effectuate the terms of this order, any agency that is party to a collective bargaining agreement that has at least one provision that is inconsistent with any part of this order shall give any contractually required notice of its intent to alter the terms of such agreement and either reopen negotiations and negotiate to obtain provisions consistent with this order, or subsequently terminate such provision and implement the requirements of this order, as applicable under law.

Sec. 9. *General Provisions*. (a) Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order.

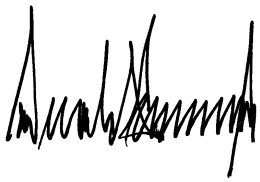
(b) Nothing in this order shall be construed to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under chapter 71 of title 5, United States Code, or encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment.

(c) Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) If any provision of this order, including any of its applications, is held to be invalid, the remainder of this order and all of its other applications shall not be affected thereby.



THE WHITE HOUSE,
May 25, 2018.

[FR Doc. 2018–11916
Filed 5–31–18; 8:45 am]
Billing code 3295–F8–P

Presidential Documents

Executive Order 13839 of May 25, 2018

Promoting Accountability and Streamlining Removal Procedures Consistent With Merit System Principles

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and section 301 of title 3, United States Code, and to ensure the effective functioning of the executive branch, it is hereby ordered as follows:

Section 1. *Purpose*. Merit system principles call for holding Federal employees accountable for performance and conduct. They state that employees should maintain high standards of integrity, conduct, and concern for the public interest, and that the Federal workforce should be used efficiently and effectively. They further state that employees should be retained based on the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. Unfortunately, implementation of America's civil service laws has fallen far short of these ideals. The Federal Employee Viewpoint Survey has consistently found that less than one-third of Federal employees believe that the Government deals with poor performers effectively. Failure to address unacceptable performance and misconduct undermines morale, burdens good performers with subpar colleagues, and inhibits the ability of executive agencies (as defined in section 105 of title 5, United States Code, but excluding the Government Accountability Office) (agencies) to accomplish their missions. This order advances the ability of supervisors in agencies to promote civil servant accountability consistent with merit system principles while simultaneously recognizing employees' procedural rights and protections.

Sec. 2. *Principles for Accountability in the Federal Workforce*. (a) Removing unacceptable performers should be a straightforward process that minimizes the burden on supervisors. Agencies should limit opportunity periods to demonstrate acceptable performance under section 4302(c)(6) of title 5, United States Code, to the amount of time that provides sufficient opportunity to demonstrate acceptable performance.

(b) Supervisors and deciding officials should not be required to use progressive discipline. The penalty for an instance of misconduct should be tailored to the facts and circumstances.

(c) Each employee's work performance and disciplinary history is unique, and disciplinary action should be calibrated to the specific facts and circumstances of each individual employee's situation. Conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time -- particularly where the employees are in different work units or chains of supervision -- and agencies are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct. Nonetheless, employees should be treated equitably, so agencies should consider appropriate comparators as they evaluate potential disciplinary actions.

(d) Suspension should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require suspension of an employee before proposing to remove that employee, except as may be appropriate under applicable facts.

(e) When taking disciplinary action, agencies should have discretion to take into account an employee's disciplinary record and past work record, including all past misconduct -- not only similar past misconduct. Agencies should provide an employee with appropriate notice when taking a disciplinary action.

(f) To the extent practicable, agencies should issue decisions on proposed removals taken under chapter 75 of title 5, United States Code, within 15 business days of the end of the employee reply period following a notice of proposed removal.

(g) To the extent practicable, agencies should limit the written notice of adverse action to the 30 days prescribed in section 7513(b)(1) of title 5, United States Code.

(h) The removal procedures set forth in chapter 75 of title 5, United States Code (Chapter 75 procedures), should be used in appropriate cases to address instances of unacceptable performance.

(i) A probationary period should be used as the final step in the hiring process of a new employee. Supervisors should use that period to assess how well an employee can perform the duties of a job. A probationary period can be a highly effective tool to evaluate a candidate's potential to be an asset to an agency before the candidate's appointment becomes final.

(j) Following issuance of regulations under section 7 of this order, agencies should prioritize performance over length of service when determining which employees will be retained following a reduction in force.

Sec. 3. *Standard for Negotiating Grievance Procedures*. Whenever reasonable in view of the particular circumstances, agency heads shall endeavor to exclude from the application of any grievance procedures negotiated under section 7121 of title 5, United States Code, any dispute concerning decisions to remove any employee from Federal service for misconduct or unacceptable performance. Each agency shall commit the time and resources necessary to achieve this goal and to fulfill its obligation to bargain in good faith. If an agreement cannot be reached, the agency shall, to the extent permitted by law, promptly request the assistance of the Federal Mediation and Conciliation Service and, as necessary, the Federal Service Impasses Panel in the resolution of the disagreement. Within 30 days after the adoption of any collective bargaining agreement that fails to achieve this goal, the agency head shall provide an explanation to the President, through the Director of the Office of Personnel Management (OPM Director).

Sec. 4. *Managing the Federal Workforce*. To promote good morale in the Federal workforce, employee accountability, and high performance, and to ensure the effective and efficient accomplishment of agency missions and the efficiency of the Federal service, to the extent consistent with law, no agency shall:

(a) subject to grievance procedures or binding arbitration disputes concerning:

(i) the assignment of ratings of record; or

(ii) the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments;

(b) make any agreement, including a collective bargaining agreement:

(i) that limits the agency's discretion to employ Chapter 75 procedures to address unacceptable performance of an employee;

(ii) that requires the use of procedures under chapter 43 of title 5, United States Code (including any performance assistance period or similar informal period to demonstrate improved performance prior to the initiation of an opportunity period under section 4302(c)(6) of title 5, United States Code), before removing an employee for unacceptable performance; or

(iii) that limits the agency's discretion to remove an employee from Federal service without first engaging in progressive discipline; or

(c) generally afford an employee more than a 30-day period to demonstrate acceptable performance under section 4302(c)(6) of title 5, United States Code, except when the agency determines in its sole and exclusive discretion that a longer period is necessary to provide sufficient time to evaluate an employee's performance.

Sec. 5. *Ensuring Integrity of Personnel Files*. Agencies shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

Sec. 6. *Data Collection of Adverse Actions*. (a) For fiscal year 2018, and for each fiscal year thereafter, each agency shall provide a report to the OPM Director containing the following information:

(i) the number of civilian employees in a probationary period or otherwise employed for a specific term who were removed by the agency;

(ii) the number of civilian employees reprimanded in writing by the agency;

(iii) the number of civilian employees afforded an opportunity period by the agency under section 4302(c)(6) of title 5, United States Code, breaking out the number of such employees receiving an opportunity period longer than 30 days;

(iv) the number of adverse personnel actions taken against civilian employees by the agency, broken down by type of adverse personnel action, including reduction in grade or pay (or equivalent), suspension, and removal;

(v) the number of decisions on proposed removals by the agency taken under chapter 75 of title 5, United States Code, not issued within 15 business days of the end of the employee reply period;

(vi) the number of adverse personnel actions by the agency for which employees received written notice in excess of the 30 days prescribed in section 7513(b)(1) of title 5, United States Code;

(vii) the number and key terms of settlements reached by the agency with civilian employees in cases arising out of adverse personnel actions; and

(viii) the resolutions of litigation about adverse personnel actions involving civilian employees reached by the agency.

(b) Compilation and submission of the data required by subsection (a) of this section shall be conducted in accordance with all applicable laws, including those governing privacy and data security.

(c) To enhance public accountability of agencies for their management of the Federal workforce, the OPM Director shall, consistent with applicable law, publish the information received under subsection (a) of this section, at the minimum level of aggregation necessary to protect personal privacy. The OPM Director may withhold particular information if publication would unduly risk disclosing information protected by law, including personally identifiable information.

(d) Within 60 days of the date of this order, the OPM Director shall issue guidance regarding the implementation of this section, including with respect to any exemptions necessary for compliance with applicable law and the reporting format for submissions required by subsection (a) of this section.

Sec. 7. *Implementation*. (a) Within 45 days of the date of this order, the OPM Director shall examine whether existing regulations effectuate the principles set forth in section 2 of this order and the requirements of sections 3, 4, 5, and 6 of this order. To the extent necessary or appropriate, the OPM Director shall, as soon as practicable, propose for notice and public

comment appropriate regulations to effectuate the principles set forth in section 2 of this order and the requirements of sections 3, 4, 5, and 6 of this order.

(b) The head of each agency shall take steps to conform internal agency discipline and unacceptable performance policies to the principles and requirements of this order. To the extent consistent with law, each agency head shall:

(i) within 45 days of this order, revise its discipline and unacceptable performance policies to conform to the principles and requirements of this order, in areas where new final Office of Personnel Management (OPM) regulations are not required, and shall further revise such policies as necessary to conform to any new final OPM regulations, within 45 days of the issuance of such regulations; and

(ii) renegotiate, as applicable, any collective bargaining agreement provisions that are inconsistent with any part of this order or any final OPM regulations promulgated pursuant to this order. Each agency shall give any contractually required notice of its intent to alter the terms of such agreement and reopen negotiations. Each agency shall, to the extent consistent with law, subsequently conform such terms to the requirements of this order, and to any final OPM regulations issued pursuant to this order, on the earliest practicable date permitted by law.

(c) Within 15 months of the adoption of any final rules issued pursuant to subsection (a) of this section, the OPM Director shall submit to the President a report, through the Director of the Office of Management and Budget, evaluating the effect of those rules, including their effect on the ability of Federal supervisors to hold employees accountable for their performance.

(d) Within a reasonable amount of time following the adoption of any final rules issued pursuant to subsection (a) of this section, the OPM Director and the Chief Human Capital Officers Council shall undertake a Government-wide initiative to educate Federal supervisors about holding employees accountable for unacceptable performance or misconduct under those rules.

Sec. 8. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

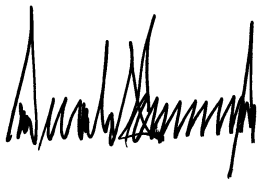
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) Agencies shall consult with employee labor representatives about the implementation of this order. Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) If any provision of this order, including any of its applications, is held to be invalid, the remainder of this order and all of its other applications shall not be affected thereby.



THE WHITE HOUSE,
May 25, 2018.

[FR Doc. 2018–11939
Filed 5–31–18; 8:45 am]
Billing code 3295–F8–P

ATTACHMENT B

Negotiated Labor-Management Agreement

between the

International Broadcasting Bureau
Voice of America

and the

American Federation of
State, County and Municipal Employees
Local 1418, AFL-CIO

February 2001

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PREAMBLE

The parties intend by the provisions of this Agreement to establish a stable, long-term relationship that appropriately recognizes and balances the vital interests of the Agency in workforce and assignment flexibility and efficient use of new technology as well as the vital Union interest in job security for its members. The parties also intend that, to the extent possible, this Agreement remain in effect indefinitely and that neither party exercise the re-opener provisions to make substantive changes in the provisions which protect these vital interests except in the most adverse circumstances.

ARTICLE I - PARTIES TO THE AGREEMENT

This basic Agreement and any supplementary agreements as may be agreed upon and executed hereunder from time to time together constitute a Labor-Management Agreement by and between the International Broadcasting Bureau, Voice of America, hereinafter referred to as the Agency, and the American Federation of State, County and Municipal Employees, Local 1418, AFL-CIO, hereinafter referred to as the Union. This Agreement supersedes any and all prior agreements between the parties.

ARTICLE II - RECOGNITION AND UNIT DESCRIPTION

Section 1. The Agency recognizes the Union as the exclusive representative under the authority granted in Title VII of the 1978 Civil Service Reform Act; Section 510 of the Agency Manual of Operations and Administration; and the Letter of Exclusive Recognition dated June 4, 1965, from the Agency to the Union, as amended by the Federal Labor Relations Authority in Case No. WA-RP-00014, dated June 14, 2001, for all employees in the unit as described in Section 2 of this Article.

Section 2. The unit to which this Agreement is applicable consists of all non-supervisory Radio Broadcast Technicians employed by the Broadcasting Board of Governors, International Broadcasting Bureau, Voice of America, in the Master Control, Traffic, Studio, Central Recording, and Technical Support Branches of the Broadcast Operations Division, and assigned to the New York News Bureau, excluding management officials, supervisors, and employees described in 5 USC 7112 (b) (2), (3), (4), (6) and (7).

ARTICLE III - PURPOSES, POLICIES AND DEFINITIONS.

Section 1. It is the intent and purpose of the Parties to promote and improve the efficient and harmonious administration of the Federal service and the well-being of employees within the meaning of Title VII of The 1978 Civil Service Reform Act, to establish a basic understanding relative to personnel policies and practices and matters affecting working conditions that are within the administrative authority of the Agency, and to provide a means for amicable discussion and adjustment of matters of mutual interest to the parties. In order to provide uniform treatment of all its employees, the Agency will follow the Federal Personnel regulations, provisions of the Agency Manual of Operations and Administration (MOA), along with any guidance issued by the Office of Personnel Management (OPM) in all matters regarding employees in the unit, except for the process of setting basic hourly pay rates.

Section 2. The following definitions of terms used in this Agreement shall apply:

a. Amendments: Modifications of the basic Agreement to add, delete, or change portions, sections or articles of the Agreement.

b. Authority: The Federal Labor Relations Authority.

c. Consultation/Impact Bargaining: The process whereby the Agency seeks and considers the Union's views before implementing changes in personnel policies or regulations which are not negotiable. Before changing such policies and regulations the Agency will provide the Union adequate notice (norma1ly 10 calendar days) and reasonable opportunity to request negotiations with the Agency on matters relating to the impact and implementation of the changes on the bargaining unit.

d. Emergency: A situation where management is required to take unusual action which is not part of the normal routine.

e. Grievance: A request by an employee, the Union or the Agency for adjustment relative to a matter of concern or dissatisfaction, pursuant to the provisions of Article XIII of this Agreement.

f. Impasse: The inability of representatives of the Agency and the Union to

arrive at a mutually agreeable decision concerning negotiable matters through the negotiation process.

g. Negotiability Dispute: A disagreement between the parties as to the negotiability of an item.

h. Negotiation: Bargaining by representatives of the Agency and the Union on appropriate issues relating to terms of employment, working conditions, and personnel policies and practices, with a view of arriving at a formal agreement.

i. Policy: Personnel policies, practices and matters affecting working conditions.

j. Seniority: Each technician's length of service in the Broadcast Operations Division (or any other name or office symbol used in the past or in the future to designate this division) shall pertain only to time continuously served as a technician within the Division. The seniority system for Radio Broadcast Technicians in the New York News Bureau shall apply only to technicians assigned to New York.

k. Supplements: New agreements negotiated during the life of the basic Agreement which were not covered in the basic Agreement.

l. Mid-Contract Bargaining: Negotiations during the term of the basic Agreement over Union-proposed or management-initiated changes in conditions of work not covered by the basic Agreement.

m. Union Official and/or Union Representative: Any accredited National representative of the Union or the duly elected or appointed officials of the Local, including stewards.

ARTICLE IV - DURATION AND RENEWAL OF AGREEMENT

Section 1. Effective Date, Duration, and Renewal. The effective date of this Agreement is February 20, 2001, and will remain in effect for as long as AFSCME Local 1418 (or a successor union) is the certified exclusive representative of Radio Broadcast Technicians in the Voice of America (or a successor organization), under Title 5 USC Chapter 71 and Section 704 of the CSRA of 1978. The Parties agree that these Articles constitute the full and complete agreement between the Parties over the subjects covered and that these subjects are closed to all future bargaining, except under the Re-Opener provisions of this Agreement or by the mutual consent of the Parties.

Section 2. Re-Opener. This Agreement may be re-opened by either Party by giving the other Party written notice of its desire to amend, supplement, or re-negotiate the Agreement within sixty (60) calendar days after the two (2)-year anniversary of the effective date of this Agreement. This Agreement may also be re-opened by either Party by giving the other Party written notice of its desire to amend, supplement, or re-negotiate the Agreement within sixty (60) calendar days after the five (5)-year anniversary of the effective date of the Agreement or any subsequent anniversary of a multiple of five (5) years (e.g., ten (10) years, fifteen (15) years, or twenty (20) years after the effective date of this Agreement).

Section 3. Amendments. The Parties will amend this Agreement as required to reflect legal or regulatory changes. Amendments not mandated by legal or regulatory changes may be proposed by either party at any time but will only be negotiated and implemented if the other party agrees to do so.

Section 4. Authority of Agreement. To the extent this Agreement is in conflict with the provisions of Agency Regulations but is not inconsistent with any federal law or government-wide rule or regulation, the Agreement will take precedence.

ARTICLE V - PERSONNEL

A. BASIC PAY

Section 1. Rates of Basic Pay.

a. This schedule, effective January 28, 2001, applies to non-supervisory RBTs assigned to the Studio, Central Recording, and Technical Support Branches. The highest step shown (step 6) is the highest payable rate for RBTs assigned to the Technical Support Branch ONLY. The second-to-the-highest step shown (step 5) is the highest payable rate for RBTs assigned to the Studio or to the Central Recording Branch.

Title			Basic Hourly Rate
Professional Radio	WB-2	1	$ 19 .83
Broadcast Technician		2	$22.56
		3	$25.29
		4	$28.03
		5	$30.75
(Technical Support)		6	$31.67

b. This schedule, effective January 28, 2001, applies to non-supervisory Master RBTs assigned to the Master Control Branch.

Title			Basic Hourly Rate
Master Radio	WB-4	1	$27.13
Broadcast Technician		2	$28.66
		3	$30.17
		4	$31.67

Section 2. General Pay Increases. Beginning January 2002, RBTs shall receive annual general pay increases of the same percentage as that year's Net Increase in the Genera] Schedule pay for the RBT's duty location and the pay scales in effect in

the locality shall be increased accordingly. (Examples: In January 1999, the General Schedule increase was 3.10% but with the locality payment, the net increase was 3.68% for an employee in Washington, D.C. In January 2000, the General Schedule increase was 3.80% but with the locality payment, the net increase was 4.94% for an employee in Washington, D.C.) These increases will be effective at the beginning of the second full pay period in January.

Section 3. Terms.

a. Promotions to grade levels above WB-2 will be made through merit promotion and staffing procedures.

b. Promotion from one grade to another will result in a pay increase not less than a one-step increase in the employee's present grade, however, pay upon promotion will not exceed the highest payable rate specified in Section l of this Article for the position to which promoted.

c. An employee whose performance is determined to be fully successful or higher in accordance with Article V, F "Performance Appraisal" will receive a within-grade (step) increase after 52 weeks of service in his or her grade level, up to the highest payable rate for that employee as specified in Section I of this Article.

d. All other financial conditions/benefits of the wage board system apply.

B. SHIFT DIFFERENTIALS, OVERTIME PAY, AND SUNDAY PREMIUM PAY

Section 1. Shift Differentials. Shift differentials will remain as they are for the duration of this Agreement (7-1/2% for the evening shift and 10% for the overnight shift).

Section 2. Overtime.

a. A technician who works in excess of eight (8) hours a day or any time on his/her scheduled days off will be paid time and one half (1-1/2) computed on his/her base pay.

b. Overtime work will be assigned by management in no less than IS-minute increments.

c. Opportunities for overtime will be offered on a rotational basis to all technicians in their respective Branches and shifts.

d. A record of the total overtime worked by each technician will be kept by management. Each technician must complete his/her time and attendance sheet daily.

e. If a technician is contacted for overtime work in the proper order from the overtime roster and that technician turns down the overtime offered, the opportunity will constitute his/her rightful tum and will be recorded by the supervisor. It should be noted that management has the right to assign an employee to work overtime if, in management's view, circumstances warrant such action. However, under normal circumstances an employee will not be required to work overtime until a reasonable effort has been made to find a volunteer for the overtime. If a technician turns down overtime offered two days before or two days after a vacation week, the opportunity wi11 not be recorded on the OT roster.

f. When there are no technicians available for overtime in a particular Branch, management will offer the overtime on a rotational basis to employees of another Branch.

g. The overtime list will be zeroed annually at the beginning of the calendar year.

h. When a technician is called in to work on his/her day off, management will not schedule a lunch period unless the overtime is in excess of six hours.

i. For the purposes of computing overtime, an administrative day begins at the time the employee begins his/her regularly scheduled tour of duty and normally ends 24 hours later at which time the next administrative day would begin. However, if another tour of duty begins prior to or after the end of a 24-hour period, the administrative day would end at the beginning of the next tour ofduty.

For Example: Employee works Sunday - Thursday 8 a.m. to 4:30 p.m. with 30 minutes for lunch. Days off Friday and Saturday. Begins next tour on Sunday at 6 a.m. 24-hour administrative day Sunday 8 a.m. to Monday 8 a.m. to Tuesday 8 a.m. etc. Days off administrative days Friday 8 a.m. to Saturday 8 a.m. and Saturday 8 a.m. to Sunday 6 a.m.

Section 3. Sunday Premium Pay. AFSCME-represented RBTs will receive Sunday Premium Pay in the same amount and under the same provisions as that authorized Federal Wage System employees under 5 CFR Part 532.

C. OTHERPAY.

In addition to other pay provisions of this Agreement, the Agency agrees to pay the following amounts to each bargaining unit RBT who is on the Agency's rolls at the time each payment is made:

a. $1300 (gross) no later than the end of the fourth full pay period following ratification of this Agreement;

b. $1500 (gross) on or before September 30, 2001; and

c. $1500 (gross) on or before January 31, 2002.

D. PROMOTIONS

All aspects regarding the promotion of unit employees, including temporary Promotions/Assignment Pay (an employee will be given a temporary promotion if the assignment to higher level work is for more than 30 consecutive calendar days and the employee is eligible for promotion), will be governed by the provisions generally applicable to staffing of bargaining unit positions in the Agency. The Agency will provide the Union the opportunity to negotiate prior to making any changes in these provisions which impact on employees in the unit.

E. JOB DESCRIPTIONS

Section 1. Management is responsible for assigning duties and responsibilities. Each employee is entitled to a complete and accurate description of the duties of the job. Minor duties and responsibilities that fall within the qualifications and regular field of work need not be described in the position description.

Section 2. Whenever action is proposed to modify the job description of any position in the unit, the views of the Union shall be requested and given serious consideration. The proposed job description will be submitted to the Union President or his/her designee. The Union must submit its views within IO calendar days of receipt of the proposed job description.

F. PERFORMANCE EVALUATION

Section 1. Regulations. The complete regulations detailing the Agency's Performance Appraisal system are contained in MOA V-A 450. Any future amendments pertaining to unit employees will be made only after negotiation with the Union in

accordance with Title VII of the CSRA. For purposes of emphasis, Sections 2-7 below repeat, in brief, the major aspects of the appraisal system.

Section 2. Objectives.

a. To enhance employee performance and provide a just, equitable, and meaningful system for judging performance for the purposes of promotion, compensation, awards and other recognition, assignments, training, and retention.

b. To provide for the accurate evaluation of employee performance on the basis of criteria which are directly related to the employee's position and are fully identified for the employee.

c. To ensure that employees understand and participate in the formulation of Performance Requirements, Critical Elements, and Performance Standards at the beginning of each rating period, and that their performance is reviewed and discussed with them periodically during the period by their supervisors.

d. To ensure that employees are treated fairly and equitably in all aspects of the evaluation process and to ensure their right to Union representation at every stage.

Section 3. Definitions.

a. Performance Requirement: a continuing responsibility or special objective identified on the performance appraisal form which the employee is assigned to achieve during the rating period.

b. Critical Requirement (Element): a performance requirement of the employee's job that is of sufficient importance that unsuccessful performance would result in unsuccessful performance in the position, and may be the basis for reduction in grade, removal, and other corrective action without regard to performance on other components of the job.

c. Performance Standard: the explicit measure, quantitative and/or qualitative, established by management for a level of achievement (outstanding, highly successful, fully successful, minimally successful, unsuccessful) for a performance requirement/critical element.

d. Rater: the Rater will normally be the employee's direct first-line supervisor. In cases where an employee may have more than one

supervisor due to shift work or for any other reason, the supervisor who has the most frequent observation of the employee will be the Rater, but prior to writing the employee's appraisal he/she will solicit input from all other supervisors who have directly supervised the employee during the rating period.

Section 4. The Appraisal Process.

a. The Agency and the Union share the view that the Performance Requirements, Critical Elements, and Performance Standards of the employees with identical position descriptions within the various Branches of the Division should be as uniform as possible. To this end, at the request of either party, prior to the beginning of each rating period the Agency and the Union will meet and discuss Performance Requirements, Critical Elements, and Performance Standards for all employees with an eye toward the preparation of these factors which can apply to all employees on the same position description within each Branch as well as any that might apply to employees across Branch lines. These discussions will not be negotiations per se, but will be a mutual effort by the parties to arrive at the most appropriate Requirements, Elements and Standards. If a disagreement between the parties cannot be resolved, the views of management must prevail.

These factors will provide the basis for the individual supervisor--employee discussions described in paragraph b, below, and will normally be the Performance Requirements, Critical Elements, and Performance Standards for each employee in a Branch unless the supervisor and employee agree that the employee's duties are so unique or unusual that different or additional factors are warranted.

b. Normally, within 30 days after the start of the rating period the employee and his or her Rater will formulate jointly Performance Requirements, Critical Elements, and Performance Standards for the employee's position. The employee's participation in this process is to be meaningful and his or her views considered seriously, but in the event of a disagreement the Rater's views must prevail.

c. Any employee or group of employees may request that a Union representative be present at any meeting to discuss the establishment or modification of Performance Requirements, Critical Elements, and Performance Standards or the evaluation of performance. Upon request, the supervisor must provide the employee(s) three working days? advance notice of the time and place of the meeting. When the supervisor intends

to meet with five or more employees in a group to discuss these matters, the supervisor is responsible for notifying the Union steward at least three days in advance of the time and place of the meeting.

d. Performance requirements, critical elements, and performance standards must be job-related and consistent with the employee's grade and the duties and responsibilities covered in the employee's position description. If the duties and responsibilities are inconsistent with the position description, the rater should see that appropriate action is taken to resolve the inconsistency either by revising the position description or by reconsidering the performance requirements .

e. A minimum of two critical performance requirements must be established for each position. Five levels of performance standards -- outstanding, highly successful, fully successful, minimally successful, and unsuccessful -- may be identified for each performance requirement/critical element, but only a standard for fully successful performance is required.

f. Performance requirements and standards for employees in the same work unit and in identical or substantially similar positions and grades shall be reasonably consistent.

g. Performance standards state how well each responsibility needs to be carried out at a level of evaluation and provide a basis for accurate, specific, meaningful and, to the extent possible, objective measurement of performance against job requirements. Each standard should be stated simply and clearly and should enable both supervisor and employee to know what is expected and to determine whether this expectation has been met. Standards should also be realistic, reasonable, within the range of the position's responsibilities and authority, and attainable within available resources.

h. The rated employee must be provided by the rater with a copy of the performance requirements/critical elements and performance standards for his/her position when established at the beginning of the rating period and as may be modified subsequently.

Section 5. Periodic Review.

a. The Rater and Rated Employee are required to discuss the employee's performance at least once midway during the rating cycle, as well as at the end of the rating year, and are urged to do so more frequently. To ensure a

Rater's familiarity with each employee's work and to promote such discussions, Raters are expected to physically observe each employee's on the job performance at least once each month during the rating period. These observation periods may be as brief as ten minutes and should provide an opportunity for either party to discuss the employee's performance and any job-related problems he/she may be having. No advance notice need be given for these observation periods.

b. The procedures for employee participation in the initial establishment of performance requirements, critical elements and performance standards must also be followed for any modification of these factors during the rating period.

Section 6. Written Appraisal.

a. Within 30 days after the end of the rating period the rating officer will initiate the appraisal process by soliciting the employee's comments on his/her performance during the rating cycle. The rating officer and the employee should discuss the employee's accomplishments and deficiencies for each of the performance requirements and its standards. After this discussion the rating officer prepares and submits the rating of record for higher level review and approval. Following receipt of the higher-level approval, the rating officer must discuss the completed appraisal with the rated employee who may add his/her comments in the rated employee's section of the appraisal form. The appraisal is then forwarded to the reviewing officer for his or her comments and signature. Neither the summary rating nor ratings on individual requirements may ~~be communicated to the employee before higher level review is received.~~

b. The reviewing officer must indicate concurrence or non-concurrence with the overall summary rating of record assigned by the rating officer. If the reviewing officer does not concur with the overall summary rating of record, the reviewer may assign a different final rating of record. If the reviewing officer overrides the overall summary rating of the rating officer, the reviewer must indicate specifically those sections of the rating with which he or she does not agree with the rating officer and state the specific reasons why.

c. The employee is encouraged to discuss his/her performance and the rating frankly with the rater and the reviewing officer and to advise them of any circumstances which the employee believes should be considered in appraising performance.

d. There may not be any comments in the appraisal report on any of the following areas: race; color; religion; sex (except for titles of address, first names or personal pronouns); national origin; age; political affiliation; marital status; references to spouse or family; mention of a medical problem, such as physical handicap, alcoholism or drug abuse; mention of initiation of, involvement in, or participation in grievance or EEO procedures except when an appropriate authority has determined that an employee has committed a discriminatory action; comments on an employee's membership in or activities on behalf of an employee organization; recommendations on reclassification of the rated employee's position to a higher grade; or reference to previous ratings or events or performance outside the rating period, except to note trends in performance that continued in the current period.

e. The Rated Employee is asked to sign all copies of the report to indicate that he/she discussed the report with the Rater and received a copy. The employee signature does not indicate agreement with the report, and the employee may rebut or appeal the rating regardless of whether he/she signs it. However, an employee's refusal to sign a rating has no effect on its status as an official document (i.e., it will still be placed in the employee's Personnel File and will be used for all the purpose specified for Appraisal Reports).

Section 7. Rebuttals and Grievances.

a. An employee who disagrees with his or her performance appraisal should discuss it first with the rater and/or reviewer. If they agree that a revision should be made in the appraisal, the appropriate changes must be made in all records. If the discussion with the rater and/or reviewer does not resolve the employee's objections, the employee's may include a rebuttal in the rated employee's objections, the employee may include a rebuttal in the rated employee's section of the Performance Appraisal form.

b. A grievance may be filed under the provisions of the negotiated procedures concerning a completed appraisal report on the grounds that the report is (1) technically deficient in that it was not prepared in accordance with these regulations, or (2) contains appraisal statements which are inaccurate or falsely prejudicial. If an employee becomes the subject of an of adverse action as a result of an unsuccessful appraisal report, he/she may also challenge the performance requirements, critical elements and performance standards identified for his/her position; but otherwise these matters are not grievable.

G. OFFICIAL PERSONNEL FILE

Section 1. The Agency agrees not to put any letters of commendation or reprimand into an employee's file without first notifying the employee.

Section 2. An employee may review his/her file at any time in the presence of a designated personnel official. If an employee feels there is information in his/her file which is inaccurate or misleading, he/she should notify the Office of Personnel in writing.

Section 3. All Agency employee files will be maintained and access allowed pursuant to the provisions of the Privacy and Freedom of Information Acts and MOA III 560.

H. EQUAL EMPLOYMENT OPPORTUNITY

Agency management and the Union will conform to all rules, regulations, policies and procedures attending the principles of Equal Employment Opportunity as promulgated by the Federal Government and administered by the Agency.

I. SAFETY AND HEALTH

Section 1. The Agency will continue to make efforts to provide and maintain safe and healthful working conditions in accordance with applicable laws and regulations. The Union will cooperate to this end and will encourage all employees to work in a safe manner. It is further recognized that each employee has an inherent responsibility for his or her own safety, to use common sense in this regard and to observe all safety rules, regulations and practices in the performance of his or her assigned duties. The Agency will periodically provide safety information to the workforce.

Section 2. The Agency and the Union agree to establish a VOA Safety and Health Committee consisting of one member from the Union, one member from management, and the VOA Safety and Health Officer who will be chairperson. Additional members of the Committee may be appointed by the chairperson, as appropriate. The Committee will meet on at least a quarterly basis.

Section 3. In the event working conditions are considered unsafe or unhealthful, the employee shall immediately notify his or her supervisor for appropriate action. If the supervisor cannot rectify the matter, he/she and/or the employee (or Union) will refer the matter to the VOA Safety and Health Officer. The Safety and Health Officer may involve the Safety and Health Committee on such problems, as he/she deems appropriate. An employee may object to performing work that will clearly

expose him or her to an imminent danger. Such objections must be made immediately to the supervisor on duty.

Section 4. If the unhealthful or unsafe conditions are not corrected within a reasonable time, the employee and/or the Union have the right to file a grievance in accordance with Article XIII of this Agreement. If the matter cannot be resolved at the grievance level, it may be referred to arbitration in accordance with Article XIV.

Section 5. Unfortunately, in some cases the unsafe or unhealthful conditions are beyond the administrative control of the Agency (i.e. conditions under the control of GSA). In such cases the VOA will make every reasonable effort to remedy the situations.

J. VACATIONS

Section I. Prime Time. Prime Time is defined as the period from Memorial Day week through Labor Day week, and the weeks of Easter. Thanksgiving; Christmas, and New Year's.

Section 2. Studio Branch. For Each 12 technicians in the Branch, one technician may select a given week during prime time. For example, if there are 60 technicians assigned to the Studio Branch, then up to five technicians may select a given week. For each technician assigned to the Branch over and above a number divisible by 12, management will make available an additional week for selection during prime time. For example, if there are 55 technicians assigned to the Branch, then up to four technicians may select a given week and management will identify and make available for selection seven additional weeks in prime time.

Section 3. Central Recording Branch. For Each 10 technicians in the Branch, one technician may select a given week during prime time. For example, if there are 30 technicians assigned to the Central Recording Branch, then up to three technicians may select a given week. For each technician assigned to the Branch over and above a number divisible by 10, management will make available an additional week for selection during prime time. For example, if there are 35 technicians assigned to the Branch, then up to three technicians may select a given week and management will identify and make available for selection five additional weeks in prime time.

Section 4. A total of one Master Control technician; and two Field and three Maintenance technicians (provided one Maintenance technician is on the midnight shift) may take vacations at any given time.

Section 5. Technicians in each Branch may select on the first round, in order of seniority, from among available vacation opportunities, up to four weeks of vacation, no more than two of which may be in prime time. Weeks picked may be consecutive or non-consecutive. When the first round is completed, a second round will be held in which any remaining available vacations may be picked in the same manner as in the first round.

Section 6.

a. At his or her turn, each technician will be afforded three calendar days in which to pick his or her vacation selection. Picks may be made in person. by phone, or in writing. The supervisor may extend the time allowed for the pick in circumstances of personal hardship or emergency.

b. If the pick is not made during the allotted time, the turn passes to the next senior technician. The passed over technician may then pick at any time thereafter during the round from among then-available vacations.

Section 7. During the last quarter of each calendar year, the parties will review vacation usage, work requirements, and staffing levels to determine if adjustments need to be made in the number of posted vacations. The parties will seek consensus on adjustments. It should be noted, however, that the number of vacations as noted above can be adjusted by management in accordance with work requirements.

Section 8. Sections 1 through 7 above shall not pertain to the New York News Bureau.

K. TRAINING AND TECHNOLOGY

BBG-IBB is committed to ensuring that RBTs remain current with new technology as it is introduced to the Agency. In accord with this commitment, representatives of Broadcast Operations Management and AFSCME Local 1418 agree to establish a joint Training and Technology committee which will meet periodically to assess RBT and organizational training and technological needs and to plan the training and assignments necessary to maintain RBT technological currency. In addition, the committee shall be a forum to discuss the appropriate technology BBG-IBB should consider utilizing to meet its mission.

L. WORK JURISDICTION

Section 1. Upon the effective date of this Agreement, and for so long as this Agreement is in effect, the Agency is free to assign any work in radio, television, or any other current or future work within the BBG-IBB (or any successor agency) to AFSCME-represented RBTs or to other employees. AFSCME Local 1418 will have no exclusive work jurisdiction. However, before making any new

assignments of work to unit RBTs of a type not previously performed by AFSCME-represented RBTs, the Agency shall provide the Union with an opportunity to discuss the substance of the change and as appropriate, negotiate the impact and implementation of the change.

Section 2. No AFSCME-represented RBT employed in that capacity on a career or career-conditional basis on the effective date of this Agreement will thereafter be separated from BBG-IBB for the term of this Agreement, except by resignation, retirement, or death. This provision does not apply, however, to removals of RBTs for cause, e.g., under 5 CFR Part 752 governing Adverse Actions or under 5 CFR Part 432 governing Performance Based Actions. For the term of this Agreement, the Agency will not move encumbered non-supervisory RBT positions out of the bargaining unit.

Section 3. The above Section (Section 2) will cease to apply if the budget for VOA is reduced to a dollar amount equal to or less than 75% of the VOA Fiscal Year 2001 budget over the first five (5) years after the effective date of this Agreement (for example, if the FY 2006 VOA budget is 75% or less in dollars than the FY 2001 budget, Section 2 supra would cease to apply). Section 2 supra also would cease to apply if the budget for VOA is reduced to a dollar amount equal to or less than 75% of the VOA budget for any fiscal year after 2001 over any consecutive five (5)-year period (for example, if the FY 2010 VOA budget is 75% or less in dollars than the FY 2004 VOA budget, Section 2 supra would cease to apply).

Section 4. If the Agency invokes Section 3 supra to conduct a Reduction in Force under 5 CFR Part 351, the Parties agree to immediately reopen negotiations on the terms of this Agreement or a new collective bargaining agreement.

Section 5. BBG-IBB agrees not to involuntarily reassign any of the four (4) bargaining unit RBTs currently stationed in New York to duty locations outside the New York City commuting area. This provision applies only to the four (4) persons who occupy unit RBT positions in New York as of the date of this Agreement and in no way obligates the Agency to fill any vacant positions in New York or elsewhere when any of the New York positions become vacant. BBG-IBB also agrees not to involuntarily reassign the one (1) bargaining unit RBT currently stationed in Los Angeles to a duty location outside the Los Angeles commuting area. This provision applies only to the one (1) person who occupies a unit RBT position in Los Angeles as of the date of this Agreement and in no way obligates the Agency to fill any vacant positions in Los Angeles or elsewhere when the Los Angeles position becomes vacant.

If the Agency decides to close either the New York or Los Angeles Bureaus, or both Bureaus, any of the five (5) unit RBT covered by this provision and on the

rolls of the Agency at that time will be offered reassignment to equivalent positions in Washington, D.C. If such an employee declines the offer of reassignment, he/she will be involuntarily separated from the Agency without regard to any other provision of this Agreement.

Section 6. The Agency agrees that it will not assign non-unit employees to perform radio technical operations work within the physical confines of the main Central Recording area, the RBT work station for the English News Bubble, or the Radio Master Control room, nor will the Agency assign non-unit employees to perform radio maintenance work within the physical confines of the Technical Support Maintenance Shop area. The Agency also agrees that it will not assign non-unit employee to the work station for the audio control board in the Agency's radio studios, 1 through 19, or to studios 29 or 30. This provision does not in any way limit the assignment of RBT Foremen or other Broadcast Operations supervisory staff nor does it limit non-unit staff or contractors from performing training, testing, troubleshooting, repairs, and related functions in these areas.

Section 7. Not with standing any other provisions of this Article, the Agency further agrees that if a live air show currently broadcast out of studios 1 through 19, or 29 or 30, is relocated to be broadcast as a live air show from another VOA Studio, not one of studios 1 through 19, or 29 or 30 (a successor studio), in the Washington, D.C. area, then non-unit employee will not be assigned to the work station for the audio control board in the successor studio for that air show. A live air show is defined as a scheduled VOA program broadcast in real time, requiring more than one (1) person (i.e., a combination of broadcaster, producer, and technician, or broadcaster/producer and technician) which cannot otherwise be broadcast by only one (I) person. A live air show does not include a feed or any one (I)-person technical functions.

M. PUBLIC TRANSPORTATION BENEFIT

RBTs will be eligible to participate in the BBG-IBB Public Transportation Benefit Program on the same terms as other Agency employees.

ARTICLE VI - WORK SCHEDULES

A. SENIORITY

Section 1. The following seniority system normally shall apply to unit Radio Broadcast Technicians assigned to the Broadcast Operations Division commonly referred to as Recording, Studio, Technical Support (Maintenance and Field), and Master Control Branches. The seniority system for Radio Broadcast Technicians in the New York News Bureau shall apply only to technicians assigned there.

Section 2. The seniority rosters shall reflect each technician's length of service in the Broadcast Operations Division (or any other name or office symbol used in the past or in the future to designate this Division) and shall pertain only to time continuously served as a technician within the Division. The Agency will post a roster in each area and keep it current. A separate seniority roster will be maintained for each technician grade. The New York News Bureau will post a roster and keep it current, reflecting seniority of technicians assigned to New York in accordance with Article III, Section 2j.

Section 3. When a technician is reassigned from one Branch to another Branch within the Broadcast Operations Division, he/she shall retain his/her Broadcast Operation Division seniority standing based on his/her length of service with the Division. This rule does not apply to Master Control.

Section 4. For technicians leaving the Broadcast Operations Division voluntarily and subsequently returning, other than on a temporary duty assignment for the U.S. Government, Broadcast Operations Division seniority will begin on the return date and previous service will not apply.

There are two exceptions to this rule: 1) when a supervisor or other employee is returned involuntarily to technician status during the supervisory or other probationary period, and 2) when a supervisor or other employee returns voluntarily to the unit under highly unusual circumstances (such as a major medical problem) and the Union and management agree that the rule should be waived. In such cases, the returning employee's seniority earned prior to leaving the unit will be restored, but the time the employee was out of the unit will not be counted.

Section 5. The relative position of employees with the same EOD date shall be determined by calculating previous government service, civilian or military, if any.

B. SHIFT PICKS

Section 1. Shift picks by technicians in each Branch will occur twice annually in the Broadcast Operations Division with selections made according to seniority. Shift picks by New York News Bureau technicians will occur on April 30 and October 31 (or when required to meet the demands of the workload) with selections made according to seniority.

Section2. Special assignments such as the News Room Bubble will be posted for competitive filling. A combination of seniority and qualifications will be used in making selections.

Section 3. In the event a shift is vacated by a technician leaving a Branch or retiring, and if the shift is to be filled, there shall be a new pick within the Branch, starting from the point on the seniority roster vacated by the departing technician. If the shift cannot be filled from within the Branch, the shift will be offered to other Branches and shall be tilled on a seniority basis. In the event a shift is vacated by a technician leaving the New York News Bureau or retiring, and if the shift is to be filled, there shall be a new pick, starting from the point on the seniority roster vacated by the departing technician.

Section 4. These procedures shall not alter management's right to assign work under 5 USC 7106.

C. REGULAR WORK WEEK AND DAYS OFF

Section 1. General.

a. A regular work week will consist of five (5) consecutive work days and two (2) consecutive days off with the following exceptions:

1. Vacation relief shifts which would create the necessity for a technician to work a split workweek.

2. Working overtime on a day off which would preclude a technician from having two (2) consecutive days off.

3. Shift changes which occur twice annually in the Broadcast Operations Division.

b. A technician's regularly scheduled days off will not be changed without a minimum of four (4) days notice.

c. A technician may be required to return to work with less than a twelve hour break but only in cases of unusual circumstances, and the Agency will make every effort to minimize these.

d. The technician's schedule for any day in the week may be changed no more than two (2) hours in either direction and only with twenty-four (24) hours advance notice. The exception would be the case in which the employee and the supervisor mutually agree to do otherwise.

e. Whenever practical, efforts will be made to avoid starting shifts between the hours of 1:00 a.m. and 5:00 a.m.

f. A technician shall be informed of any changes in his/her time sheet entry but it may not be held for his/her signature if the deadline for submission to the payroll office occurs, and delay might prevent his/her being paid on time.

g. If a technician has a non-work related problem which affects his/her schedule, the Agency will, whenever practicable make efforts to resolve the schedule problems. This may involve the establishment of a temporary special schedule, if practical, or temporarily changing the shifts of others. Efforts will be made to avoid serious disruptions.

Section 2. Meal Period:

a. Each daily tour of duty must include a 30 minute meal period during which the employee will be excused from duty unless an exception has been granted. The meal period will be scheduled as near the middle of the workday as possible. The meal period will not be scheduled during the first and last two and three-fourths hours of the workday except in emergency situations or, in Master Control and Technical Support, as agreed between the supervisor and the technician.

b. Any shift which is in excess of 12 total hours will include an additional 30 minute meal period (non-paid) for said technician involved, unless waived by mutual consent of said technician and management supervisor.

c. The Agency agrees to make every reasonable effort to assure that the food vending machines are maintained in proper working order and that food supplies are maintained at adequate levels to include weekends, holidays, and periods of emergency.

ARTICLE VII - FACILITIES AND ADMINISTRATION

A. DUES WITHHOLDING

Section 1. Agreement to Withhold Union Dues. The Agency agrees that payroll deductions for the payment of union dues will be made from the pay of employees covered by this Agreement who are members in good standing of the Union, at no cost to the Union or the employee. In implementing the dues deduction program, the Agency and the Union will be governed by provisions of this section and section 7115 of Title VII of the Civil Service Reform Act.

Section 2. Supply of Forms. The Union will be responsible for the purchase and the distribution of Standard Form 1187 prescribed by the Comptroller General for the use of any eligible member who wishes to authorize the deduction of his/her dues. Standard Form 1188 will be available through the appropriate Administrative or Personnel Office for employees who wish to revoke the allotment.

Section 3. Requesting Dues Withholding. Standard Form 1187 may be completed at any time by a member in good standing of the Union certified by the Secretary/Treasurer of the Union, and forwarded to the Payroll Office. Dues will be withheld beginning with the first complete pay period following receipt of Standard Form 1187 in the Payroll Office.

Section 4. The amount of union dues to be deducted each biweekly pay period on behalf of the Union shall remain as originally certified to on such allotment forms by the Union Secretary/Treasurer until a change in the amount of such deduction is certified to by the, Secretary/ Treasurer of the Union and such certification of change is duly transmitted to the Payroll Office.

Section 5. Certifying Official for the Union. The Secretary/Treasurer of the Union is authorized to certify:

a. The amount of dues payable at the time;

b. The amount of dues payable when the Union changes its dues schedule;

c. On Standard Form 1187, the request for dues deduction by any present

member of the Union or by any individual who becomes a member at a later date.

Section 6. Union Members Not in Good Standing -- The Union will notify in writing the Payroll Office when a member ceases to be a member in good standing.

Section 7. Dues Withholding Fees and Accounts. The Agency will remit each biweekly pay period a check payable to the Secretary/Treasurer of the Union the net amount of dues withheld. The remittance check will be accompanied by a listing, in duplicate, of names and amounts withheld. With each check, the Agency will also furnish a separate list or lists of those names which have been dropped that payroll period because of:

a. Voluntary revocation (Standard Form **1188);**

b. Transfer out of payroll office or recognized bargaining unit (including separations);

c. Insufficient earnings (LWOP, etc.);

d. Notice from the Union that employee is no longer a member.

Section 8. Change in Amount of Dues. When the amount of regular dues changes, the Union will notify the Payroll Office and the revised amount will be withheld beginning with the pay period following receipt of the notice, or later date if requested by the Union. However, changes in amounts of allotments by reason of changes in the amount of union dues will not be made more frequently than once each twelve months.

Section 9. Revocation of Dues Withholding. An employee may revoke his/her allotment by filing an SF-1188 with the Payroll Offices. Such allotments may not be revoked for a period of one year after the allotment has begun. Thereafter, an employee may revoke his/her allotment effective the first full pay period after September 1 of each year, provided the SF-1188 is received before September 1 by the Payroll Office.

Section 10. Discontinuance of Dues Withholding. The Agency will discontinue paying an allotment for dues withholding when this Agreement ceases to be applicable to the employee, or the employee is suspended or expelled from membership in the Union.

Section 11. Automatic Termination of Dues Withholding. All allotments of union dues withholding will be automatically terminated in the event of loss of exclusive recognition.

Section 12. Nothing in this Agreement shall require an employee to become or remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions.

Section 13. The provisions of this Article shall continue in full force and effect for as long as the Union remains the certified representative for the employees involved. It may be amended or modified by the Agency and the Union from time to time by mutual agreement of the Agency and the Union as a may be required to appropriately reflect changes made in the regulations and directives pursuant to which it was negotiated.

B. INTERNAL UNION BUSINESS

Section 1. All internal Union business, such as soliciting members, collecting dues, electing officers, posting and distributing literature, and internal Union meetings will be conducted during the non-duty hours of the employees involved and in non-work areas.

Section 2. Employees in the unit selected to serve in a national capacity for AFSCME or elected to a national office of the Union will be granted leave without pay in accordance with Federal Government and Agency regulations.

Section 3. Administrative leave not normally to exceed sixteen (16) hours per year may be granted to three Union officials to attend AFSCME sponsored training when it is demonstrated by the Union that the training is of mutual benefit to the Agency and provided the employee can be spared from his or her assigned duties. Requests for such administrative leave should be addressed to the Chief, Labor and Employee Relations Division (M/PL).

C. NEW EMPLOYEES

Section 1. An AFSCME 1418 official may confer in non-work areas and during non-duty time with new employees in the unit assigned to his or her area of responsibility regarding the functions and activities of the Union and furnish such new employees with appropriate Union literature. The Union will be responsible for distributing copies of this Agreement to new employees in the unit.

Section 2.

AFSCME 1418 shall be advised of the schedule for orientation sessions for new Broadcasting employees who are in the bargaining unit and will be given an opportunity to have a representative attend those sessions. A listing of employees

for orientation showing their organizational element will be provided to the Union in advance of the sessions. Any AFSCME Local 1418 representative will be identified to employees in the bargaining unit.

D. FACILITIES

Section I. Facilities for Union.

a. Office Space. The Agency agrees to provide available office space in the VOA headquarters building and office furniture for use by officers of the Union.

b. Meeting Rooms. Upon request of the Union to the Chief, Labor and Employee Relations Division (M/PL), the Agency will provide space for Union meetings when available.

The Union shall be responsible for the suitable use and care of space that is made available to it

c. Use of Telephones. A telephone will be provided in the Union office space for use by the Union officers for official business only. Long distance (toll) calls will not be authorized under any circumstances.

d. Reproduction Facilities. The Agency agrees to allow the Union use of VOA copy facilities for the specific purpose of posting notices on Agency designated Union bulletin boards, and for copying materials to be forwarded to the Agency.

e. Bulletin Boards. The Agency agrees that the Union may post Union literature on existing bulletin boards designated for this use. The posted material may not violate established laws, rules, or regulations.

f. Copies of Agency Issuances. The Agency agrees to include the Union on the distribution list for copies of BBG-IBB issuances of personnel policies and regulations.

Section 2. Facilities for Employees.

a. Space for Dining. The Agency will continue to provide space as near the Stand-by Room as possible for dining and preparation of food for those employees who require it.

b. Lockers. Management will continue to provide lockers for technicians.

c. Protective Clothing. The Agency and the Union recognize that the updating of the Technical Operations Division will require work in areas of the building that by their nature are subject to more than normal amounts of dirt and debris. Therefore, the Agency agrees to supply technicians of the Technical Support Branch suitable clothing (coveralls, gloves, and protective safety glasses) appropriate to this type of work.

E. COPIES OF AGREEMENT

Section I. All costs for reproduction of this Agreement will be borne by the Agency.

Section 2. The Agency agrees to furnish the Union with an initial 200 copies of the Agreement.

Section 3. The Union agrees to distribute copies of the Agreement to all members of the exclusive unit.

ARTICLE VIII - MANAGEMENT RIGHTS

Section 1. Governing Regulations. Consistent with the provisions of Title VII of the 1978 Civil Service Reform Act, in the administration of all matters covered by this Agreement the parties and the employees will be governed by existing and future federal laws and government- wide rules and regulations including published Agency policies and regulations in existence at the time the Agreement is approved, and subsequently published Agency policies and regulations required by law or government-wide rules or regulations.

Section 2. Retained Management Rights. In accordance with section 7106 of Title VII of the 1978 Civil Service Reform Act, Agency management cannot negotiate with the Union nor yield its authority:

a. to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

b. in accordance with applicable laws --

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

(2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

(3) with respect to filling positions , to make selections for appointments from ---

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

(b) any other appropriate source and

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

Section 3. Discretionary Management Rights. If management elects to do so, it may enter into negotiations with the Union on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

Section 4. Nothing in this Article precludes management from negotiating with the Union on the procedures the Agency will observe in exercising its retained and discretionary rights, or from negotiating appropriate arrangements for employees adversely affected by the exercise of these rights.

Section 5. Non-Abridgement. The provisions of this Article shall not nullify or abridge the rights of employees or the Union to grieve or appeal the exercise of the management rights set forth in this Article through appropriate channels.

ARTICLE IX - UNION RIGHTS AND REPRESENTATION

A. UNIONRIGHTS

Section 1. The Agency recognizes AFSCME Local 1418 as the exclusive representative of all employees in the unit and the Union's entitlement to act for and negotiate Agreements covering all employees in the unit. The Union is responsible for representing the interests of all employees in the unit without discrimination and without regard to Union membership. The Union shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

Section 2. The Agency agrees to respect the rights of the Union and will give the Union the opportunity to negotiate on all negotiable issues, and on the impact and implementation of all non-negotiable issues, before implementing any changes in personnel policies, practices and matters affecting working conditions.

Section 3. The Agency will recognize the duly elected local officers and officials/representatives designated by the Union including stewards. The Union agrees to provide the Agency in writing and on a current basis, a list of the Union's officers and officials, including the stewards' areas of representation. The Union may post the list of local officers, officials and stewards on the bulletin boards referenced in Article VII, D, Section 1.e. of the Agreement.

Section 4. Management representatives of the Agency agree to meet with representatives of the AFSCME National office on an appointment basis.

Section 5. If the Union President shift is not Monday-Friday during the day shift, he/she shall designate an alternate to represent the Union during this schedule with two conditions:

1. management will attempt to contact the Union President (including calling him/her at home) for major matters; and

2. commitments made by the alternate representative will be subject to review by the President and may be amended by the President within 48 hours for good cause.

B. STEWARDS

The Union will designate one steward for each Branch of the Broadcast Operations Division to represent employees regarding personnel policies and practices and matters affecting working conditions. The Union also will designate one steward for the New York News Bureau technicians, to represent employees.

C. OFFICIAL TIME

Section 1. For Representational and Negotiation Purposes.

a. Union officers and stewards shall be permitted reasonable time during working hours without loss of leave of pay to effectively represent employees in the unit. Official time will be granted, as required, for purposes of negotiation; the number of Union representatives authorized official time shall not exceed the number of management representatives.

b. Reasonable time for consultation discussions or meetings shall be granted to effectively resolve a matter of concern, or review and/or evaluate a proposed policy change and formulate a recommendation.

c. Reasonable time for receiving, investigating, preparing and presenting a complaint, grievance or appeal will also be granted, but must necessarily depend upon the facts and circumstances of each case -- e.g., the complexity of the supporting specifics, the volume of the supporting evidence, availability of documents and witnesses, and similar considerations. In consonance with the above, Union representatives shall guard against using official time unnecessarily.

d. Reasonable time for a Union observer of a complaint, grievance or appeal action shall be the time necessary to observe the proceedings to their conclusion.

Section 2. Procedure. The following procedure will be followed by all Union officers and stewards when using official time:

a. The representative will obtain his/her supervisor's permission to leave his/her assigned duties. Permission will normally be granted provided a determination is made that the operations of the Branch will not be affected adversely by the representative's absence. If permission is not granted, management will tell the employee when there is an acceptable time.

b. Before contacting another employee of the unit during duty time, the representative will obtain permission from that employee's supervisor.

c. The representative will immediately advise the supervisor at the time of return to work.

d. The representative will record the absence on time sheets provided by the supervisor.

D. RESTRAINT

The Agency agrees that there will be no restraint, coercion or discrimination against any union official because of the performance of duties in consonance with this Agreement, laws and Executive Orders, directives, etc., pertaining to employee rights and labor-management relations.

ARTICLE X - RIGHTS OF EMPLOYEES

Section 1. Employees have the right, freely and without fear of penalty or reprisal, to organize or join, or to refrain from joining any lawful employee organization. No interference, restraint, coercion, or discrimination shall be practiced within the unit by the Agency or the employee representative to encourage or discourage membership in any employee organization.

Section 2. The Agency shall not discipline or otherwise discriminate against any employee because he or she has filed a grievance, testified at a grievance hearing, or because the employee has filed a complaint or given testimony under any part of the 1978 Civil Service Reform Act.

Section 3. This Agreement does not prevent any employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate Agency officials in accordance with applicable laws, regulations, or Agency policies.

Section 4. The Agency affirms the right of employees to conduct their private lives as they see fit and to engage in outside activities of their own choosing, so long as their actions are not in violation of applicable laws, rules, or regulations. Within this context, the Agency will not coerce or in any manner require employees to invest their money, donate to charity, or participate in any undertaking not related to their performance of official duties.

ARTICLE XI - NEGOTIATION AND IMPASSES

Section 1. Negotiation of Personnel Matters. Consistent with the provisions of Title VII of the 1978 Civil Service Reform Act, the Agency and the Union agree to meet at reasonable times and negotiate in good faith with respect to personnel policies, practices, and working conditions of employees in the unit, as may be appropriate under Federal laws, government-wide rules and regulations, and Agency rules and regulations for which a compelling need exists.

Section 2. Negotiations of Pay Matters. Those terms and conditions of employment and other employment benefits with respect to the Wage Board Broadcast Technicians in the unit to whom section 9 (b) of Public Law 92-392 applies, which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall continue to be negotiated in accordance with Title VII, Section 704, of the Civil Service Reform Act of 1978 and section 9 (b) of PL 92-392.

Section 3. Negotiation Impasses. When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

ARTICLE XII - DISCIPLINE, ADVERSE ACTIONS, AND ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

Section 1. General Provisions.

a. The regulations governing Discipline, Adverse Actions and Actions Based on Unacceptable Performance are contained in MOA VA-450 and 5 CAR 432 and 5 CAR 752. The procedures below apply to all non-probationary bargaining unit employees. The procedures governing the termination of probationary employees are contained in *5* CAR 315 however, should management decide to admonish, reprimand, suspend or take another action other than termination against a probationary employee, the procedures outlined below will be utilized. Probationary employees may not appeal adverse actions to the MSPB.

b. The Agency shall determine when the need arises for disciplinary and adverse actions and shall carry out such actions in a prompt and timely manner. An employee will be subject to disciplinary or adverse actions only for just cause as will promote the efficiency of the Federal Service.

c. The parties recognize that discipline should be progressive in nature if it is to correct the conduct of an offending employee. It is understood, however, that progressive discipline need not follow any specific sequence of disciplinary actions and that major offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending employee. The least degree of discipline likely to correct the problem or misconduct shall normally be that taken.

d. Disciplinary action may be in addition to any penalty prescribed by law. If disciplinary or other remedial action is necessary, it will be taken and will be effected in accordance with this agreement, applicable laws and - government regulations.

Section 2. Employee Responsibilities. It is the responsibility of each employee to know and be aware of the provisions of government and agency regulations and policies concerning employee responsibilities and conduct. Employees who violate the

laws, rules, regulations or standards of conduct will be disciplined in accordance with the gravity and frequency of the offenses committed.

Section 3. Management Responsibilities. In taking disciplinary actions, the Agency shall give due regard to the principle that like penalties should be imposed for like offenses, but it is understood as well that equality of treatment does not require uniformity of penalties. Consequently, in taking disciplinary actions, the Agency will give due consideration to the existence of mitigating or aggravating circumstances, the grade or nature of the position occupied by the employee involved, the frequency and severity of the offense, and any other factors or circumstances bearing upon the incident or acts involved.

Section 4. Representation and Employee Rights During an Investigation.

a. The Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if: (1) the employee reasonably believes that the examination may result in disciplinary action against the employee and (2) the employee requests representation. Upon request, an employee is entitled to representation by an attorney or Union official for any grievable or appealable action taken under this article. If the employee chooses to utilize the negotiated grievance procedure (Article XID), he/she may:

I) represent himself or herself :
2) avail himself or herself of AFSCME representation or
3) utilize an alternative representative, such as an attorney, approved by the Union.

b. An employee who believes that he/she may be subject to criminal prosecution as the result of an investigation has the right to refuse to answer questions regarding his/her actions under the Fifth Amendment protection against self-incrimination.

Section 5. Official Time. An Employee is entitled to a reasonable amount of official time to prepare and present his/her position with regard to any proposed disciplinary action and is entitled to official time to be present at any meeting between management and the employee regarding the action.

Section 6. Disciplinary Actions. The disciplinary actions covered by the provisions of this section are oral and written admonishments, written reprimands, and suspensions of fourteen (14) calendar days or less.

a. Oral and Written Admonishments. Admonishments may be used when an employee's conduct is less than acceptable and it is probable that initial counseling or a letter of warning will result in improvement. An admonishment may be oral or written, and in either case is given to the employee by the immediate supervisor or by another manager. If the admonishment is in writing, a copy must be provided to the employee. Admonishments will not be filed in the employee's official Personnel Folder (OPF), but will be maintained by the supervisor (or other management official) and may be used as a history for future disciplinary actions. Admonishments are neither grievable nor appealable, and must be removed from the supervisor's file not more than one year from issuance if the employee's conduct has been satisfactory.

b. Letters of Reprimand. A reprimand is a written letter to an employee from his/her supervisor or another management official for conduct of such a serious nature that it cannot be condoned or tolerated. The letter of reprimand must contain full particulars of the matter for which the employee is being reprimanded and should clearly define the charges and reasons in detail. A copy of the reprimand is retained by the immediate supervisor or management official and a copy is filed in the employee's official Personnel Folder (OPF). The reprimand will stay in the OPF for one (1) to three (3) years depending on the nature of the offense. At the end of the three (3) years, the reprimand must be removed from the OPF and disposed of in accordance with record disposal requirements. An employee may request the removal of the reprimand from the OPF at any time after one (1) year, and such a request will be considered favorably if the employee's conduct has been satisfactory since the date of the reprimand. A letter of reprimand may be grieved under the provisions of Article XIII of this agreement.

c. Suspensions for Fourteen (14) Calendar Days or Less.

1. A suspension is effected for reasons to promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one (1)-year period or any other pattern of discourteous conduct) and when such action is determined to be appropriate to the offense.

2. An employee against whom a suspension is proposed is entitled to an advance written notice stating the specific reasons for the proposed action. The proposal shall contain other information appropriate to the circumstances of the action, e.g. (a) length of

proposed suspension, (b) the name of the Deciding Official, (c) the employee 's right to respond to the proposal orally and/or in writing and to submit any documentation in support of his/her position, (d) copies of documentation supporting the proposal or where such documentation may be reviewed and the amount of official time allowed to do so, (e) the employee's right to representation, (f) the time by which any answer must be submitted, and (g) the employee's duty status during the notice period . An employee who has received such an advance notice is entitled to ten (10) calendar days to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer. This time may be extended by the Deciding Official for good cause upon request of the employee. Such requests will not be denied arbitrarily. The Deciding Official or designee for the action will receive the employee 's oral or written answer.

3. The employee is entitled to a written decision at the earliest practicable date containing the specific reasons for the decision. In arriving at a decision the Deciding Official shall consider only the reasons specified in the advance notice and shall consider any answer of the employee and the employee's representative. The Deciding Official can effect the action proposed, a lesser disciplinary action or no action at all, as appropriate. The decision must be delivered at or before the time the action will be effective. If no disciplinary action is effected, no record of the proposal will be included in the official Personnel Folder.

4. Suspensions of 14 days or less may be grieved under Article XIII of this Agreement.

Section 7. Adverse Actions (Other than Removal and Reduction- in- Grade) for Unacceptable Performance:

a. The actions covered by the provisions of this article are removals (for conduct), suspensions for more than fourteen (14) calendar days, reduction-in-grade (for conduct), reduction-in-pay, and furloughs of thirty (30) calendar days or less as identified in *5* USC 7512.

b. The employee against whom an adverse action is proposed is entitled to thirty (30) calendar days advance written notice stating the specific reasons for the proposed action. The advance notice shall state the reasons for proposing the action. It will also describe (1) how the efficiency of the service is impacted by the misconduct, (2) the name of the Deciding

Official, (3) the employee's right to respond to the proposal orally and/or in writing and to submit documentation supporting his/her position, (4) copies of any documentation supporting the proposal or where such documentation may be reviewed and the amount of official me allowed to do so, (5) the employee's right to presentation, (6) the time by which any answer must be submitted, and (7) the employee's duty status during the notice period.

An employee who has received such an advance notice is titled to ten (10) calendar days to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer. This time may be extended by the Deciding Official for good cause upon request of the employee. Such requests will not be denied arbitrarily. The Deciding Official or designee for the action will receive the employee's oral or written answer.

c. The employee is entitled to a written decision within IO calendar days, circumstances permitting, which will contain specific reasons for the decision . In arriving at a decision the Deciding Official shall consider only the reasons specified in the advance notice and shall consider any answer of the employee and the employee's representative. The Deciding Official can effect the action proposed, a lesser disciplinary action or no action at all, as appropriate. The decision must be delivered at or before the time the action will be effective. If no disciplinary action is effected, no record of the proposal will be included in the official Personnel Folder.

d. An employee may appeal an adverse action under this section to the Merit Systems Protection Board {MSPB) within the time limits prescribed by the MSPB or may file a grievance under the negotiated grievance procedures in Article XIII, but not both. The employee will have made his/her selection of appeal routes when he/she files an appeal with the MSPB or files a grievance in writing under the negotiated grievance procedure.

Section 8. Actions Based Upon Unacceptable Performance.

a. The actions covered by the provisions of this article are reduction-in-grade and removal for unacceptable performance to be taken in concert with the Agency's performance appraisal system for non-SES, non-Merit Pay, GS and Wage System employees as prescribed in MOA V-A 450. Ifat any time during the rating period an employee's performance becomes unsatisfactory in one or more critical elements, the supervisor shall advise the employee in writing of his/her performance deficiencies and will provide the employee with a reasonable opportunity to improve his/her

performance before any recommendation for removal or demotion is initiated by the supervisor. (A reasonable opportunity to improve will be not less than 30 calendar days, and a longer period may well be warranted depending on the work circumstances.)

b. If after a reasonable opportunity to improve, performance in one or more critical elements is still unsatisfactory, the employee's supervisor will discuss with the employee his/her continuing unsatisfactory performance and will solicit the employee's explanation of any extenuating circumstances. Employees are entitled to representation during this discussion in accordance with MOA V-A 459.2.

c. An employee against whom an action under this section is being proposed is entitled to a thirty (30) calendar days advance written notice from the Proposing Official which identifies the specific instances of unacceptable performance and the critical elements involved in each, and notes the employee's efforts to improve his/her deficiencies.

d. The advance notice shall also contain other information appropriate to the circumstances of the action, e.g., (1) the name of the Deciding Official, (2) the employee's right to respond to the proposal orally and/or in writing and to submit any documentation in support of his/her position, (3) copies of documentation supporting the proposal or where such documentation may be reviewed and the amount of official time allowed to do so, (4) the employee's right to a representative, (5) the time by which any answer must be submitted, and 6) the employee's duty status during the notice period. An employee who has received such an advance notice is entitled to ten (10) calendar days to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer. This time may be extended by the Deciding Official for good cause upon request of the employee. Such requests will not be denied arbitrarily. The Deciding Official or designee for the action will receive the employee's oral and/or written answer.

e. The employee is entitled to a written decision within thirty (30) calendar days after the date of expiration of the notice period. A decision to effect a reduction-in-grade or removal may be based only on those instances of unacceptable performance by the employee which occurred during the one ())-year period ending on the date of the notice and which were identified in the proposal. In arriving at a decision the Deciding Official shall specify the instances of unacceptable performance and shall consider any answer of the employee and the employee's representative. The decision must be delivered at or before the time the action will be effective.

f. An employee may challenge a reduction in grade or removal under this article by appealing the action to the Merit Systems Protection Board (MSPB) within the time limits prescribed by the MSPB or may file a grievance under the negotiated grievance procedures in Article XIII, but not both. The employee will have made his/her selection of appeal routes when he/she files an appeal with the MSPB or files a grievance in writing under the negotiated grievance procedure.

Section 9. Exception to the Thirty (30)-Calendar Day Advance Notice Rule for Adverse Actions:

a. If there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be effected less than thirty (30) days from receipt of the advance written notice. The Agency may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within seven (7) calendar days. When the circumstances require immediate action, the Agency may place the employee in a non-duty status with pay for such time, not to exceed ten (10) calendar days, as is necessary to effect the action.

b. The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

c. The thirty (30)-calendar day advance written notice is not required for effecting a suspension during the notice period for a removal or an indefinite suspension when the circumstances are such that retention of the employee in an active duty status during the notice period may be injurious to the employee, his/her fellow workers, or the general public; may result in damage to government property; or because the nature of the employee's offense may reflect unfavorably on the public perception of the Federal Service. The Agency shalt include in the notice the reasons for not retaining the employee in an active duty status during the notice period of a removal or indefinite suspension. The Agency may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within seven (7) calendar days. When the circumstances require immediate action, the Agency may place the employee in a non-duty status with pay for such time, not to exceed ten (10) calendar days, as is necessary to effect the suspension.

ARTICLE XIII - NEGOTIATED GRIEVANCE PROCEDURE

Section 1. Common Goal. The Agency and the Union recognize the importance of settling disagreements and disputes promptly, fairly, and in an orderly manner. To this end, it is the purpose of this Article to provide a mutually acceptable process for the expeditious resolution of grievances at the lowest organizational level possible.

Section, 2 Scope.

a. A grievance may be filed under this procedure by any employee, a group of employees, the Union, or the Agency concerning conditions of employment subject to the control of the Agency and/or an alleged breach of this agreement. Grievances under this procedure shall include the following:

1. any matter of concern or dissatisfaction regarding the interpretation, application or violation of this agreement;

2. any claimed violation, misinterpretation, or misapplication of law, rule or regulation affecting conditions of employment;

3. complaints in which an employee has alleged that it is necessary to correct his/her official Performance Appraisal Reports to correct an error or injustice;

4. letters of reprimand and suspensions of fewer than fourteen (14} calendar days;

5. adverse actions and removals for conduct or performance; and

6. prohibited personnel practices.

b. Complaints regarding the following matters are specifically excluded from this negotiated procedure and must be pursued through appropriate alternate procedures :

1. alleged violations of the Hatch Act (5 USC, Chapter 73);

2. problems concerning retirement, life insurance, or health insurance;

3. suspension or removal for reasons of national security (5 USC 7532);

4. \any examination, certification or appointment;

5. the classification of any position which does not result in the reduction-in-grade-or-pay of an employee;

6. non-selection for an award or non-adoption of an employee suggestion;

7. non-selection under promotion procedures from a properly ranked and certified list of candidates for promotion or selection on the basis of alleged better qualifications;

8. filling of a position outside the bargaining unit;

9. admonishments;

10. termination of a probationary employee; and

11. equal employment opportunity complaints.

c. This procedure shall be the sole procedure available to the employees and the Union for resolving grievances within its scope. Questions that cannot be resolved by the parties as to whether a grievance is based on a matter subject to this procedure will be referred to an arbitrator for decision.

d. Actions based on unacceptable performance under the Performance Appraisal System covered under *5* USC 4303 and actions based on conduct including removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay and furloughs of thirty (30) days or less, covered under *5* USC 7512, may also be raised under statutory appellate procedures or the Negotiated Grievance Procedure but not both. The employee exercises that option at the time he/she files a notice of appeal under the applicable appellate procedures or timely files a formal written grievance, whichever comes first.

Section 3. Representation.

a. The Union has the exclusive right to represent employees in presenting grievances under this negotiated procedure. However, any employee or group of employees in the unit may represent themselves in such grievances and have them adjusted by the Agency, without the intervention of the Union, so long as the adjustment is not inconsistent with the terms of this Agreement and the Union has been given the opportunity to be present at

the adjustment and at any formal discussion between the grievant and the Agency in regard to the grievance .

b. Each employee has the right to choose his/her own representative in any grievance, appeal or complaint pursued under a procedure other than this negotiated procedure.

c. In exercising their rights to present any grievances, appeals or complaints, employees and their representatives will be unimpeded and free of restraint, coercion, discrimination, or reprisal by the Agency or the Union.

Section 4. Procedure.

a. lnformal Procedure. This step is not mandatory but is encouraged. Before an employee files a formal grievance, he or she should discuss his complaint with his or her supervisor or with the lowest level management official with authority to resolve the complaint. If this discussion proves unsatisfactory or if the grievant receives no oral response from the supervisor within five (5) calendar days after the discussion the grievant may proceed to the first step of the formal grievance procedure.

b. Step 1. Within fifteen (15) calendar days from the date of the incident that gave rise to the grievance, or from the date the employee or the Union became aware of the incident, the grievant must present the grievance in writing to the Operations Manager of the Branch to which he or she is assigned. The Operations Manager will give the grievant a written decision within ten (10) calendar days after receipt of the grievance.

The step 1 grievance should include such information as the name, position title, grade, and organization of the grievant(s); the interpretation, application, or violation of the Labor-Management Agreement Article(s), Agency directives, etc., involved in the grievance; the nature of the grievance, e.g., a description of the occurrence or condition or the way in which the Agreement or activity policy has been interpreted, applied, or violated which gives rise to the grievance; and the name of the responsible official, if known.

c. Step 2. If the Step 1 decision is unacceptable, within ten (10) calendar days after receipt of the decision the grievant may forward his/her grievance (with the Operations Manager's written decision attached) to the Chief of the Division to which he or she is assigned, for consideration. The Chief, or his/her designee, will give the grievant his/her written decision within fifteen (15) calendar days from receipt of the grievance.

d. Step 3. If the grievant is dissatisfied with the Step 2 decision, he or she may, within fifteen (15) calendar days after receipt of the decision, submit his/her grievance, with all appropriate documents attached, to the Director of Personnel (M/P) or his/her designee for Final Agency Review. The Director of Personnel (or designee) will give the grievant his/her decision within thirty (30) calendar days from receipt of the grievance.

e Step 4. If the grievant is dissatisfied with the decision reached in Step 3, he/she may request the Union to refer the grievance to arbitration in accordance with the provisions of Article XIV of this Agreement. The Union is under no obligation to refer a grievance to arbitration, and a grievance may be withdrawn by the grievant or the Union at any time prior to or during the arbitration process.

Section 5. Union-Agency Institutional Grievances.

a. Discussion. Prior to filing an institutional grievance (a grievance over a matter of general application to the unit or over a violation of the institutional rights and responsibilities of the parties), the Agency and Union will discuss the matter and attempt to resolve it informally. The Union President and the Chief, Labor and Employee Relations Division (M/PL), or their designees, will make themselves available for such discussions within ten (10) calendar days after notice by the other party of a complaint and a request for discussions. (Institutional grievances must be filed within thirty (30) calendar days after the incident giving rise to the grievance. For the purpose of this time limit, the initiation of the discussion noted above will be considered as filing.)

b. Final Decision. lf the grievance is not resolved within thirty (30) calendar days after the discussions described in Section 5a, the moving party may file a formal written grievance with the Director of Personnel (M/P), or the Union President (Executive Committee), as appropriate. The Director of Personnel or the Union President (Executive Committee) will render a final written decision within thirty (30) calendar days after receipt.

c. Referral to Arbitration. If the moving party is not satisfied with the final decision in Section 5b, the grievance may be referred to arbitration under the provisions of Article XIV, Arbitration.

Section 6. Extension of Time Limits. Any time limit in this Article may be extended by mutual consent of the parties.

ARTICLE XIV - ARBITRATION

Section 1. Right to Arbitration. If the decision on a grievance processed under the negotiated grievance procedure is not satisfactory, the Union, either as grievant or as representative of the employee grievant(s), may refer the issue to arbitration. A grievance may be referred to arbitration only by the Agency or Union. A Union request to refer an issue to arbitration must be in writing, signed by the Union President or his or her designee, and submitted to the Director, Office of Personnel within ten (10) calendar days from receipt of the Final Agency Review Decision (Step 3 of the negotiated procedure). An Agency request for arbitration will be signed by the Director, Office of Personnel, or his or her designee and will be submitted to the Union President.

Section 2. Selection of Arbitrator. Within ten (JO) calendar days from the date of receipt of a valid arbitration request, the parties shall attempt to select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall immediately request the Federal Mediation and Conciliation Service to submit a list of seven (7) impartial persons qualified to act as arbitrators. A brief statement of the nature of the issues in dispute will accompany the request to enable the Service to submit the names of arbitrators qualified for the issues involved. The parties shall meet within five (5) calendar days after the receipt of such lists to select an arbitrator. If they cannot agree upon one of the listed persons, the Agency and the Union will each alternately strike one name from the list until only one arbitrator's name remains.
The remaining name shall be the only and duly selected arbitrator. A flip of the coin will determine which party strikes the first name.

Section 3. Fees and Expenses. The arbitrator's fees and expenses and all expenses in connection with an arbitration inquiry or hearing shall be borne equally by the parties. Travel and/or per diem costs shall not exceed those authorized by applicable Agency regulations.

Section 4. Arbitration Process.

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

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

2. "An Arbitrator inquiry" can be used when a formal hearing would serve no purpose. In this case, the arbitrator would make such inquiries as he or she deems necessary (e.g., inspecting work sites, taking statements, etc.)

3. A submission to "arbitration hearing" should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator.

b. The parties may mutually agree on a" stipulation of facts" to the arbitrator or the grievant may request an "inquiry" or "hearing".

c. The arbitration "hearing" or "inquiry" will be held on the Agency's premises during the regular day-shift work hours of the basic workweek.

d. An employee of the unit covered by this Agreement serving as the grievant's representative, the grievant, and any employee witnesses who are otherwise on duty shall be excused from duty as necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave. Employee participants on shift will be temporarily placed on the regular day-shift for the day(s) of the hearing on which they are involved.

Section 5. remedy will be final and binding on both parties.

Section 6. Arbitrator's Authority in Dispute over the Agreement. The arbitrator shall have the authority to interpret and define the explicit terms of this Agreement as necessary to render a decision as set forth. He or she have no authority to add or to modify any terms of this Agreement or published. Agency policy.

Section 7. Exceptions. Within thirty (30) days beginning on the date the award is served on the filing party, either party to arbitration may file an exception to an arbitrator's award in accordance with Federal Labor Relations Authority regulations. If no exception is filed, the arbitrator's decision and remedy will be effected immediately, or as soon as possible if extenuating circumstances exist.

Section 8. Arbitrator's Authority. The arbitrator's decision and proposed

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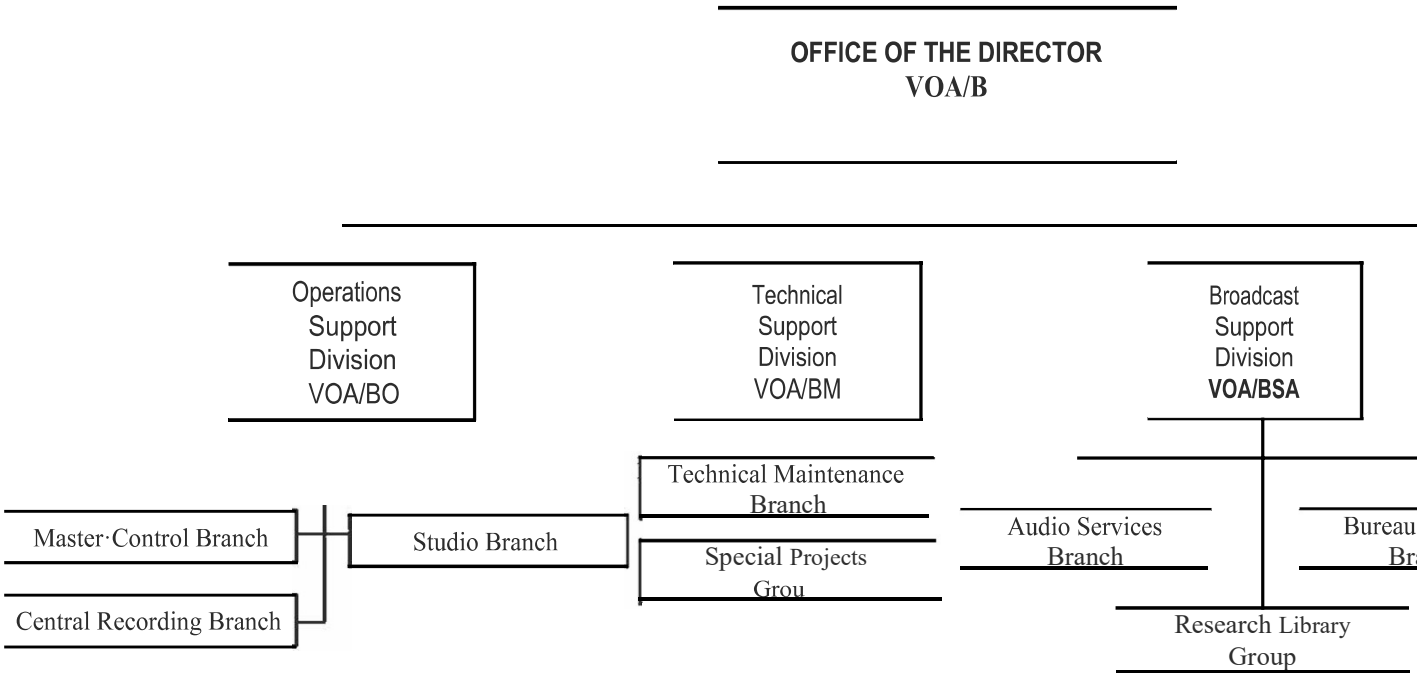

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IN WITNESS WHEREOF, the parties hereto have entered into this Agreement, which was effective February 20, 2001, and is memorialized this 20th day of September, 2001.

For the International Broadcasting Bureau:

Chief, Labor and Employee Relations Division

Thomas R. Morgan
Director, Broadcast Operations

For the American Federation of State, County and Municipal Employees, Local 1418, AFL-CIO:

President, AFSCME Local 1418

Joseph D. Thornlow
Vice President, AFSCME Local

Approved for the Director, IBB:

John S. Welch

Date

Approved for AFSCME, Local 1418:

Gary A. Marco

9-6-2011
Date