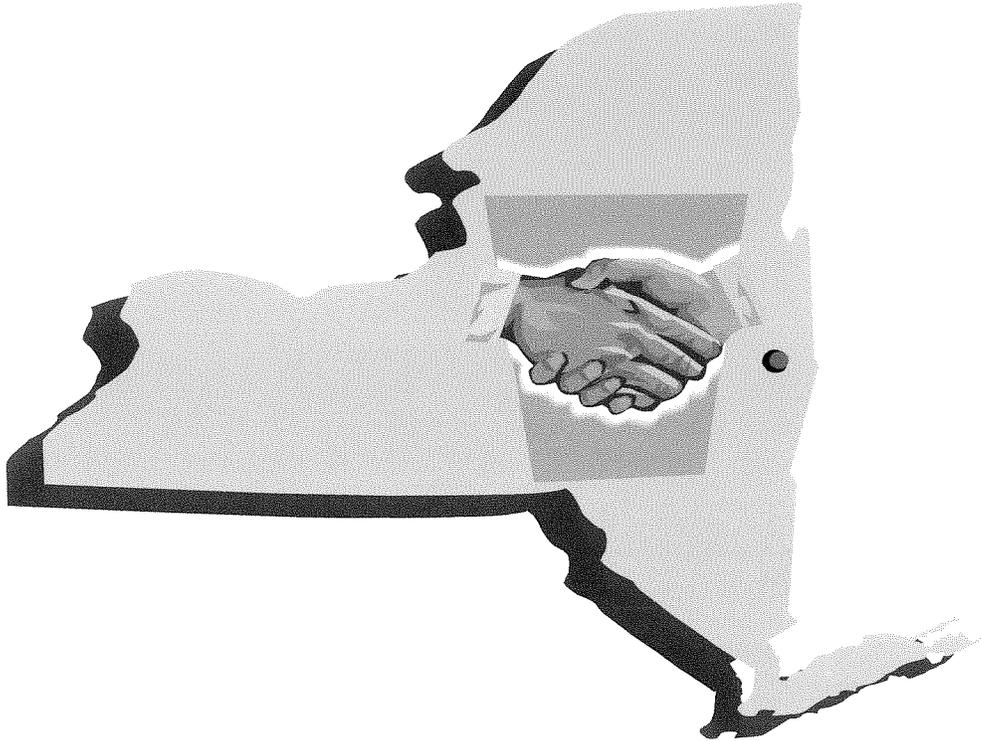




LABOR/MANAGEMENT AGREEMENT

**BETWEEN
THE
NEW YORK NATIONAL GUARD
AND
ASSOCIATION OF CIVILIAN TECHNICIANS**

2010 - 2013



PREAMBLE

Pursuant to the policy set forth in Public Law 95-454 and subject to currently applicable statutes and controlling regulations, the following Articles constitute an Agreement by and between The Adjutant General of New York, Division of Military and Naval Affairs (DMNA) and the State Chairman, Association of Civilian Technicians (ACT), Inc. New York.

DEFINITIONS

ACT: “ACT” means the Association of Civilian Technicians.

ACT Official and/or Representative: Any accredited National Representative of the Union, and the duly elected or appointed officials of the Chapters, including State Council, Stewards, committee members and others designated by the Union.

Agency: The” Agency” means an Executive agency, i.e. Division of Military and Naval Affairs.

Amendments: Modifications of the Basic Agreement by adding, deleting, or changing portions, sections, or articles of the Agreement.

Emergency: A temporary condition posing a threat to human life or property.

Employee: Unless otherwise specified, “Employee” means Title 32, Section 709e, Dual Status and Non-Dual Status personnel employed by the New York National Guard.

FLRA: The Federal Labor Relations Authority.

Grievance: Means any complaint

(A) By any employee concerning any matter relating to the employment of the employee;

(B) By any labor organization concerning any matter relating to the employment of any employee; or

(C) By any employee, labor organization, or agency concerning-

- (i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
- (ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

HRO: Federal Human Resource Office (MNHF).

Impasse: The inability of the representatives of the parties to arrive at a mutually agreeable decision concerning negotiable matters, through the collective bargaining process.

Management Official: An individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine or influence the policies of the agency.

Negotiation: Collective bargaining by representatives of the parties on appropriate issues relating to any condition of employment, personnel policy or practice, with the view of arriving at a formal agreement.

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

Supplements: Additional articles or memoranda negotiated by the parties on subjects not adequately covered by this Agreement, which are agreed to and therefore become a part of this agreement.

Technician: "Technician" means Title 32, Section 709e, Dual Status and Non-Dual Status personnel employed by the New York National Guard.

Table of Contents

<u>Article #</u>	<u>Title</u>	<u>Section #</u>	<u>Page #</u>
	Pre-Amble		1
	Definitions		2,3
	Table of Contents		4,5,6,7,8,9
1	Bargaining Unit Exclusive Recognition		10
	Bargaining Unit	1	10
	Supervisors Verification	2	10
2	Purpose		11
3	Equal Employment Opportunity		12
	EEO General	1	12
	EEO Program	2	12
	EEO Discriminatory Practices	3	12
	EEO Program Improvements	4	12
	EEO Representation	5	12
	Sexual Harassment	6	13
	Affirmative Action Plan	7	13
4	Employee Assistance Program (EAP)		14
	EAP Policy	1	14
	EAP Program Responsibilities	2	14
	EAP Personnel Actions	3	14
5	Management's Rights		15
	Management's Rights Preamble	1	15
	Management's Rights	2	15
6	Union Rights		16
	Union Representation	1	16
	Civilian Titles	2	16
	Union Representational Rights & Duties	3	16
	Smoking Policy	4	16
	Union Office and Equipment	5	16
	Legitimate Union Business	6	17
	LWOP for National Union Officers	7	18
7	Union Management Cooperation		18
	Consultation	1	18
	Consultation Definition	2	18
	DMNA Consultation	3	18
	Excluded Consultation Matters	4	18
	Employee Morale	5	19
	Federal Wage Grade Surveys	6	19
	Bargaining Unit Roster	7	19
	Manning Document	8	19
	HRO Newsletter	9	20
	Access to Regulations, Policies and Directives	10	20
	DMNA Publications	11	20
	New Hire Printout	12	20
	New Hire Pamphlets	13	20
	New Hire Training	14	21
	Use of Facilities	15	21

Table of Contents

<u>Article #</u>	<u>Title</u>	<u>Section #</u>	<u>Page #</u>
8	Union Representation		22
	Recognition of Stewards and Representatives	1	22
	ACT Representative List	2	22
	Receiving Complaints and Grievances	3	23
	Formal Discussions	4	23
	Official Time for Officials and Representatives	5	23
	ACT Sponsored Conventions, Conferences & Training	6	24
	Official Time	7	25
	Official Time State Chairman	8	26
9	Employee Rights		27
	Employee Rights	1	28
	Weingarten Rights	2	28
	Notification of Rights	3	28
	Wear of Uniform During Representation	4	28
	Supervisor Work Folders	5	28
	Adverse Actions	6	28
	Administrative Pay During Adverse Action	7	29
	Disciplinary Actions	8	29
	Technician Duties	9	29
	Position Description	10	29
	Uniforms	11	30
	Temporary Duty Assignments	12	30
	Travel Compensation	13	30
	Retirement Consultations	14	30
	Lockers	15	30
	Use of Personal Radios	16	30
	Official Personnel Folder Review	17	31
	Health Benefits Open Season	18	31
10	Dues Withholding		32
	Dues Withholding	1	32
	Standard Form (SF) 1187	2	32
	Union Dues Deduction	3	32
	Membership Termination	4	32
	Dues Time Periods	5	32
	Deduction Amount	6	33
	Changing Amount of Dues	7	33
	Remittance	8	33
	Members Separating From the Bargaining Unit	9	33
	Changes of Authorized ACT Officials- Written Authorization	10 11	33 33

Table of Contents

<u>Article #</u>	<u>Title</u>	<u>Section #</u>	<u>Page #</u>
11	Publicity		
	Bulletin Boards	1	34
	Posting on Bulletin Boards	2	34
	Maintaining Bulletin Boards	3	34
	Contents of Bulletin Board Postings	4	34
	Violations	5	34
	Contract Distribution	6	34
12	Hours of Work		35
	Definitions	1	35
	Lunch Period	2	35
	Cleanup Period	3	35
	Compensatory Time	4	35
	Overtime Work/Premium Pay	5	35
	Standby Duty/Recall Compensation	6	36,37
13	Leave		38
	Use of Scheduled & Unscheduled Annual Leave	1	38
	Sick Leave	2	38
	Sick Leave Abuse	3	38
	Family and Medical Leave Act	4	38
	Use of Scheduled & Unscheduled Compensatory Time	5	39
	Administrative Leave for Physicals	6	39
	Volunteer Fire Fighting/Ambulance Crew	7	39
	Time Spent in Charitable Activities	8	40
	Compensatory Time Off Religious Observances	9	40
	Blood Donations	10	40
	Physical Fitness Program	11	40
14	Holidays		41
	Holidays	1	41
	Holiday Pay	2	41
	Holiday Work	3	41

Table of Contents

<u>Article #</u>	<u>Title</u>	<u>Section #</u>	<u>Page #</u>
15	Inclement Weather		42
	Early Release Policy Climate/Emergencies		42,43
16	Environment		44
	Working in Extreme Temperatures	1	44
	Severe Weather Work Restrictions	2	44
	Exposure Time	3	44
	Facility Environment	4	44
17	Health and Safety		45
	Working Conditions General	1	45
	Emergencies	2	45
	Reporting Injuries/Illnesses	3	46
	Eating Areas	4	46
	Fire Protection	5	46
	Monthly Safety Inspection	6	47
	Assistant Driver	7	47
	Health and Safety Survey	8	47
	Access to Safety Publications	9	47
	Local Safety Committee	10	47
	State Safety Committee	11	48
	Cardiopulmonary Resuscitation (CPR)	12	48
	Occupational Health	13	48
	Administrative Dismissal	14	48
18	Hazardous Duty Pay(HDP)/Environmental Differential Pay (EDP)		49
	HDP/EDP Purpose	1	49
	HDP/EDP Procedures	2	49
	HDP/EDP Responsibilities	3	49
19	Merit Promotion		50
	Civilian Personnel Merit Promotion Plan	1	50
	Merit Promotion Exclusions	2	50
	Merit Promotion Pamphlet Changes	3	50
	Upward Mobility Plan	4	50
20	Position Description & Classification		51
	Technician Duties	1	51
	Position Descriptions	2	51
	Classification Appeals	3	51
	Position Description Changes	4	52
	Other Duties as Assigned	5	52

Table of Contents

<u>Article #</u>	<u>Title</u>	<u>Section #</u>	<u>Page #</u>
21	Technician Performance Appraisal		53
	Appraisal Program Evaluations	1	53
	Performance Standards	2	53
	Appraisal Definitions	3	53
	Appraisal Responsibilities	4	54,55
	Identification of Performance Standards	5	56
	Failure of a Critical Element	6	56
	Failure of a Critical Element While on Detail	7	57
	30 Day Notice	8	57
	Notification of Improved Performance	9	57
	State Review and Appeals Board	10	58
	Separation/Reduction in Grade Extensions	11	58
	Rationale for Critical Element Failure	12	58
	TPR 430 Availability	13	58
22	Incentive Awards		59
	Incentive Awards General	1	59
	Incentive Awards Program Objectives	2	59
	Incentive Awards Program Scope	3	59
	Incentive Awards Program Administration	4	60
	Incentive Awards Committee	5	60
23	Reduction in Force (RIF)		61
	RIF Application	1	61
	RIF Exceptions	2	61
	RIF Accomplishment	3	61
	DMNA Actions During a RIF	4	62
	RIF Retention Register	5	63
	RIF Placement Actions	6	63
	RIF Competitive Level	7	64
	RIF Tenure Groups	8	64
	RIF Order of Release	9	65
	RIF Notices	10	65
	RIF Appeals of Specific Notice	11	66
	Precluding a RIF	12	67
24	Detail of Technicians		68
	Temporary Assignments	1	68
	Detail Documentation	2	68
	Detail to a Higher Graded Position	3	68
25	Training		69
	Training Programs	1	69
	Training Procedures	2	69
	Scheduling of Training	3	69

Table of Contents

<u>Article #</u>	<u>Title</u>	<u>Section #</u>	<u>Page #</u>
26	Travel		70
	Travel and Transportation	1	70
	Travel Expense and Orders	2	70
	Travel Official Business	3	70
	Travel Compensation	4	70
	Travel Notification	5	70
	Fear of Flying	6	71
	Exception From Travel Assignment	7	71
	Government Travel Card (GTS) and Travel Advances	8	71,72
27	Grievance Procedures		73
	Grievance Purpose	1	73
	Grievances Exclusions	2	73
	Employee Grievance Rights	3	74
	Grievance Definitions	4	74
	Authority Decisions Improper Selection	5	74
	Grievances by ACT	6	74
	Grievance Representation	7	75
	Grievance Processing	8	75,76
	Grievance – ACT’s Right to Written Reply	9	76
	Grievances Concerning Negotiated Agreement	10	76
	Grievance Time Limits	11	76
28	Mediation		77
	Mediation Policy	1	77
	Mediation Procedures	2	77
29	Arbitration		78
	Arbitration Purpose	1	78
	Arbitration-Selection of Arbitrator	2	78
	Arbitration Fees and Expenses	3	78
	Arbitration Procedures	4	78
	Arbitration Exclusions	5	78
	Arbitration Exceptions to Award	6	78,79
	Arbitration Hearing Location	7	79
	Arbitrator Time Limits	8	79
30	Unfair Labor Practices		80,81
31	General		82
	Custodial Duties	1	82
	Flight Physical Failure	2	82
	Contracting	3	82
	Carpooling	4	82
32	Duration and Changes		83
	Agreements Duration/Negotiating New	1	83
	Agreements/Supplements	2	83
	Negotiability Determination	3	83
	Local Agreements	4	83
	Signature Page	5	84,85
	Index		86,91

ARTICLE 1

BARGAINING UNIT/EXCLUSIVE RECOGNITION

Section 1. Bargaining Unit

The Agency recognizes that the Labor Organization, ACT, is the exclusive representative of all technicians in the bargaining unit as follows:

INCLUDED: All Wage Grade (WG & WL) and General Schedule (GS) technicians employed by the agency.

EXCLUDED: Management Officials, Supervisors, Professional Technicians, and technicians described in 5 U.S.C., Section 7112(b). Any changes to the bargaining unit after the effective date of this agreement will be through mutual consent or through the Federal Labor Relations Authority.

Section 2. Supervisors Verification

Upon request by any union official, regarding a supervisory position, the HRO will verify that an individual identified as a supervisor is actually a supervisor or manager as defined by 5 U.S.C. 7103. The HRO will provide the appropriate documentation within three (3) working days upon request of the union official.

ARTICLE 2

PURPOSE

This agreement sets forth the respective roles and joint responsibilities of the parties; procedures and methods that govern the working relationships between the parties; and indicates the nature of the subject matter of proper mutual concern. The Agency and ACT agree that the parties have had a full and fair opportunity to bargain on all aspects of all the topics contained in this agreement and that this contract represents the parties full, final and complete agreement on all aspects of the topics included in the agreement for the life of the contract. It is intended that this Agreement will meet the following purposes:

- a. To ensure technician participation in the formulation of personnel policies and procedures.
- b. To provide for the highest degree of efficiency and responsibility in the accomplishment of the mission of the New York National Guard.
- c. To promote systematic technician/management cooperation and communication.
- d. To provide means for discussion and adjustment of matters of mutual interest.

ARTICLE 3

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Section 1. EEO General

1. DMNA and ACT agree to cooperate in providing equal employment opportunity for all persons, regardless of race, color, religion, national origin, sex, age, or handicapping condition, in the spirit inherent in Title VII of the Civil Rights Act of 1964.

2. If an individual feels that they have been discriminated against for their political affiliation or marital status, although not covered under the EEO, may file a complaint through the negotiated grievance procedures covered in this negotiated agreement.

Section 2. Equal Employment Opportunity Program

Any technician who believes they have been discriminated against in any matter because of; race, color, religion, national origin, gender (including sexual harassment), age, handicapping condition or retaliation may initially file a grievance and/or informal EEO complaint. After the informal process, the individual may pursue either the formal EEO complaint processing or the negotiated grievance procedure.

Section 3. EEO Discriminatory Practices

To further assure freedom from discriminatory practices, DMNA and ACT will give no credence to marital status, political affiliation, union-membership, or other non-merit factors in the processing of the personnel actions.

Section 4. EEO Program Improvements

The Agency agrees to consider and discuss recommendations and suggestions from ACT on matters relating to the EEO programs and program improvements.

Section 5. EEO Representation

Any technician who initiates an EEO complaint and/or grievance is entitled to representation (i.e., union, private attorney) at any time during the grievance/complaint process and/or resolution.

Section 6. Sexual Harassment

Any bargaining unit technician who feels they have been the victim of sexual harassment may file a complaint, within 45 days of the latest occurrence, in accordance with NGR (AR) 690-600/NGR (AF) 40-1614, Civilian Personnel Civilian Discrimination Complaint Processing and Adjudication.

Section 7. Affirmative Employment Plan

The New York National Guard Technician Affirmative Employment Plan will meet the requirements of EEO Management Directive (MD) - 715 and federal law. It supports equal employment opportunity in every aspect of personnel policy and practice in employment, development, promotion, and treatment of National Guard technicians. Both parties agree to promote and support all programs for equal employment opportunity through a positive and continuing effort.

ARTICLE 4

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Section 1. EAP Policy

1. The Agency and ACT recognize that personal problems affect performance. A technician will not be excluded from seeking or receiving assistance for personal problems such as but not limited to; substance abuse, financial difficulties, legal, family, or other problems that may affect job performance.

2. Sick leave will be authorized for the purpose of treatment or rehabilitation as in any other illness or health problem.

3. The confidential nature of medical and personnel records of technicians will be maintained as provided by law and regulations.

Section 2. EAP Program Responsibility

1. The Agency will establish an EAP and will appoint an EAP coordinator. Contact information for the EAP Program will be posted conspicuously in all work locations. Technician Personnel Regulation (TPR) 792-2 dated 5 September 1978 will be the governing regulation for technician assistance in the New York National Guard.

2. The program will provide for referral of technicians to resources outside the New York National Guard for treatment and treatment follow-up. In addition, technicians may avail themselves of the program services on their own initiative.

3. Rehabilitation expenses are the responsibility of the technician. As with other illnesses, certain specified costs may be reimbursable under applicable Federal Employees Health Benefits (FEHB) programs or other individual medical insurance plans in which the technician may be a participant.

Section 3. EAP Personnel Actions

A technician's job security will not be in jeopardy when a technician voluntarily admits to a substance abuse problem and requests counseling or referral assistance through EAP. For those technicians where substance abuse is cited as a defense or contributing factor for a technician's misconduct, the misconduct will be dealt with separately as per TPR 752. The technician will be referred to a medical provider or an employee assistance program for the substance abuse. The misconduct will be treated in the same manner that all such misconduct is dealt with and similar penalty for a similar offense will be imposed. If the penalty imposed is a penalty other than removal and the technician can establish that the substance abuse is a handicapping condition, then reasonable accommodations may be made.

ARTICLE 5

MANAGEMENT'S RIGHTS

Section 1. Managements Rights Preamble

In accordance with Chapter 71 of Title 5 of the USC, Federal Service Labor Management Relations Statute, Section 7106.

Section 2. Management's Rights

(a). Nothing in this article shall affect the authority of any management official of the agency -

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

(2). In accordance with applicable laws;

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

B. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

C. With respect to filling positions, to make selections for appointments from
(i) among properly ranked and certified candidates for promotion or
(ii) any other appropriate source; and

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

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

(1). At the election of the agency; on the numbers, types, grade of employees or positions assigned to any organizational sub-division, work project, or tour of duty, or on the technology, methods and means of performing work.

(2). Procedures which management officials of the agency will observe in exercising any authority under this section: or

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

ARTICLE 6

UNION RIGHTS

Section 1. Union Representation

In order not to breach the statutory duty of fair representation to all bargaining unit technicians without regard to union membership, the parties agree to the following:

Officers and Stewards will not be required to wear the military uniform while:

- a. Performing representational duties in accordance with the negotiated agreement;
- b. Representing the Union in a third party proceeding;
- c. Serving as a member of the bargaining unit's negotiating team;
- d. While meeting with Management on any labor-related issue, as a union representative;
- e. Attending any labor-management training session as a union representative.

Section 2. Civilian Titles

Union officials, in the performance of their representational duties will be addressed by their civilian title (Mr., Mrs., Miss, Ms.) and surname.

Section 3. Representation Rights and Duties

An exclusive representative of an appropriate organization in an agency shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more technicians in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.

Section 4. Smoking Policy

In each chapter area, the Chapter President or their representative will meet with the local facility supervisors to negotiate over rules governing technicians smoking within the purview of The Adjutant General's DMNA smoking policy memorandum.

Section 5. Union Office and Equipment

1. Whenever possible, DMNA agrees to provide appropriate office space to the State Chairman, Executive Vice Chairmen, Vice Chairmen, and each Chapter President for the conduct of its legitimate and authorized business. Such offices will be in New York National Guard facilities mutually agreed upon between DMNA and ACT.
2. In locations where office space is determined by local management to not be available, HRO will assign a management representative and the ACT State Chairman

will assign a union representative to jointly visit the location to make appropriate arrangements for the conduct of official union business.

3. DMNA will provide access to a government telephone for union use, in private. Whenever possible, this phone may be provided in the office space mentioned above.

4. Once designated for official union space, such facilities shall not be changed or removed without first consulting with ACT.

5. Where available, DMNA will provide each union office space with a personal computer with internet access.

Section 6. Legitimate Union Business

1. Management and ACT agree that no internal union business, including lobbying for pending legislation, shall be performed during the time the union representative is on official time. We mutually agree that language in the contract stands as is, with the understanding that "official time to conduct union business" will be time for the purpose of all rights afforded to the union as provided in Chapter 71 of Title 5 USC, Federal Service Labor Management Relations Statute.

2. DMNA agrees that the State Chairman, Executive Vice-Chairman, State Secretary and each Chapter President will be provided four (4) consecutive hours of official time per week on each Wednesday to conduct union business. The following provisions apply to this official time:

a. Mission requirements may dictate that the same four (4) consecutive hour each Wednesday may not be able to be provided, but (4) consecutive hours will be provided at alternate time during the same week.

b. If the union official needs to leave the installation, the supervisor will be notified prior to departure.

c. Official time will not be accumulated from week to week.

d. If the uniform is not worn during this period, changing of cloths comes out of the four-hour periods.

e. The timekeeper will reflect the proper official time codes on time and attendance sheets for all times utilized.

Section 7. Leave Without Pay (LWOP) for National Union Officers

Leave without pay up to four (4) years may be granted, upon request for the purpose of serving on a temporary basis as an officer or representative at the National Level of the Union. Requests for extension may be submitted up to sixty (60) days prior to the expiration of the period of leave without pay. A determination on such requests will be made not later than thirty (30) days prior to the expiration date. If LWOP for this purpose is denied, then management will give a statement of denial giving reasons.

ARTICLE 7

UNION MANAGEMENT COOPERATION

Section 1. Consultation

DMNA agrees that under the provisions of PL 95-454, ACT is entitled to consultation meetings between its representatives and those of DMNA.

a. DMNA agrees, if issues or problems develop that cannot be solved at the local level, to meet with the State Chairman of ACT or a duly appointed representative, at a location mutually agreed upon by both parties, to discuss such issues or problems. Such meetings will be held as often as necessary.

b. At any installation/activity, the supervisor will refer matters of concern that cannot be resolved by meetings between the supervisor and the steward to their next level supervisor and by the steward to their chapter president.

c. A meeting will be held at any level when requested by DMNA or ACT whenever the subject matter to be resolved is important.

d. Meetings described in paragraphs (a), (b) and (c) above will be held during normal working hours.

Section 2. Consultation Definition

For the purposes of this Agreement, consultation is defined as meeting, conferring and negotiating in regard to policies, programs, and practices related to working conditions of members of the unit which are the purview of DMNA, in an effort to reach mutual understanding or agreement.

Section 3. DMNA Consultation Matters

Matters appropriate for consultation and negotiation between the parties are personnel policies, programs, and practices related to working conditions, which are within the purview of DMNA. These matters include but are not limited to such matters as safety, training, labor-management relations, technician services, methods of adjusting grievances, appeals, leave, promotion policies, demotion practices, reduction-in-force matters, and hours of work.

Section 4. Excluded Consultation Matters

No obligation exists to consult or negotiate with ACT with respect to the mission of an agency, its budget, its organization, the number of employees, and the numbers, types, and grades of positions of technicians assigned to an organizational unit, work project or tour of duty, the technology of performing its work, or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for technicians adversely affected by the impact of realignment of work forces or technological change.

Section 5. Employee Morale

ACT and DMNA shall review the possibilities of increasing technician morale. This shall be a matter of concern to both parties with either party submitting recommendations to the other. Recommendations submitted shall become a topic of discussion during meetings as set forth in Section 1 of this article.

Section 6. Federal Wage Grade Surveys

The employer shall notify ACT as soon as practical when information is received that higher authority has directed the start of an official wage survey in the area. When DMNA is the host agency or is notified by the host agency to participate in a wage survey, DMNA will notify ACT who will nominate ACT representative(s) for appointment to the wage survey data collection team. Final appointment to the wage survey team will be approved/disapproved by the host agency. The number of personnel to be appointed to the data collection team will be determined by the lead agency. However, the employer agrees to appoint at least one representative of ACT to the team if the employer is requested by the lead agency to participate.

a. Exceptions to Scheduled Wage Surveys. It is agreed that ACT shall have the right to request, through DMNA, the National Guard Bureau to the Department of Defense for a full-scale wage survey to be conducted when significant wage raises have taken place in the area. Final approval rests with the Office of Personnel Management.

b. Organization, Functions, and Responsibility. Organization, functions, and responsibilities of the agency and local wage survey committees shall be as prescribed in 5 Code Federal Regulations (CFR), Part 532 (Prevailing Rate Systems).

c. Wage Survey Data. The employer agrees to furnish, at the request of the lead agency DOD, wage survey supporting data needed to identify the numbers and classes of technicians covered by the survey. Copies of such data will be provided to ACT, upon request.

Section 7. Bargaining Unit Roster

DMNA agrees to furnish the State Chairman, semi-annually, (no later than the second and fourth quarters of the calendar year) the following information: a list of names, titles, grades, and units of assignment of all bargaining unit technicians.

Section 8. Manning Document

DMNA will provide the State Council Chairman, quarterly, with two (2) current copies of the Full-Time Unit Manpower Document - Air (spaces and faces) broken down by base and the Support Personnel Manning Document - Army (spaces and faces). HRO will provide an index to identify units within the Army.

Section 9. HRO Newsletter

DMNA will furnish an electronic copy of the HRO newsletter published by DMNA to the State Chairman of ACT.

Section 10. Access to Regulations, Policies, and Directives

Officials of ACT will have access to all pertinent technician regulations, policies and directives, based on availability. Management may either provide a copy of the publication, or provide a reasonable period of time to review the publication at a nearby work location, within the workday.

Section 11. DMNA Publications

When requested, the State Chairman will be furnished an electronic copy of each DMNA Pamphlet and Regulation that pertains to technicians.

Section 12. New Hire Printout

MNHF will provide a monthly printout developed from within our Defense Civilian Personnel Data System (DCPDS) which will reflect the effective dates of all new bargaining unit hires, to include their unit/organization of assignment. The printout will be provided to the State Chairman, no later than the 15th of each month, for all new hires during the previous calendar month.

Section 13. New Hire Pamphlets

1. DMNA will ensure, that within the first month after hire, all newly hired bargaining unit technicians will be provided with a standard packet, which will consist of, but not restricted to the following:

- a. A written statement that the Association of Civilian Technicians is the sole union representative for all technicians in the State of New York.
- b. A written statement that the technician has the right to join or not to join ACT.
- c. The names, work addresses and phone number of the local chapter president and shop stewards(s).
- d. A copy of the technician's position description.
- e. A copy of the current negotiated agreement.

2. It is ACT's responsibility to provide HRO with updated documents as necessary of (a), (b), and (c) above to place in the standard packet.

Section 14. New Hire Training

1. On a bi-monthly basis, during the first week of the month, one ACT representative for each chapter will be authorized four (4) hours of official time for education and discussion regarding the provisions of this negotiated agreement with newly hired bargaining unit technicians. Newly hired bargaining unit technicians will be given the option of attending these training sessions. If the technician elects to attend the session, official time will be provided to the technician.

2. To qualify for this training, newly hired bargaining unit technicians must be trained within four (4) months from the date that the State Council Chairman was provided with the monthly new hire printout by the HRO.

Section 15. Use of Facilities

Given prior coordination with local facility managers, DMNA agrees to the use of meeting rooms in installations/activities during other than working hours for the purpose of assembling ACT membership when it will not interfere with other scheduled activities or create the need for additional personnel. ACT will be responsible for the room(s) and contents while in use and will leave facilities in the same conditions as found.

ARTICLE 8

UNION REPRESENTATION

Section 1. Recognition of Stewards and Representatives

DMNA agrees to recognize the stewards and representatives duly authorized by ACT.

a. The number of stewards shall not exceed the following:

1. One (1) for each armory in which there are five (5) or more technicians. In armories of less than five (5) technicians, the nearest shop steward may be utilized.

2. One (1) for each Field Maintenance Shops (FMS).

3. Two (2) for each Combined Support Maintenance Shops (CSMS)

4. Four (4) for each Maneuver Area Training Equipment Sites (MATES).

5. Two (2) for each Army Aviation Support Facility.

6. Two (2) for the office building of DMNA.

7. One (1) for the USP&FO warehouse.

8. Five (5) for each Airbase, six (6) at Stewart ANGB.

9. One (1) for NEADS.

10. Two (2) for each ANG Geographically Separated Units (GSU)

b. The local chapter president will designate areas of representational responsibility.

Section 2. ACT Representative List

ACT shall maintain, and shall supply DMNA in writing, a current complete list of the names and titles of its representatives, with the designation of the group of technicians each steward is to represent. No ACT representative will be recognized as an officer or steward unless their name has been provided to DMNA. The ACT State Chairman will provide DMNA a new master listing within the first quarter of the calendar year.

Section 3. Receiving Complaints and Grievances

Any ACT official may receive complaints and grievances. Although anyone who is an ACT official is authorized to receive complaints and grievances, initially only one ACT official will be granted authorization at a time to leave their work area to receive and investigate a grievance. When it is necessary to leave the work area, the ACT official will obtain permission to leave their work area and to enter other work areas. If permission cannot be immediately given, because of the mission being performed, then the technician will be released immediately following its completion. The ACT official will notify the supervisor upon return to work. ACT officials will be allowed reasonable and necessary time for the investigation of complaints and grievances and will be permitted access to government phones with outside access in a supervisor's office.

Section 4. Formal Discussions

ACT shall be given the opportunity to be represented at:

(A). Any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievances or any personnel policy or practice or other general condition or employment; or

(B). Any examination of an employee in the unit by a representative of the agency in connection with an investigation if:

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

(ii) The employee requests representation, by invoking their Weingarten Rights as described in the agreement.

Section 5. Official Time for ACT Representatives

1. Whenever it becomes necessary for a State Council Chairman or Executive Vice-Chairman to consult with the ACT attorney or National Field Representative, in conjunction with third party processing of a complaint, the officer, will be granted one day official time.

2. The State Council Treasurer may be granted twelve (12) hours of official time to prepare financial reports required by federal agencies. Each Chapter President, Treasurer or designated individual will be allowed up to eight (8) hours of official time to prepare financial reports required by federal agencies.

3. ACT representatives will be granted official time, for periods when they would otherwise be in a duty status, to perform or participate in official union activities as

provided for in this section in accordance with the Labor/Management Statute (5 USC Sec 7131).

Section 6. ACT Sponsored Conventions, Conferences or Training

1. ACT representatives to include State Chairman, Executive Vice-Chairman, two Vice-Chairman, State Secretary, State Treasurer, Chapter Presidents, Vice-Presidents, Secretaries, Treasurers, Stewards, and duly elected delegates shall be authorized official time to attend ACT sponsored conventions, conferences, or training sessions concerning matters of mutual interest to the government and the technicians in their capacity as representatives of ACT.

2. A total of two hundred sixty (260) days will be authorized for use by the 116 ACT representatives on an annual basis, commencing after this negotiated agreement is ratified and signed, to attend training as outlined above. The State Council Chairman will distribute this time for the purpose of ACT sponsored training (state and national) to include travel time.

3. Of the two hundred sixty (260) days of official time provided, the number of days will not exceed eight (8) days for each chapter officer, annually, for this purpose. The five State Council Officers may exceed the eight (8) days limit. That time will come from the 260 day limit.

4. The State Council chairman will provide the HRO, or designee with a notice two (2) weeks prior to each training session. The request will include a training agenda and a roster of personnel to attend each training session. In instances where conflicts exist for ACT representatives attending a training session, coordination will occur between HRO or designee and the State Council Chairman to resolve the conflict. HRO, or designee will formally contact managers/supervisors to authorize official time for the training attendees. If written notice is not received within five (5) days prior to the officers training sessions, the supervisor/manager must contact the HRO, or designee at DSN 489-4647 or commercial (518) 786-4647 to obtain a verbal approval. State Chairman Senior ACT representative attending conference/training sessions, shall provide HRO, or designee verification of official time used within five (5) work days of completion of training/conference attendance.

5. The State Council Chairman shall forward requests for additional days to the HRO for consideration.

6. Supervisor/Managers will ensure that time and attendance cards reflect the appropriate code for official time.

7. All costs for state and national training will be borne by ACT.

Section 7. Official Time

1. Official time will be provided to designated ACT representatives for the purpose of negotiations. ACT representatives must request official time, no less than five (5) days prior to such negotiations from their immediate supervisor. Official time will be provided to one (1) ACT representative for each management official participating in negotiations. Time will be accorded on the basis of time spent pursuing negotiations, where both parties are in attendance, to include travel performed during normal duty hours. Official time will be provided to ACT representatives as stated below. Technicians representing other technicians are limited to (a) below:

a. Grievance

b. Arbitration procedures.

c. Impasse proceedings.

d. In proceedings before the FLRA where the FLRA has determined official time is appropriate.

e. Representation matters covered by Chapter 71 of Title 5 USC. The amount of official time authorized will be that which is reasonable and necessary to complete the aforementioned, including travel. With mutual consent, official time will also be granted for Labor/Management meetings. It is mutually agreed that official time for which excused absence is authorized will not be utilized for the conduct of internal union business. ACT representatives request and prior coordination with the appropriate supervisor and the HRO, the State Chairman, or their representative, will be granted a reasonable amount of official time to accomplish Labor/Management related (Chapter 71 of Title 5 USC) Administrative Activities such as:

(1) Responding to requests from the FLRA, FSIP or HRO.

(2) Responding to proposed actions by the HRO.

2. An ACT representative who desires to use a reasonable amount of time should adhere to the following procedures:

a. A designated ACT representative who wishes to use time under this Article will contact a supervisor, to request permission to leave the job.

b. An ACT representative who wishes to use time under this Article in an organization not under the direction of their own supervisor will request permission from their supervisor and will inform the supervisor of the organization involved before engaging in such activity.

c. The ACT representative or employees will return to work and report to their supervisor upon conclusion of use of time under this section.

Section 8. Official Time State Chairman

The State Chairman will be provided Official Time which is agreed to be reasonable, necessary, and in the public interest to: conduct training, review regulations, prepare for and attend hearings, respond to correspondence, attend meetings which are of mutual interest to both Management and ACT, and any other matter which is related to lawful representational duties with the exception of internal union activities. Official time will be arranged by a notification from the HRO to the Chairman's timekeeper. Each instance of official time shall be approved via phone call to HRO. Notification will be given to a supervisor by HRO.

ARTICLE 9

EMPLOYEE RIGHTS

Section 1. Employees' Rights

1. In accordance with Title 5, USC §7102, DMNA and ACT recognize that:

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

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

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

2. DMNA shall take such action, consistent with law or with directives from higher authorities as may be required in order to assure the technicians are apprized of their rights as described in this article. In addition, no interference, restraint, coercion, or discrimination is to be practiced to encourage or discourage membership in any lawful organization. No technician will be precluded from:

a. Being represented by an attorney or other representative, other than the exclusive representative, of the technicians own choosing in any grievance or appeal action; or

b. Exercising grievance or appellate rights established by law, rule or regulation: except in the case of grievance or appeal procedures negotiated under this chapter.

c. The terms of this Agreement do not preclude any technician from bringing matter of personal concern to the attention of appropriate officials in accordance with applicable laws and regulations.

Section 2. Weingarten Rights

1. In accordance with Title 5, USC §7114, any examination of an employee in the unit by a representative of the agency in connection with an investigation if;

a. The employee reasonably believes that the examination may result in disciplinary action against the employee; and

- b. The employee requests representation.
2. Employees have the right to union representation during investigatory interviews by management. These are called "Weingarten Rights."
3. By asking to invoke Weingarten rights, the employee will be provided representation by an exclusive representative of the local labor organization if the employee believes that the examination may result in disciplinary action against the employee.

Section 3. Notification of Rights

The employer shall annually inform all employees of their Weingarten rights under paragraph (2), Chapter 72, Section 7114, Title 5 USC This notification shall be distributed to all supervisors, state chairman and ACT chapter presidents. These rights shall be posted on a board in each Army Guard activity/unit and each Air Guard work center.

Section 4. Wearing of Uniform During Representation

Technicians in the bargaining unit will not be required to wear the military uniform while appearing as a grievant or witness before a third party proceeding at negotiation impasses, arbitration or FLRA proceedings.

Section 5. Supervisor's Work Folders

1. Notations of oral admonishment's (date and subject) on the NGB Form 904-1 will be made in pencil and initialed by the technician and will be removed from their NGB Form 904-1 if not recurring within a one (1) year period from date of initial occurrence. At the time of entry, the technician and the supervisor will agree on a date (normally six (6) months) when they will review the entry to determine if it is still necessary or relative to a continuing/recurring problem. Should the supervisor determine that the entry must still remain, a new date will be established for a subsequent review (normally six (6) months).
2. Upon request, a technician must be allowed to review the work folder pertaining to them. Technicians wishing to provide access to another person must provide the supervisor written notification that specifically identifies the person to be given access and the records to be provided. The record can be disclosed to other officials/technicians who have a need for the record in the performance of their duties.

Section 6. Adverse Actions

Disciplinary adverse actions consist of:

- a. Suspension (includes indefinite suspension);
- b. Change to lower grade; and
- c. Removal.

Section 7. Administrative Pay Status During Adverse Action

1. In adverse action cases where a technician is removed from pay status in excess of ninety (90) days, where there is no prior record of adverse action within the last five (5) years, the agency will:

a. Schedule a hearing within forty five (45) days of receipt of written request for hearing pursuant to TPR 752, paragraph 2-17 element 6 (b); and

b. Convene a hearing within one hundred twenty (120) days of receipt of written request for hearing.

2. Delays caused by ACT are added to the one hundred twenty (120) days. Delays are defined as any adjustment to the original three (3) scheduled hearing dates as proposed by the Labor Relations Specialist.

3. In the event a hearing is not convened within one hundred twenty (120) days, excluding ACT delays, the technician shall be placed back in a pay status effective the next available pay period, with no retroactive back pay, unless provided for in the final decision by TAG.

Section 8. Disciplinary Actions

1. In those instances where the supervisor proposes to issue an oral or written reprimand or any other formal disciplinary action, the technician will be offered the opportunity to representation.

2. DMNA will administer discipline in accordance with guidelines established in Agency directives.

3. Each technician will be permitted to examine their Official Personnel Folder (OPF) which is maintained by the HRO in accordance with current directives and CFR. A technician may request, in writing, a designated representative of their choice, to review their OPF when the representative is presenting a grievance, Unfair Labor Practice (ULP), or where otherwise authorized by rule, regulation, or law.

Section 9. Technician Duties

The duties of each technician shall be as basically described in NGB publications concerning job descriptions or subsequent publications that may supersede present documents.

Section 10. Position Description

Each technician is entitled to a complete and accurate position description, which shall be reviewed with the supervisor as necessary, but no less than once every two (2) years, or when a change occurs.

Section 11. Uniforms

The Agency will provide the appropriate military uniform required to be worn in each functional area to all bargaining unit technicians in accordance with current regulations. The Agency will provide an exchange program for worn, torn, or clothing soiled too badly to be rendered clean and presentable in the performance of day to day duties. Technicians will wear the uniform as provided by the Agency.

Section 12. Temporary Duty Assignments

1. The Agency understands that certain circumstances associated with temporary duty assignments away from normal duty station may cause undue personal hardships with technicians involved in that assignment. Therefore a technician, upon request, will be considered for release from a temporary duty assignment if a qualified replacement, as determined and approved by management, is available and willing to work.

2. The Agency agrees to schedule and arrange for travel of technicians to occur within each technician's standard workday, whenever possible, however, understanding that circumstances and/or mission requirements will dictate that management assign travel outside the normal work hours.

Section 13. Travel Compensation

Technicians required to travel outside of their normal tour of duty will be granted compensatory time, travel and per diem, applicable under statute and regulation.

Section 14. Retirement Consultations

1. When prospective retirees request and are offered the opportunity to go to DMNA to receive consultation about retirement, they will do so on an official time status.

2. Prospective retirees shall be offered the opportunity to attend a pre-retirement seminar at least five (5) years prior to retirement.

Section 15. Lockers

DMNA will provide a locker at or near the facility for technicians commensurate with space and funding availability.

Section 16. Use of Personal Radios

DMNA agrees to permit technicians to play personal radios in work areas with the supervisor's permission. Use of earphones is prohibited.

Section 17. Official Personnel Folder Review

When technicians are directed, or have received approval by management to go to DMNA to examine their technician OPF, they will be granted official time for such activity.

Section 18. Health Benefits and Open Season

During the annual open season period as announced by OPM, the Agency, upon receipt of the FEHB Open Season Guide (which includes plan comparisons), will provide sufficient copies to all work centers for review by each technician.

ARTICLE 10

DUES WITHHOLDING

Section 1. Dues

Payroll deduction for the payment of union dues shall be made from the pay of members in the unit who voluntarily request such dues deductions and who are bona fide members of ACT in good standing.

Section 2. Standard Form (SF) 1187

ACT shall be responsible for purchasing Standard Form 1187, request and authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues, for the proper completion and certification of the forms and for transmitting them to the Human Resources Office (HRO). ACT shall be responsible for informing and educating its members about the program.

Section 3. Union Dues Deduction

Any member who desires to have their union dues deducted from their pay must complete and sign the appropriate portion of Standard Form 1187, and have the appropriate section completed and signed by an authorized official of ACT who shall forward or deliver it to the Human Resources Office. The forms must be received in the HRO at least five (5) days prior to the beginning of the pay period in which the deduction will begin.

Section 4. Membership Termination

ACT agrees to give prompt, written notification to the HRO in the event a technician participating in the dues deduction program ceases, for any reason, to be a member in good standing, in order that the technician allotment may be terminated.

Section 5. Dues Time Periods

Any technician, who authorizes the allotment of dues (SF 1187) to ACT will have such authorization remain in effect for an initial period of one (1) year. Should any such technician submit a request for revocation of such authorization (SF 1188) prior to the expiration of this initial year, the revocation will become effective on the first full pay period following the expiration of this initial year. Any request for revocation of an authorization submitted after the expiration of this initial year will be effective as of the first full pay period in the month of September following the submission of the revocation request.

Section 6. Deduction Amount

The amount of dues to be withheld under this article shall be the regular dues of the member as specified on the member's SF 1187 or as certified by ACT if the amount of regular dues has been changed as provided in Section 7 of this Article. A deduction of regular dues shall be made each pay period from the pay of a technician who has requested such allotment for dues. It is understood that no deduction for dues shall be made in any pay period for which the technician's net earnings after other deductions are insufficient to cover the full allotment of dues.

Section 7. Changing Amount of Dues

If the amount of regular dues is changed by ACT, ACT will notify the HRO in writing and will certify as to the new amount of regular dues to be deducted each pay period. New SF 1187 authorization forms will not be required. Changes in the amount of union dues for payroll deduction purposes shall not be made more frequently than once in each twelve month period.

Section 8. Remittance

A check shall be made payable to the Treasurer, Association of Civilian Technicians, showing the names of technicians, the amount deducted for dues for each technician, and the net amount remitted by the accompanying check. The list will be broken down by Chapter if computerized payroll operations permit. Additionally, it will indicate the reason for not listing any technician who has authorized a deduction.

Section 9. Members Separating From the Bargaining Unit

Deductions of dues provided for in this Article shall be terminated upon separation of a technician from the bargaining unit. The HRO will initiate termination of the dues withholding.

Section 10. Changes of Authorized ACT Officials (SF 1187)

ACT shall be responsible for notifying the HRO promptly of changes in officials authorized to certify Standard Form 1187. Forms containing signatures of officials other than those indicated by ACT as authorized to certify will be returned for proper completion.

Section 11. Written Authorization

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

ARTICLE 11

PUBLICITY

Section 1. Bulletin Boards

Space will be provided for a bulletin board not less than 24" X 36" or more than 48" X 48" in major work areas for the display of information relative to ACT or the technicians in their technician status.

Section 2. Posting on Bulletin Boards

Posting will be accomplished during non-duty hours.

Section 3. Maintaining Bulletin Boards

ACT is responsible for dating, posting, and removing material on the board and for maintaining it in an orderly condition. Information of a temporary nature shall be removed after a reasonable amount of time has expired.

Section 4. Contents of Bulletin Board Postings

ACT agrees that items posted must not violate any law or security or contain scurrilous or defamatory material.

Section 5. Violations

Flagrant violation of any of the above provisions will result in a revocation of the bulletin board privilege.

Section 6. Contract Distribution

DMNA will furnish an electronic copy of the negotiated agreement to ACT State Chairman and all ACT Chapter Presidents no later than thirty (30) days after approval by the Department of Defense. DMNA will provide up to twenty five (25) printed copies of the negotiated agreement to ACT State Chairman.

ARTICLE 12

HOURS OF WORK

Section 1. Definitions

1. Administrative workweek means a period of seven (7) consecutive calendar days, Sunday through Saturday, designated in advance.
2. Basic workweek means five (5) consecutive eight (8) hour days within the administrative workweek.
3. The Alternate Work Schedule (AWS) will be in accordance with Title 5, USC, Chapter 61.

NOTE: AWS requests will be forwarded to the HRO for submittal to The Adjutant General who is the final approving authority for all AWS. No new AWS will be implemented until approval from The Adjutant General is received. Any existing AWS will be in accordance with the current MNAG-TAG policy memorandum, Subject: Implementation of Alternate Work Schedules.

Section 2. Lunch Period

A lunch period of one half hour must be scheduled outside the hours established for the daily tour and shall not be considered duty time. Normally this period should be at the mid point of the tour of duty. In the event a technician must work during the scheduled lunch period, the technician will be rescheduled for another lunch period, as close as possible to the technician's original lunch period.

Section 3. Cleanup Period

DMNA agrees that a reasonable amount of time will be allowed prior to the lunch period and at the close of the shift for the purpose of personal clean up, returning tools and securing machinery to the satisfaction of the supervisor.

Section 4. Compensatory Time

Technicians shall not be required to perform any work or duty before or after normal work day without equal compensation for such duty or work performed, and such compensatory time will be utilized in accordance with TPR 690-1.

Section 5. Overtime Work/Premium Pay

Overtime work should be kept to a minimum, consistent with good mission management. It is agreed that overtime work will normally be scheduled for mission essential requirements. A technician, upon request, will be considered for release from an overtime assignment if a qualified replacement, as determined and approved by management, is available and capable of performing overtime work. In normal

situations, supervisors will notify technicians forty eight (48) hours in advance of all overtime assignments, and in emergency situations, will attempt to schedule overtime with no less than one (1) hour of notification.

a. In the event no volunteers are forthcoming, management will distribute overtime in a fair and equitable manner to qualified individual(s) who most recently have not performed overtime work. A technician who is in a leave status at the time the overtime work is required, will not be considered as available for that overtime work assignment. However, the technician is subject to future overtime work assignments.

b. The agency agrees that any full time technician within the organization/activity, who is required to work on a Sunday, nights, or a holiday as part of the basic scheduled workweek, is entitled to premium pay in accordance with Title 5 CFR 550.

c. If possible, when required to work overtime, and upon request of the technicians, management will schedule a thirty minute (30) non-duty period between the technician's normal ending shift and the start of the overtime work period. The designated thirty minute (30) meal period is not counted as time worked. If scheduled for four (4) or more hours of overtime, and time off between the normal ending shift and the start of the overtime work is not possible, a meal period of twenty minutes (20) or less may be counted as time worked for which compensation is allowed. Where such an on the job meal period is in effect, technicians must spend the time in close proximity to their work stations and must be available for work.

Section 6. Standby Duty/Recall Compensation (IAW CFR 551, except in instances noted below)

1. When a technician is recalled, for the purpose of returning to work or for providing substantial technical information, the total compensatory time will not be less than two (2) hours.

2. Time spent on standby duty or in an on-call status.

3. Time spent on standby duty shall be considered hours of work for which compensatory time will be granted if both conditions below are met.

a. Technician is restricted to private living quarters or designated post of duty with activities substantially limited.

b. Technician is required to remain in a state of readiness to perform work.

4. A technician will be considered off duty, and time spent on call status shall not be considered hours of work and compensatory time not granted, if;

a. The technician is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, but not in a state of readiness even though the technician is required to remain within a reasonable call back radius; or

b. With Supervisory approval, the technician is allowed to make arrangements such that any work which may arise during the on call period will be performed by another technician.

5. If the Agency requires electronic devices, such as beepers or cellular phones, they will be provided by the Agency. If leaving a phone number or occasional call back is sufficient, that is accomplished via normal telephone service provided by technicians.

ARTICLE 13

LEAVE

Section 1. Use of Scheduled and Unscheduled Annual Leave

1. Technicians will earn annual leave in accordance with applicable regulations. A technician's request to take scheduled annual leave may be granted when they have given their supervisor an Optional Form (OF) 71. When denied by management, the technician will be advised of the reason by management completing the remark section of the OF 71. Upon advance request, the technician may be granted annual leave for a work day which occurs on a religious holiday unless such request causes a severe work interruption.

2. Requests for unscheduled annual leave will be considered on an individual basis. Technicians will contact their supervisor within one hour after the beginning of their work shift for request of leave, stating the reason for the request and the approximate time they expect to be absent from work. In the event the leave is denied, the supervisor will advise the technician of the specific reason.

Section 2. Sick Leave

Technicians will earn and be granted sick leave in accordance with applicable regulations. The technician shall notify their immediate supervisor or designated representative of their incapacitation for duty as soon as possible, but not later than one (1) hour after the start of the technician's shift, except under extenuating circumstances. Approval of sick leave for pre-arranged medical, dental and optical appointments must be secured in advance.

Section 3. Sick Leave Abuse

Management has the discretion, under 5 C.F.R. § 630.403(a) to require medical documentation when necessary; specifically, "for an absence for any of the purposes described in § 630.401(a) for an absence in excess of 3 workdays, or for a lesser period when the agency determines it is necessary."

Section 4. Family and Medical Leave Act (FMLA)

1. The FMLA provides eligible Federal technicians with entitlement to twelve (12) workweeks of unpaid leave during any twelve (12) month period. The most current FMLA provides entitlements for circumstances as follows, but not limited to:

- a. The birth of a son or daughter of the technician or care of such son or daughter.
- b. The placement of a son or daughter with the technician or adoption or foster care.
- c. The care of a spouse, son, daughter, or parent of the technician who has a serious health condition; or

d. Serious health condition of the technician that makes the technician unable to perform the essential functions of his or her position.

2. In addition, the Expanded Family and Medical Leave policies provides that eligible Federal technicians may schedule and be granted up to twenty four (24) hours of leave without pay each year for the following:

- a. School and Early Childhood Education Activities.
- b. Routine family medical purposes.
- c. Elderly relatives' health care needs.

Section 5. Use of Scheduled and Unscheduled Compensatory Time

1. Compensatory time will be taken on an as earned basis and must be utilized within twenty six (26) pay periods from the pay period in which it was earned. A technician's request to take scheduled compensatory time may be granted when they have given their supervisor an Optional Form (OF) 71. When denied by management, the technician will be advised of the reason by management completing the remark section of the OF 71.

2. Requests for unscheduled compensatory leave will be considered on an individual basis. Technicians will contact their supervisor within one (1) hour after the beginning of their work shift for request of leave, stating the reason for the request and the approximate time they expect to be absent from work. In the event the leave is denied, the supervisor will advise the technician of the specific reason.

Section 6. Administrative Leave Physical Exams

Administrative leave will be granted to technicians for the time necessary for required technician physical examinations whenever necessary or requested by the Agency. Under no circumstances will administrative leave be granted for military physical exams, to include dental exams.

Section 7. Volunteer Fire Fighting/Ambulance Crew

Upon request, a technician who participates as a member of a volunteer fire department or ambulance crew may be granted three (3) days of excused absence per year under the following conditions as indicated below. At the discretion of the supervisor, a technician may be granted an additional two (2) days, for the total of five (5) days per year, of administrative leave.

a. The situation which is the basis for the request must have occurred between the hours of 10:00 p.m. and 7:00 a.m., which precedes a normal workday.

b. Must have been an active participant in the situation for which the administrative leave is requested.

c. Must be supported in writing by a letter from the senior person in charge of the department.

Section 8. Time Spent in Charitable Activities

In accordance with 5 CFR Section 551, time spent working for public or charitable purposes at an agency's request, or under the agency's direction or control, shall be considered hours of work.

Section 9. Compensatory Time Off Religious Observances

To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall in each instance afford the technician the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to a technician requesting such time off for religious observances when the technician's personal religious beliefs require that the technician abstain from work during certain periods of the workday or workweek.

Section 10. Blood Donation

Those who participate in a blood donor program may be excused from work by the agency without charge to leave for the time necessary to donate blood and for recuperation following blood donation. The maximum excused time will not exceed four (4) hours.

Section 11. Physical Fitness Program

Technicians are authorized up to three (3) hours per week of official time to participate in the physical fitness program in accordance with the established policy of the Agency.

ARTICLE 14

HOLIDAYS

Section 1. Holidays

1. The following are identified as holidays for the purpose of pay and leave of National Guard Technicians:

NEW YEAR'S DAY
MARTIN LUTHER KING DAY
PRESIDENT'S DAY
MEMORIAL DAY
INDEPENDENCE DAY
LABOR DAY
COLUMBUS DAY
VETERAN'S DAY
THANKSGIVING DAY
CHRISTMAS DAY

2. Any other day designated as a holiday by Federal Statute or Executive order.

Section 2. Holiday Pay

All days listed above, in addition to any designated by law, regulation or Executive Order, will be non work days for technicians while performing in a technician status. Technicians who may be required to work on a holiday will receive holiday pay in accordance with applicable regulations.

Section 3. Holiday Work

When the Agency determines that holiday work should be assigned, the Agency will determine which employees are equally qualified to do the work. If the number of equally qualified employees is greater than the number of employees whom the Agency determines should be assigned to do the work, the Agency shall use a rotational basis to select from among the equally qualified employees those who will be assigned to perform the holiday work.

ARTICLE 15

INCLEMENT WEATHER POLICY

Early Release Climate/Emergencies

1. Early release of technicians due to climate conditions or for a breakdown in essential service is within the administrative authority of The Adjutant General. This authority will be used sparingly, only for minimum periods of time, and is further delegated to the Deputy Adjutant General.
2. All technicians are to presume their work site will be open each regular workday regardless of weather conditions or public announcements made by private organizations or other government agencies. Each activity will remain open in anticipation of providing support to the affected areas of the state. Each Wing/MACOM Command will determine the minimum essential staff required to respond when called.
3. When approval is granted to a request for early release of technicians, a written report listing the cause, duration, and number of technicians involved will be forwarded to this Headquarters, ATTN: MNHF, after the situation has reverted to normal.
4. Technicians scheduled for work during early release periods will be carried in an excused absence status without loss of pay or charge to leave for that period. If the technician is assigned to an uncommon tour of duty or shift which does not include the time period of excused absence, there is no entitlement to excusal. If a technician is on annual leave, sick leave, or taking compensatory time when the early release notice is approved, he/she is charged the leave and not administratively excused unless the notice states otherwise. Exception, if there is an Executive/Administrative Order issued closing the facility, an individual would not have to charge already schedule leave.
5. If tardiness or early release periods have not been authorized and the immediate area where a technician resides is such that travel is prohibited within that county or the installation where the technician is assigned is closed, the technician may request excused absence which will be reviewed for approval/disapproval at this headquarters by MNHF. The request must be forwarded through command channels and contain at a minimum the following information:
 - a. Technician's name/work site location
 - b. Title/grade of position
 - c. Scheduled hours of work/shift

- d. Home of record (including county and zip code)
- e. Primary/alternate routes from home of record to work site
- f. Name/phone number of immediate supervisor
- g. Statement of circumstances

6. Authority is also delegated to the below listed individuals to grant excused absence up to two (2) hours for the New York Army and Air National Guard technicians reporting late because of extreme weather conditions:

- a. Joint Chief of Staff
- b. Deputy Joint Chief of Staff
- c. Commander NYANG
- d. Human Resources Officer
- e. Chief of Staff, 42 In Div
- f. Chief of Staff, 53 Trp Cmd
- g. Each NYANG Wing/Station Commander

ARTICLE 16
ENVIRONMENT

Section 1. Working in Extreme Temperatures

DMNA and ACT mutually recognize the hazards of working in extreme temperatures while, at the same time, acknowledge the necessity for accomplishing certain tasks to varying extents even in the most extreme temperatures. It is the responsibility of each technician to ensure the adequacy of cold weather gear worn and to make full and proper use of all such protective equipment prior to venturing out into extreme temperatures.

Section 2. Severe Weather Work Restrictions

No local outside routine work will be performed when the temperature is below -25 degrees Fahrenheit or equivalent wind chill temperature is below -40 degrees Fahrenheit. Mission Essential/ Emergency requirements will be performed without regard to the temperature or wind-chill factor and management will ensure exposure is for only brief periods of time. EDP/HDP will be paid per DMNA Regulation 690-11 when personnel are exposed to these conditions.

Section 3. Exposure Time

It is realized that tolerances among individuals differ and that the type of outside work being accomplished affects the body heat generated by a worker. Therefore, common sense must be applied with regard to maximum exposure time.

Section 4. Facility Environment

If heating or cooling problems of an extreme nature occur, management will make every effort to relocate technicians to an environment suitable for work. Technicians dismissed, by reason of management's inability to relocate technicians to suitable environments for work, will be given administrative leave. If extreme heating/cooling problems cannot be resolved by local management officials by relocating the technicians to a suitable work location or fixing the heating/cooling problem, the HRO will be immediately notified of the situation. In situations where the HRO cannot immediately resolve the problem by authorizing administrative leave for the affected technicians or relocating the technicians to a suitable work location, the supervisors will authorize liberal annual leave/compensatory time taken. The approval of annual leave will be dependent on mission essential/emergency requirements. In the event technicians take annual leave or compensatory time, and at a later time administrative leave is approved, technicians will be charged only the time they took prior to approval of the administrative leave.

ARTICLE 17

HEALTH AND SAFETY

Section 1. Working Conditions, General

1. DMNA will make every effort to provide safe and healthful working conditions in accordance with Occupational Safety and Health Agency (OSHA) Standards and 29 CFR Part 1910. ACT will cooperate in these efforts and encourage technicians to work in a safe manner and to obey established safety practices and directives.

2. The Agency agrees to provide federally approved personal protective equipment and safety equipment as required by applicable regulations and manuals. Technicians are required to use personal protective and safety equipment provided by the Agency. It is agreed that some means of cleaning/maintenance of this equipment will be determined and provided at the local level. Equipment may include, but is not limited to:

a. When and where required, safety glasses, with side shields to include the replacement of broken or damaged ones, will be provided by the Agency consistent with governing regulations.

b. Permanent or portable eye wash, shower and ventilation as required by applicable safety regulations in those areas where technicians are exposed to fuel, acid or other hazardous contaminants.

c. First aid kit, fire extinguisher, fire blankets and stretchers will be provided as required.

Section 2. Emergencies

1. 29 CFR 1960.46(a) requires the Employer to respect "the right of a technician to decline to perform his or her assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard and abatement procedures." In the event an emergency situation requires such an action, the supervisor concerned will forward through applicable Safety Officers to the Chairman, DMNA Safety Council, a report of the actions taken to include the rationale for the action and any recommendations to preclude a recurrence of the situation. This report will be submitted within ten (10) working days from date of occurrence. A copy of the report will be provided to the ACT representative at the installation/activity.

2. ACT has the right to submit any contrary opinions as to the validity of the emergency, through ACT's appropriate channels, to include the reasons for their decision to the Chairman, DMNA Safety Council.

3. A technician who feels that the actions required constituted an emergency, which was not declared by the supervisor, has the right to submit a grievance. The proof of such a position is incumbent on the technician concerned.

4. Where a technician is working without immediate supervision and a situation develops where it's not possible to obtain a decision as to the nature of the action required, the procedures of paragraph (1) above will be followed.

5. If a technician is subjected to a violation of health and safety regulations or standing operating procedures, the technician can ask for an immediate evaluation by the designated safety representative. All technicians are responsible for the prompt reporting to their supervisor of observed unsafe conditions. Once notification of an unsafe condition has been made to management, it will then be management's responsibility to correct the situation, and/or to report the condition to the appropriate safety personnel.

Section 3. Reporting Injuries/Illnesses

If a technician sustains a traumatic related injury, while on duty in a technician status, such injury will be handled in accordance with 20 CFR Parts 10 and 25. Technicians shall report job connected injuries or illnesses to their supervisor immediately and complete forms CA-1 (for traumatic injury) and CA-2 (for occupational disease/illness) through the Electronic Data Interchange (EDI). Supervisors will ensure that all required forms will be forwarded to the proper HRO representative, within the time limits required by applicable regulation. DMNA will furnish, to the extent allowed by regulation, first aid for job connected injuries, physical impairments, or illnesses. Further treatment, if required, will be provided under the Federal Employees Compensation Act (FECA). Initial transportation will be provided, as appropriate. Technicians will be fully advised of their rights and responsibilities under the FECA, upon initial employment and periodically thereafter by their supervisor. At the time of injury or as soon as possible thereafter, the technician will again be advised of their rights and responsibilities.

Section 4. Eating Areas

At each installation/activity where possible, an eating area will be provided.

Section 5. Fire Protection

1. DMNA will make every effort to comply with requirements as contained in applicable laws and regulations for fire protection and public safety at installations/activities where technicians are employed.

2. Periodic briefing of technicians will be held at each installation/activity regarding fire protection procedures to include practice evacuation of the facility.

3. Fire exit doors, as required by applicable fire regulations, will not be locked during working hours, subject to local internal security requirements.

Section 6. Monthly Safety Inspection

Representatives from management and ACT will conduct monthly safety inspection(s). A joint report will be submitted to the Chairman, DMNA Safety Council, by the technician supervisor, and ACT representative, with a copy furnished to the local ACT representative.

Section 7. Assistant Driver

In those instances where the round trip travel will be in excess of eight (8) hours within the same day, an assistant driver will be provided wherever possible.

Section 8. Health and Safety Survey

When OSHA is involved in obtaining data or conducting surveys which relate to health and safety issues, the local ACT representative will be notified and participates in the survey and be furnished a copy of any reports provided to management.

Section 9. Access to Safety Publications

The Agency agrees to provide access to all publications required in the administration of the technician health and safety program. If not available in the local safety library, technicians will contact their Base/State Safety Office for obtaining appropriate publications.

Section 10. Local Safety Committee

At each facility and level of management, where a technician safety council/committee exists, an ACT representative at each facility will be granted membership. The chairman of the committee will ensure that the ACT representative is notified of all meetings with sufficient prior notification so that arrangements can be made for attendance.

- a. Local safety committees will be established.
- b. ACT will nominate, for appointment by the Agency, at least one (1) technician from within the bargaining unit to serve as a member of each local safety committee.
- c. The names of personnel serving on local safety committees will be published and posted on appropriate bulletin boards.
- d. The employer will ensure that annual safety training will be provided for all safety councils.

Section 11. State Safety Committee

The ACT State Chairman or his designated representative will be a member of the committee. The chairperson of the committee shall be a management official appointed by The Adjutant General from within one of the activities of the DMNA.

a. The purpose of this committee is to assist and advise the Agency, in accordance with applicable safety directives, on matters affecting occupational health and safety.

b. This committee shall meet at least semi-annually or upon call of the chairperson. Minutes of meetings will be recorded and copies furnished to the Agency and ACT.

Section 12. Cardiopulmonary Resuscitation (CPR)

DMNA and ACT agree that the availability of a person trained in the use of CPR techniques and general First Aid is a valid safety precaution. It is agreed that every reasonable effort will be made to certify at least one (1) person, at each work location, in CPR and First Aid procedures. Also, every reasonable effort will be made to provide equipment needed to ensure their skills could be used to the maximum benefit of all concerned. It is further agreed that management will select personnel to be trained; and any administrative costs of initial training of personnel, and their subsequent recertification, will be borne by, and scheduled by DMNA.

Section 13. Occupational Health

The Agency agrees to establish a medical surveillance program in accordance with current occupational medicine protocols. The medical records generated from this program are confidential in nature, and will not be released to any third party unless there is a technician generated Privacy Act release form on file.

Section 14. Administrative Dismissal

The Agency shall make every reasonable effort to ensure the health, safety, and well being of technicians. Under emergency conditions, which result in the loss of heat, water, power, etc., the senior management official will direct administrative dismissal of technicians after appropriate approval from the HRO. Management will respond immediately to all ACT representative inquires regarding the actions being taken in response to the situation.

ARTICLE 18

HAZARDOUS DUTY PAY (HDP)/ENVIRONMENTAL DIFFERENTIAL PAY (EDP)

Section 1. HDP/EDP Purpose

To establish guidelines under which HDP and EDP are paid to New York Army and Air National Guard Technicians, whether they are employed on a full time, part time or intermittent basis.

Section 2. HDP/EDP Procedures

Specific procedures and guidelines that are provided in DMNA 690-11, titled "Civilian Personnel Hazardous Duty and Environmental Differential Pay Plan" will be followed in administering this program, as permitted by 5 CFR part 532.511 and part 550.902. No changes will be made by DMNA to any provision of the plan, which affects technicians in the unit without first consulting and negotiating with ACT.

Section 3. HDP/EDP Responsibilities

Supervisors will inform all technicians of DMNA Regulation 690-11 and its availability for review. DMNA shall invite a representative of ACT to attend all HDP/EDP meetings.

ARTICLE 19

MERIT PROMOTION

Section 1. Civilian Personnel Merit Promotion and Placement Plan

DMNA agrees to implement the merit promotion and placement program in accordance with Public Law 95-454 and DMNA Pam 690-4, titled "Civilian Personnel Merit Promotion and Placement Plan" for New York National Guard Technicians. No changes will be made by the Agency to any provision of the plan which affects technicians in the unit without first consulting and negotiating with ACT. DMNA and ACT agree that the purpose of the Civilian Personnel Merit Promotion and Placement Plan for New York National Guard Technicians is to:

- a. Fill all technician positions with the best qualified individuals available.
- b. Ensure all technicians have an opportunity to develop and advance to their full potential.
- c. Fill all technician positions on the basis of merit and job related factors.

Section 2. Merit Promotion Exclusions

The merit promotion article does not apply to the filling of supervisory jobs by non bargaining unit personnel and AGR personnel. Therefore, grievances over the filling of these jobs are excluded from the negotiated grievance procedure.

Section 3. Merit Promotion Pamphlet Changes

It is mutually agreed that the current Civilian Personnel Merit Promotion and Placement Plan DMNA Pamphlet 690-4 will remain in place and the date will be changed to align with the date of the new negotiated agreement.

Section 4. Upward Mobility Plan

It is further agreed that ACT and DMNA will utilize DMNA Pamphlet 690-12 (Upward Mobility Plan New York Army and Air National Guard) to ensure technicians are afforded the opportunity to aspire to reach their fullest potential. The employer will make no changes to any provisions of DMNA 690-12 without first consulting and negotiating with ACT.

ARTICLE 20

POSITION DESCRIPTION AND CLASSIFICATION

Section 1. Technician Duties

1. Technician duties will be assigned in accordance with the technician position description of the assigned position.
2. If the Agency determines that the duties of vacant positions should be assigned, the Agency will determine which employees are equally qualified to perform the duties. If the number of equally qualified employees is greater than the number of employees to whom the Agency determines the duties should be assigned, the Agency shall use a rotational basis to select from among the equally qualified employees those who will be assigned to perform the duties.
3. It is also understood that these provisions do not interfere with or restrict management's right to assign work.

Section 2. Position Descriptions

Copies of present and new position descriptions will be made available to technicians concerned and to ACT upon written request.

Section 3. Classification Appeals

1. A technician has the right to appeal the classification of the position to which they are officially assigned. Prior to filing an appeal the technician shall discuss the matter with the supervisor concerned. An ACT representative may be present at the initial meeting if the technician so desires. The HRO shall advise and assist technicians on procedural aspects of filing classification appeals. The technician may designate a representative or representatives of their own choosing to assist in preparing the written appeal.
2. A classification appeal is a written petition made by a technician or a group of technicians for a change in the classification of the position to which assigned.
3. A technician may appeal:
 - a. The grade, title or series of the position they officially occupy.
 - b. The coverage of their position under the Federal Wage System or the General Schedule.
4. A technician may not appeal:

- a. A dispute with the supervisor concerning the description of duties.
- b. The contention that the classification of a technician's position is inconsistent with that of another position.
- c. A final classification assigned by the Office of Personnel Management (OPM).
- d. Official position classification standards.
- e. Federal pay schedules and locality wage schedules.
- f. Changes in step rate resulting from personnel actions; or
- g. Personnel actions and questions of authorized duties and responsibilities.

Section 4. Position Description Changes

A request for the redescription of a position description may be submitted at any time a technician believes that the major duties and responsibilities in the job description do not accurately describe the duties they actually perform or when the duties assigned to the position on a regular recurring basis are inconsistent with the position held by the technician.

Section 5. Other Duties as Assigned

When mission requirements allow, the phrase "other duties as assigned" will not be used regularly to assign work to a technician that is not reasonably related to their basic position description. This provision is approved with the mandatory understanding that the parties, in implementing this provision, will not place limitations on management's ability to assign any work, particularly "other duties as assigned," that is necessary to accomplish the agency's mission.

ARTICLE 21

TECHNICIAN PERFORMANCE APPRAISAL

Section 1. Appraisal Program Evaluation

A meeting will be held between DMNA and ACT periodically to discuss the effectiveness of this program.

Section 2. Performance Standards

1. All personnel involved in the performance standard/appraisal process will be familiar with TPR 430. Performance standards should describe the fully acceptable level of performance that will fully satisfy the supervisor's expectations and allow for successful completion of that part of the organization's function and goals for which that particular job is responsible. The supervisor must explain this to the technician prior to establishing performance standards, final determination will be made by the immediate supervisor with the concurrence of the reviewer. An ACT representative will be assured the opportunity to be present if requested by the technician. If an ACT representative is not requested at the commencement of the discussions, they will be assured the opportunity to be present if requested by the technician later. Performance standards shall comply with 5 USC 4302(b) (1) and any change thereto.
2. When technicians are informed of their performance standards (NGB Form 430) and critical elements they will be given a copy and it will be made a matter of record requiring their signature. Appraisal of a technician's performance will not be accomplished unless the technician has been performing under a written standard for a minimum of one hundred twenty (120) days.

Section 3. Definitions

1. **Appraisal.** The continuing process by which the technician is kept informed of how their performance compares against established performance standards and results in a final performance appraisal at the end of the appraisal period.
2. **Appraisal period.** The period of time, normally one (1) year but not less than one hundred twenty (120) days, for which the technician's performance will be appraised. The appraisal period will end on the last day of the technician's month of birth and will begin on the first day of the following month.
3. **Appraiser.** The technician's supervisor is the individual most responsible for technician's performance, for establishing performance standards, for counseling the technician on the critical and major elements of the job, and for appraising the technician based on pre-established mutually understood performance standards.

4. **Approving official.** A manager or supervisor in the technician's chain of command who is at higher organizational level than the reviewer. This individual is the approving official for performance appraisals of excellent and outstanding, and may recommend personnel decisions and actions resulting from the appraisal.
5. **Critical job element.** Any component of a technician's job that is of sufficient importance that performance below the minimum standard established by management requires remedial action and denial of a within grade increase, and may be the basis for removing or reducing the grade level of that technician. Such action may be taken without regard to performance on other components of the job.
6. **Major job element.** A major duty or responsibility of the technician's job which, although important, is not considered critical in relation to other aspects of the job.
7. **Overall performance appraisal.** The appraisal assigned at the end of the appraisal period that describes the overall performance level of the technician based on performance of each individual job element.
8. **Performance level code.** A numerical indicator (.0 to 1.0 points) assigned to each individual job element during the performance appraisal that denotes the technician's level of achievement compared to the performance standard.
9. **Performance Standards.** A statement of expectations or requirements established by management for a critical or non critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.
10. **Unacceptable performance.** Performance of a technician that fails to meet performance standards in one or more critical elements of that technician's position.

Section 4. Appraisal Responsibilities

1. The Office of The Adjutant General is responsible for:
 - a. Establishing responsibilities within their respective states, the proper administration and operation of this appraisal system.
 - b. Ensuring that all managers and supervisors are adequately trained in all aspects of performance evaluation under this system.
2. Human Resource Office is responsible for:
 - a. Administering the appraisal system within the State.
 - b. Reviewing completed appraisals for timeliness, completeness, and conformance with the regulatory requirements of this system.

c. Ensuring that necessary personnel actions or decisions based on the performance evaluation are carried out.

d. Technician performance appraisals will be maintained as a confidential document. Its use will be restricted to technician matters unless the technician agrees to its disclosure.

3. Supervisors (Appraisers) will:

a. In cooperation with their subordinate technicians, establish written performance standards and critical job elements for each position. These standards and critical job elements must be consistent with the duties and responsibilities covered in the technician's position description. A copy of the established standards and critical job elements will be provided to the technician and the HRO.

b. Personally inform technicians of the level of performance required for a fully acceptable performance.

c. Appraise performance on a continuing basis and keep technicians informed as to how their performance compares to the established performance standards.

d. Give guidance and assistance to each technician as necessary on how performance can be improved.

e. Assign the annual performance appraisal with established standards and requirements.

f. Coordinate the annual performance appraisal with the reviewer before discussion with the technician.

4. Reviewers Responsible for:

a. Assisting supervisors in identifying critical elements and establishing performance standards.

b. Reviewing appraisals and ensuring that appraisals by subordinate supervisors are accurate, fair, meaningful and complete.

c. Participating with appraisers to resolve any disagreements over critical elements, performance standards, or the technician's performance appraisal.

5. Approving Officials Responsible for:

a. Making a comprehensive review of the technician's performance appraisal at the end of the appraisal period, including the written appraisal and discussion with the appraiser and the reviewer if necessary.

b. Approving or recommending personnel action and decisions resulting from the performance appraisal in accordance with established procedures.

6. Technicians are responsible for:

a. Participating in the development of performance and critical job elements.

b. Advising their supervisors of the need, if necessary, to revise performance standards and critical elements during the appraisal period.

c. Requesting clarification of any element of the job or performance standard not clearly understood.

d. Identifying work problems and cooperating with the supervisor in resolving any problems, advising the supervisor on special factors and circumstances that should be considered in the appraisal process, and discussing objectives for improving job performance.

7. Participating actively with the supervisor during discussions of performance throughout the appraisal period.

Section 5. Identification of Performance Standards

1. Performance standards will, to the maximum extent possible, permit accurate evaluation of performance on the basis of objective criteria.

2. All technicians will be appraised by a standard appraisal system determined by The Adjutant General. Management and ACT agree to renegotiate any contractual articles, and working conditions affected by any change to the existing appraisal system.

3. The supervisor along with the technician will establish performance standards and critical elements that are an accurate reflection of the duties performed, and then sign and date the performance standards and critical elements form (Approved DMNA form). Performance standards will be reviewed with the technician semiannually. The technician will receive a copy of the signed form. Appraisal of a technician's performance will not be accomplished unless the technician has been performing under a written standard for a minimum of one hundred twenty (120) days.

Section 6. Failure of a Critical Element

1. If during the appraisal period a supervisor advises a technician of their failing to measure up to a critical element of their performance standards, the supervisor must provide this to the technician, including specific instructions on how to improve their performance on this critical job element and a date that performance is expected to meet the standards. Assistance will be provided by the supervisor to assist the technician in attaining the fully acceptable level of performance. This date will be at

least ninety (90) days from the date of the counseling session. An ACT representative will be assured the opportunity to be present at all counseling sessions if requested by the technician. A technician given a ninety (90) day notice of unacceptable performance will be given the opportunity to grieve the substance of the notice through the negotiated grievance procedure.

2. The supervisor upon the request of the technician affected, provide a copy to the local ACT representative when a ninety (90) day warning of a possible unsatisfactory rating is given.

3. This grievance procedure will not preclude management from taking necessary personnel actions during the course of the grievance, or from making whole the affected technician if so ordered by competent authority.

Section 7. Failure of a Critical Element While on Detail

If a technician is detailed for a period of over one hundred twenty (120) days and received an unacceptable rating in a critical element, upon request by the technician or ACT, the Agency will provide the reason and supporting facts for the unacceptable rating.

Section 8. 30 Day Notice

No action will be taken as a result of less than fully acceptable performance without benefit of a written thirty (30) day notice. A minimum thirty (30) day advance notice of the action to be taken (reduction in grade or removal), which identifies the critical job element(s) and instances of unacceptable performance on which action is based. This advance written notice must be in concurrence with an official who is in a higher position than the immediate supervisor. (This requirement does not apply when the action is being taken by The Adjutant General). This is not a proposed notice, but is to be considered as a final notice of the action to be taken because, before this final step, the technician would have been given adequate assistance and time to improve performance.

Section 9. Notification of Improved Performance

The technician must be notified by the supervisor in writing when unacceptable performance in any critical job element has improved and is within the minimum standards set and the time frame allotted.

Section 10. State Review and Appeals Board

Performance Appraisal Board proceedings:

a. The appellant must file the performance appraisal appeal NLT thirty (30) calendar days from the date that the technician reviews the appraisal.

b. The HRO will notify the technician, supervisor, and the Appeals Board President of the impending hearing within fourteen (14) calendar days upon receipt of the letter requesting an appeal.

c. The Performance Appraisal Board President will become familiar with TPR 430 and the performance appraisal.

d. The Performance Appraisal Appeal Board will convene NLT ninety (90) calendar days upon receipt of the appeal from the HRO.

Section 11. Separation/Reduction in Grade Extensions

At the discretion of the Agency the effective date of separation or reduction in grade may be extended pending final decision.

Section 12. Rationale for Critical Element Failure

Where a technician can substantiate to management that he/she cannot satisfy critical elements or meet performance standards because of working conditions beyond their control, no adverse action or detrimental performance rating will be initiated or rendered arising from such situation.

Section 13. TPR 430 Availability

A copy of TPR 430 will be available to each technician, upon request.

Section 14. Substance Abuse and Personal Problems

If a technician identifies a personal problem prior to receiving their performance appraisal, the issue will be taken into consideration. Every effort will be made to resolve the situation informally.

ARTICLE 22

INCENTIVE AWARDS

Section 1. Incentive Awards General

The Agency and ACT agree that a well managed Incentive Awards Program can greatly benefit the technician program and be of real significance in improving the morale and well being of the work force. The Agency will publicize all aspects of the program and ACT will encourage technician participation.

Section 2. Incentive Awards Program Objectives

Incentive awards are an effective means to achieve greater efficiency, economy, and improvement of operations in the technician program by encouraging active participation. The program recognizes and rewards technicians, individually or collectively, for achievements and suggestions contributing to the efficiency, economy, or other improvements of government operations that exceed normal job performance requirement, as well as those who perform outstanding special acts or services in the public interest in connection with official employment.

Section 3. Incentive Awards Program Scope

The Incentive Awards Program addresses awards or recognition in the following areas:

- a. Suggestions
- b. Inventions
- c. Sustained Superior Performance (SSP)
- d. Special Acts or Services (Special Achievement Awards)
- e. Length of Service Recognition
- f. Honorary Awards and other methods of recognition
- g. Letters of Commendation or Appreciation
- h. Quality Salary Increases (QSI)
- i. On the Spot Cash Awards
- j. Time Off Awards

Section 4. Incentive Awards Program Administration

1. The parties agree that the details outlining the purpose, scope and administrative procedures relating to the Incentive Awards Program are published in TPR 451 and further defined as pertains to members of the bargaining unit in this article. The availability of funds will determine the extent of monetary awards.

2. In the event TPR 451 is revised during the term of this agreement, the Employer agrees to conduct appropriate Impact and Implementation (I&I) Bargaining with ACT on matters concerning the Incentive Awards Program which may impact on this agreement.

Section 5. Incentive Awards Committee

An Incentive Awards Committee will be scheduled by the Agency and will serve all technicians for awards requiring The Adjutant General's approval.

ARTICLE 23

REDUCTION IN FORCE

Section 1. RIF Application

A Reduction in Force (RIF) occurs when a technician is released from their competitive level by separation, change to lower grade, furlough for more than thirty (30) calendar days, or reassignment involving a replacement of another technician. Such action may be due to lack of work or funds, reorganization, abolishment of position, transfer of functions or the need to place a technician exercising restoration rights.

Section 2. RIF Exceptions

1. The following actions do not constitute a RIF:

- a. Separation of technicians who fail to accompany a transfer of function.
- b. Management reassignment of a technician to a vacancy at the same grade or representative rate.
- c. Termination of temporary technicians.
- d. Downgrades as a result of reclassification.
- e. Termination of temporary promotions.
- f. Elimination of technicians through disciplinary/adverse action procedures.
- g. Furlough of thirty (30) calendar days or less.

2. DMNA agrees to notify the ACT State Chairman of any notification of pending adjustment of manpower, positions, realignment, reclassification, or reduction in grade as this information becomes available. This information will be provided to assist ACT in helping to preclude a possible RIF action.

Section 3. RIF Accomplishment

A RIF will be accomplished in accordance with the procedures outlined in TPR 351 and the specific terms of this article.

a. DMNA will designate the specific area for RIF after consultation with ACT, in accordance with this Article.

b. DMNA agrees to consider all reasonable actions to avoid or minimize the impact of a RIF. Consideration will be given to curtailing recruitment or promotion in the

geographical area affected by the RIF. Existing vacancies will be considered to retrain qualified technicians who would otherwise be separated. Every effort will be made, within budgetary restraints, to retrain technicians affected by a RIF to prevent separation. When a RIF is declared, technicians who work in the area affected by the RIF may accept a voluntary early retirement, if qualified and authorized.

c. DMNA and ACT agree to negotiate a cut-off date for appraisals to be used in the RIF process. The cut off date does not negate the continuing requirement of appraisals to be accomplished as they affect a multitude of other non RIF issues.

Section 4. DMNA Actions During a RIF

DMNA agrees to the following:

a. Notify ACT of an impending RIF action within ten (10) workdays. DMNA further agrees to provide an explanation of the procedures which will be used for implementation of the RIF within thirty (30) calendar days from the date of receipt of original notification to the State Chairman. Such notifications will be made following Section 3 (b) above.

b. ACT will be given an opportunity to review the implementation of the RIF and respond not later than thirty (30) calendar days with suggestions.

c. Meet with a representative of ACT to explain the need for a RIF and the procedures to be used in the implementation.

d. ACT will be given a copy of the retention register established in conjunction with the RIF.

e. Provide briefings as appropriate to keep the technician workforce informed.

f. Assure that applicable regulations are available for review by all parties concerned.

g. Review criteria to determine the need for a RIF and provide applicable counseling.

h. Develop an aggressive placement program for adversely affected technicians.

i. Individuals affected by RIF will not receive their sixty (60) calendar day notice prior to the State Chairman providing DMNA with a response.

Section 5. RIF Retention Register

DMNA will establish a retention register before releasing technicians from their competitive level. The register will show the competing technicians in descending order starting with the highest score first. The retention register documents any action being taken and is maintained for every RIF action. When a retention register is established, it will list all competing technicians in descending order by Tenure Groups I, II, and III. The technician's correct Tenure Group is shown in Item 24 of the SF 50. For the purpose of this article, "Technician" is defined as Supervisory and Bargaining Unit Personnel.

- a. This process will begin with the highest-grade level technician with the highest retention standing.
- b. The following ranking standards will be utilized for determining retention standing for placement actions during a RIF.
 1. Tenure Group.
 2. The average of the technicians last three (3) performance appraisals. Technicians who do not have three (3) official appraisals on file will be credited with fifty five (55) points for any missing appraisals in the average. If a decision on an appealed performance appraisal is issued prior to the effective date a RIF personnel action, the new appraisal will be used in the retention standing equation. Every reasonable effort will be made by all parties to expedite the appeal process to cause a final decision prior to RIF's effective date.
 3. As a tiebreaker service computation date.
 4. As a second tie breaker technician service date.
 5. If it becomes necessary to displace a technician, the same standards above will apply to a technicians.

Section 6. Placement Actions

1. Placement offers and competition for occupied positions will occur in the following order:
 - a. Placement in vacant positions at the same grade or pay.
 - b. Competition for occupied positions at the same grade or pay.
 - c. Placement in vacant positions at lower grade levels or pay.
 - d. Competition for occupied positions at lower grade levels or pay.

2. When placed, technicians must meet all military/compatibility requirements and be able to perform the duties of the job. The HRO may waive all technician qualification standards except mandatory education and military/compatibility requirements (unless waived by NGB) for placement in vacant positions at the same or lower grade. In order to displace other technicians in occupied positions at the same or lower grade level, management and the HRO must determine that the excess technicians are well qualified and can perform the duties without disruption of the work operations. Technicians who are displaced will receive job offers in accordance with paragraph 1 above. Competitive merit placement procedures must be used for placement in higher graded positions.

Section 7. RIF Competitive Level/Area

1. The boundary within which technicians compete for retention and receive placement offers. A competitive area may be defined in terms of organizations and/or geographical location. It may be restricted to the commuting area or one organization or expanded to cover the entire state. The area may also include both the ARNG and ANG or be restricted to one service. The competitive area should be identified during advance planning for RIF.

2. A competitive level consists of all positions within a competitive area which are in the same grade, same type of service (dual or non-dual status) and are so alike in qualification, requirements, duties and responsibilities that the technician can be moved from one position to another without undue interruption to the work program. The management of the competitive levels is the responsibility of the HRO.

a. Separate competitive levels are required within the same series and grade and within the same trade or occupation when differences exist.

b. A competitive level may consist of only one (1) position when that position is not interchangeable with or similar to other positions.

c. Separate competitive levels will established for:

(1). Part-time and full-time positions.

(2). Dual and Non-Dual Status service positions.

(3). Supervisory and non-supervisory positions.

Section 8. RIF Tenure Groups

Tenure groups are the categories in which technicians are grouped based on length of employment and completion of probationary/trial periods.

a. Tenure Group I - Permanent, competitive service technicians with career status, who have successfully completed their probationary period, and permanent, excepted service technicians who have successfully completed a trial period.

b. Tenure Group II - Permanent technicians who are serving a trial or probationary period. This category includes competitive service technicians with career conditional status and excepted service technicians who have not completed their trial period. Competitive service technicians under career appointment who must serve a probationary period are also in Tenure Group II.

c. Tenure Group III - Technicians who serve under indefinite appointments in the excepted service.

Section 9. RIF Order of Release

1. The order in which technicians on the retention register will be released from their competitive level based upon their retention standing.

2. When a RIF requires the release of one (1) of more competing technicians from a competitive level, all technicians in Tenure Group III are selected for release before any in Tenure Groups I or II, and all Group II before any in Group I. Within each Group, technicians are selected for release in the order of their retention score, beginning with the lowest score.

Section 10. RIF Notices

The Human Resources Office will issue RIF notices to all affected technicians.

a. General Notice: This notice is issued when it cannot be determined what specific personnel actions will take place during a RIF. This notice must be supplemented by a specific notice before a technician can be released from their competitive level.

b. Specific Notice: Before releasing technicians from their competitive level, they must receive a specific notice no later than sixty (60) days prior to the effective date of the personnel action. The last day of the notice may not fall on a non workday. The personnel action may not be effected, or the notice delivered, during the period of 15 December through 3 January. As a minimum, include the following information in the notice. If a more severe action that originally proposed becomes necessary, issue a new notice.

1. Reason(s) for the action.
2. Specific action that will be taken (reassignment, demotion, separation, etc.) and effective date.
3. Title, series, grade, and salary of new job offer and current position.

4. If applicable, compatibility information for a new position.
5. If applicable, reasons for any exceptions to order of release.
6. Location of retention registers, pertinent regulations and who to contact for additional information.
7. Appeal rights (how to submit, to whom, and time limits.)
8. An explanation of all benefits due; such as grade and pay retention, severance pay entitlement, and retirement eligibility.
9. Eligibility for additional placement assistance e.g., OPM's IPP, DoD Priority Placement Program; Reemployment Priority List; Defense Outplacement Referral System; and Job Training Partnership Act Program.
10. Requirement for the individual to acknowledge receipt of the notice by signature, if delivered in person, or by return receipt, if mailed.
11. Competitive area and competitive level designated.
12. Service computation date, technician service date, and retention rating.

Section 11. RIF Appeals of Specific Notice

A competing technician may appeal to The Adjutant General when they have received a specific notice of RIF and believes DMNA incorrectly applied the provision of TPR 351.

- a. An appeal may be submitted upon receipt of a specific notice, but no later than thirty (30) calendar days before the effective date of the action.
- b. The appeal must be in writing and must identify the technician as follows:
 - Name
 - SSN
 - Position title, grade and job number
 - Place of employment
- c. The appeal must clearly state the reason the technician believes the action affecting them is inappropriate, and must show that DMNA failed to comply with the RIF procedures outlined in TPR 351.

Section 12. Precluding a RIF

1. Once NGB and/or the State Adjutant General makes the State aware of a RIF no affected personnel actions will take place until negotiations between the HRO and the New York State Chairman of ACT or their designee have been completed.

2. Pending the various negotiated date/time frames agreed by management and the union a concerted effort will be made to use the following guidelines:

a. To preclude a RIF no vacant bargaining unit position within those specific career fields that are affected (Army or Air National Guard) will be filled within the New York National Guard. This is with the exception of those positions essential to agency operations determined by the State Adjutant General through the HRO. If said positions are to be filled, technicians affected by a RIF will be given first consideration in the filling of those positions. In the event any affected technicians identified by a mock RIF that have not been placed by the negotiated "cut-off date," those technicians will be management directed to available vacant positions.

b. Personnel who decline a management directed reassignment outside a reasonable, agreed to, commuting area will be separated from their current position, but not until the date the formal proposed RIF would have taken place.

c. The Agency will take positive action to assist technicians affected by a RIF. Positions available for offer will initially be within the competitive area or expanded area as necessary including statewide. Technicians who qualify may be registered for placement in other agencies through the DoD Priority Placement Programs. Registration will be in accordance with DoD Manual 1400.20-1-M.

d. Those technicians that cannot be placed or management directed in a vacant position will be terminated through the RIF process.

ARTICLE 24

DETAIL OF TECHNICIANS

.Section 1. Temporary Assignments

The Agency may detail technicians for any legitimate management purpose, for example, to handle unexpected workloads or fill in during another technician's absence, or while awaiting a pending security clearance, or emergencies. Such details will be for the shortest practical period. Furthermore details will only be used to ensure mission accomplishment. When possible, candidates possessing the necessary skills for the position will be rotated through the position

Section 2. Detail Documentation

1. All details, regardless of duration, must be reported on a SF 52 and maintained as a temporary record in the Official Personnel Folder. Any detail in excess of thirty (30) days must be maintained as a permanent record in the Official Personnel Folder.
2. In case of emergency, details where there is insufficient time to furnish a SF 52, it will be accomplished by verbal authorization and followed by a SF 52. The supervisor will be responsible for forwarding this SF 52 to HRO within five (5) working days.

Section 3. Detail to Higher Graded Positions

Technicians detailed to a higher grade position in excess of thirty (30) days shall be temporarily promoted to a higher grade. If the period is to exceed one hundred twenty (120) days, the position will be filled temporarily using merit promotion procedures.

ARTICLE 25

TRAINING

Section 1. Training Programs

1. It is agreed that DMNA is responsible for installing and maintaining a training program, including orientation of new technicians, specific training in the application of skills and techniques, and the development of technicians for maximum utilization.

2. Although it is expected that personnel are basically qualified to perform their duties as a prerequisite to employment, DMNA and ACT recognize the possible need for additional training or retraining.

Section 2. Training Procedures

Technicians may attend and participate in other training events and schools while in technician status as directed by the Agency, in accordance with TPR 400 and the technician's current position description.

Section 3. Scheduling of Training

It shall be a matter of concern and interest to both DMNA and ACT that appropriate training courses, seminars, conference, and meetings be scheduled during working hours to allow technicians the opportunity to gain information, education and training in their respective positions. When schools are outside the regular scheduled workweek, the technician will be compensated in accordance with CFR 551.423. Training requests will be submitted and endorsed through the technician's supervisory chain for consideration of approval and funding.

ARTICLE 26

TRAVEL

Section 1. Travel and Transportation

Travel and transportation at government expense will be directed only when officially justified and by those means which meet mission requirements consistent with good management practices.

Section 2. Travel Expense and Orders

1. Technicians will not be directed to perform official travel at their own expense or at rates of allowances and amounts of reimbursement inconsistent with the provisions of Volume 2, Joint Travel Regulations (JTR) and applicable regulations. Prior to issuance of travel orders, DMNA may counsel, advise, and afford all technicians, upon their request, their rights under the applicable JTR.

2. Technician travel orders will be issued prior to technicians being given work assignments at locations where the combination of actual hours of work and travel time exceeds ten (10) hours.

Section 3. Travel Official Business

1. It is agreed that technicians traveling on official business will exercise the same care in incurring expenses and accomplishing a mission that a prudent person would exercise if traveling on personal business. Excess costs, circuitous routes and luxury accommodations unnecessary or unjustified in the performance of a mission are not considered as exercising prudence.

2. The JTR are the sole travel and transportation allowance regulations governing official travel. There may be circumstances when travel and transportation allowances are prohibited in the JTR and are so stated. However just because a prohibition is not stated does not mean that an allowance exists or may be authorized

Section 4. Travel Compensation

Travel will normally be scheduled within a technician's regularly scheduled work week. When travel is required outside the regularly scheduled work week, the technician will be compensated in accordance with appropriate regulations.

Section 5. Travel Notification

Technicians required to travel will be advised at least three (3) days in advance, except in cases of emergency.

Section 6. Fear of Flying

A technician who indicates a fear of flying shall be required to submit to an examination to determine the validity of their feelings.

Section 7. Exceptions From a Travel Assignment

A technician selected for assignment involving travel may request to be excused and such requests will be given bona fide consideration, providing such a request is submitted within a reasonable amount of time prior to the scheduled travel. In cases of denial, the reasons for denial will be explained to the technician.

Section 8. Government Travel Card (GTC) and Travel Advances

1. Mandatory use of the GTC: "The Travel and Transportation Reform Act of 1998" (TTRA) (Public Law 105-264) stipulates that the government sponsored, contractor issued travel card (Government Travel Card, or GTC) shall be used by all civilian US Government personnel, unless otherwise exempted, to pay for costs incident to official business travel, including travel advances, lodging, transportation to include airline tickets purchased as directed through Individually Billed Account, rental cars, meals and other incidental expenses.

2. Payment: The technician is responsible for the timely payment of the GTC bill by means of split disbursement on a travel voucher. The technician is additionally responsible for payment of any remaining non-reimbursable incidental expenses charged on the GTC.

3. Exemptions: the following are exempted from mandatory use of the GTC:

- a. Technicians who have an application pending for the travel charge card.
- b. Individuals traveling on invitational travel orders.
- c. New appointees.
- d. Infrequent Travelers (no more than two (2) times per year).
- e. Technicians who are denied travel charge cards or whose travel charge cards have been cancelled or suspended by the cardholder's agency.

4. Failure to use the GTC shall not be a basis for refusing to reimburse the technician for otherwise appropriate charges. Such failure, however, may subject the technician to appropriate administrative or disciplinary action.

5. Technicians who misuse or abuse the GTC may be subject to appropriate administrative or disciplinary action up to, and including, removal from federal service. Additionally, willful misuse of the GTC may constitute a crime punishable under federal or state law.
6. A travel advance in the form of an electronic funds transfer may be authorized for an technician who is exempt from use or who is denied a GTC or whose GTC has been canceled or suspended by the card contractor or by the cardholder's agency/organization for financial irresponsibility or for other specific reasons.
7. Temporary technicians will not normally be issued a GTC unless the Agency deems necessary to support official travel.

ARTICLE 27

GRIEVANCE PROCEDURES

Section 1. Grievance Purpose

DMNA and ACT recognize the importance of settling disagreements and disputes promptly. The purpose of this article therefore, is to implement the provisions that pertain to grievances and to establish specific procedures for the resolution of grievances. This procedure is the exclusive procedure available to the union and the technicians in the unit, for the processing of grievances, and is designed to provide a prompt and orderly consideration and resolution of matters in dispute.

Section 2. Grievance Exclusions

1. The grievance procedure will not apply with respect to any grievance concerning Section 7121(c) Public Law 95-454 as stated below:

- a. Any claimed violation of Subchapter III of Chapter 73 of this title (relating to prohibited political activities).
- b. Retirement, life insurance, or health insurance.
- c. A suspension or removal under Section 7532 of this title.
- d. Any examination, certification, or appointment, or
- e. The classification of any position which does not result in the reduction in grade or pay of a technician.

2. In addition to the exceptions listed above, grievances will not be entertained on matters pertaining to:

- a. Non-selection for appointment or promotion from among properly ranked and certified candidates for promotion.
- b. Any matter which pertains to a non-bargaining unit technician.
- c. The contents of properly negotiated agency pamphlets, rules and regulations.
- d. Non-adoption of a suggestion.

e. Disapproval of a quality salary increase, performance award for which nominated.

f. Actions pursuant to 32 U.S.C. 709f.

g. Performance ratings in accordance with Section 11 of Article 21, Employee Performance Appraisal.

h. Honorary or discretionary awards.

Section 3. Grievance Rights

DMNA agrees that all technicians have a right to present their grievances to the appropriate management officials for prompt consideration and equitable decision. In exercising this right, the technician and their representative will be free from restraint, coercion, discrimination or reprisal.

Section 4. Grievance Definition

The parties to this agreement define a grievance as meaning any complaint:

a. By any technician concerning any matter relating to the employment of the technician or;

b. By ACT concerning any matter relating to the employment of any technician or;

c. By any technician or ACT concerning the following:

(1). The effect or interpretation, or a claim or breach, of this collective bargaining agreement.

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

(3) Matters involving prohibited personnel practices may be pursued under this grievance procedure or the statutory procedure, but not both, and that choice will be considered as made at the time the party timely initiated an action under this grievance procedure or applicable statutory procedure.

Section 5. Decision on Improper Selection

If proper authority determines that an improper selection for a specific position has been made, DMNA agrees to abide by that authority's decision, unless the agency appeals the decision utilizing appropriate appeal procedures, in which case the agency will abide by the final decision resulting from those procedures.

Section 6. Grievances by ACT

DMNA recognizes the right of ACT to initiate a grievance on its own behalf. The grievance must be processed in accordance with the provisions of Section 8 of this article.

Section 7. Grievance Representation

Technicians may not be represented by any other labor organization, however, a technician is permitted to be their own representative, or be represented by ACT in the process of a grievance. DMNA agrees that a technician cannot be offered a settlement to a grievance without an ACT representative being afforded the opportunity to be present during all phases of the grievance procedure and having been given reasonable time to appear. Any settlement or adjustment offered or agreed to, may not be inconsistent with the term of this agreement.

Section 8. Grievance Processing

The following grievance procedure will be adhered to:

Step 1. A grievance must be submitted orally to the immediate supervisor concerned within fifteen (15) workdays of the act or occurrence or first knowledge to which it relates. The supervisor concerned must respond orally within ten (10) workdays thereafter.

Step 2. If the grievance is not resolved, the employee or their representative may submit the grievance, in writing, within five (5) workdays to the next level of supervision, with an information copy provided to the immediate supervisor. The written grievance must identify the date the oral grievance was submitted, the specific nature of the grievance, the remedy desired and the designated representative if other than the grievant (which is subject to change by the grievant). The next level supervisor will meet with the technician and/or their representative within five (5) workdays of receipt of the grievance. A written reply will be provided within five (5) workdays of the meeting. If no meeting is held, Section 11 of this article applies.

Step 3. If the grievance is not resolved, it may be forwarded by the grievant or duly authorized representative to the next level of supervision for further consideration. This level is construed to mean Air Commander, MACOM, Director of Logistics, State Aviation Officer, or United States Property and Fiscal Officer as appropriate to the activity within five (5) workdays following the receipt of the previous response. A reply will be made within five (5) workdays following receipt.

Step 4. If the grievance is not resolved at Step 3, the technician or their representative may forward the grievance to the Human Resources Officer within fifteen (15) workdays of receipt of the decision from Step 3, for The Adjutant General's decision. After duly considering the recommendations of the HRO and review of their grievance file, The Adjutant General will render a written decision to the technician within twenty (20) workdays. This decision will be DMNA's final decision and shall contain findings on all issues covered by the grievance. A copy

of The Adjutant General's decision will be mailed to the grievant; the grievant's representative and the ACT State Council Chairman.

Step 5. If the grievant and/or ACT is not satisfied with the decision in Step 4, the issue may be pursued through arbitration by requesting arbitration through the HRO within thirty (30) days, absent a bona fide exclusion for such access.

Section 9. Grievance – ACT’s Right to Written Reply

ACT will receive a copy of each written reply made at the appropriate supervisory levels.

Section 10. Grievances Concerning Negotiated Agreement

Grievances concerning the interpretation, application or alleged violation of this agreement shall be processed as above. In the event that the decision is not agreeable to the technician, and/or ACT or DMNA determined that this grievance is inappropriate to pursue through the grievance procedure as a matter outside its purview, the provisions of arbitration may be invoked to ascertain the validity of the grievance.

Section 11. Grievance Time Limits

1. Failure of management officials or supervisors to observe the time limits described herein will automatically permit the grievant to advance to the next step of the grievance procedure.
2. Failure of the grievant to observe the time limits will terminate the grievance.
3. All time limits may be extended by mutual agreement.

ARTICLE 28

MEDIATION

Section 1. Mediation Policy

The Agency and ACT agree to follow the provisions of the law when an agreement cannot be reached over issues that are deemed appropriate for collective bargaining in accordance with PL 95-454.

Section 2. Mediation Procedures

The parties agree that when an impasse is reached during negotiations, prior to going to the Federal Services Impasses Panel, mediation will be considered. The requesting party will assume responsibility to contact the Federal Mediation Conciliation Service and coordinate the participation of the mediator in negotiations should mediation be determined by both parties to be appropriate. Neither party will attempt to unilaterally frame the issue for the mediator. If agreement cannot be reached after invoking mediation, either party may proceed in accordance with PL 95-454.

ARTICLE 29

ARBITRATION

Section 1. Arbitration Purpose

If DMNA and ACT have not resolved the complaint utilizing the negotiated grievance procedure then the issue may be pursued through arbitration absent a bona fide exclusion for such access. It is recognized that arbitration as provided herein is final and binding and may only be invoked by DMNA or ACT upon written notice by either party to the other party.

Section 2. Arbitration - Selection of Arbitrator

1. Within five (5) workdays of receipt of the arbitration request, representatives of the parties shall meet for the purpose of endeavoring to agree on the selection of an arbitrator. If agreement cannot be reached, either party may request the Federal Mediation and Conciliation Service to submit a list of five impartial persons who are qualified to act as arbitrators.

2. The parties shall meet within five (5) workdays after receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, DMNA and ACT will each strike one name from the list of five (5) arbitrators and shall repeat this procedure until one name remains. The person whose name remains on the list shall be the duly selected arbitrator.

Section 3. Arbitration Fees and Expenses

The fees and expenses of the arbitrator, reporter, and costs of transcripts (if any) shall be borne equally by both parties, without regard to which party requests arbitration.

Section 4. Arbitration Procedures

When the arbitrator has been selected, ACT and DMNA representatives will meet on an equal basis to frame the question or questions to be submitted to the arbitrator.

Section 5. Arbitration Exclusions

If the issue is declared to be non-grievable or non-arbitral by either party, the validity of grievability/arbitrability of the issue will be the first question determined by the arbitrator.

Section 6. Arbitration Exception to Awards

Either party to arbitration may file with the authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in Section 7122(f) of Title 5 USC). If upon review the authority finds the award is deficient

a. Because it is contrary to any law, rule, or regulation;

b. On other grounds similar to those applied by Federal courts in private sector labor/management relations the authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations;

c. If no exception to an arbitrator's award is filed during the thirty (30) day period beginning on the date the arbitrator served the award, the award shall be final and binding.

Section 7. Arbitration Hearing Location

The arbitration hearing shall be held at a location mutually agreed upon by the Agency and ACT. The arbitration hearing will be held during the regular day shift work hours of the basic work week.

Section 8. Arbitrator's Time Limits

The arbitrator will be requested by the parties to render a decision as quickly as possible, but in any event not later than thirty (30) calendar days after the conclusion of the hearing unless the parties otherwise agree.

ARTICLE 30

UNFAIR LABOR PRACTICES

Section 1. Unfair Labor Practices (Reference Chapter 7116 Title 5 USC)

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency-

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) To sponsor, control, or otherwise assist any labor organization, other than to furnish, upon re-request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) To discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) To refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) To fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) To enforce any rule or regulation (other than a rule or regulation implementing Sec. 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) To otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization-

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) To cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) To discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non preferential civil service status, political affiliation, marital status, or handicapping condition;

(5) To refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) To fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) To call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) To condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) To otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure-

(1) To meet reasonable occupational standards uniformly required for admission, or

(2) To tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under Sec. 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which-

(1) Publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) Corrects the record with respect to any false or misleading statement made by any person, or

(3) Informs employees of the government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

ARTICLE 31

GENERAL

Section 1. Custodial Duties

In facilities where no state employees are employed to perform custodial duties, assigned personnel may be required to perform these duties on a fair and equitable basis. Management will make every effort to obtain authorization for employees for these particular tasks.

Section 2. Flight Physical Failure

When a technician fails a flight physical and is otherwise physically qualified for military service, management will initiate appropriate action in accordance with TPR 715.

Section 3. Contracting

Both parties understand that "Contracting Out" is a management right. However, management agrees that, to the extent possible, no technician will lose employment due to contracting out. Further, management will make every reasonable effort to reassign each of these technicians.

Section 4. Carpooling

Carpooling is a mode of travel which eliminates additional POVs on installations. Due to its purpose, conservation of energy and relieving parking congestion, the Agency should encourage participation in carpooling.

ARTICLE 32

DURATIONS AND CHANGES

Section 1. Agreement Duration/Negotiating New Agreement

1. This Agreement shall remain in full force and effect for three (3) years from the date approved by the Department of Defense (DoD). The parties shall meet to commence negotiations on a new agreement per the following schedule:

Prior to Agreement Termination

Event

Not later than 150 days prior

Negotiate Ground Rules (MOU)

Not later than 100 days prior

Management and ACT submits proposals

Not later than 60 days prior

Begin negotiations

2. Further, this Agreement shall terminate at any time it is determined that ACT is no longer entitled to exclusive recognition under the provisions of PL 95-454.

Section 2. Agreement Amendments/Supplements

This agreement may be opened at any time by consent of both parties. Also, modifications or amendments of this agreement may be required because of changes in applicable laws. Any request for modifications or amendments shall be in writing and must be accompanied by a summary of the modifications or amendments proposed and the reasons therefore. When the modification or amendment is required and both parties consent to opening the agreement, representatives of DMNA and ACT will meet to negotiate the matter and no changes other than those required or those covered by the summary shall be considered. Such modifications or amendments shall be subject to the approval of the Department of Defense (DoD) and will be effective on a date determined to be appropriate under the circumstances.

Section 3. Negotiability Determination

When a decision has been made by a higher authority that a proposal or proposals previously determined to be non-negotiable have become negotiable, the parties shall meet, without unreasonable delay, and negotiate such proposal or proposals that had previously been withdrawn. If other items in the contract can be specifically related to the proposals to be negotiated, they may become subject of these negotiations. To protect the integrity of the contract, this relationship of other contract items shall be strictly interpreted.

Section 4. Local Agreements

Local agreements may be made between local management supervisor and local ACT representatives as long as they do not conflict with the provisions of this agreement. Such local agreements will pertain only to the personnel at that particular installation. Any supplemental agreements negotiated under this section will be handled in accordance with DoD Directive 1426.1 (Engl. 2) B.2.b(8).

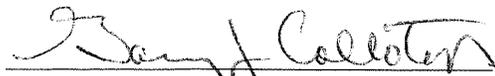
Section 5. Signature Page

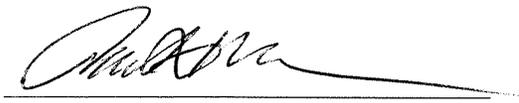
The signature page will remain the same as in the existing agreement with the addition of a list of management and ACT representatives who participated in the negotiations of this new agreement.

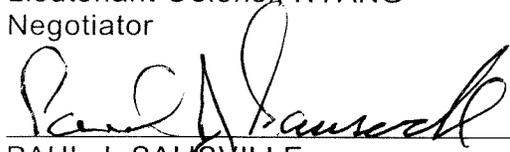
Signed this 31ST day of July 2009:

**FOR THE DIVISION OF MILITARY
AND NAVAL AFFAIRS (DMNA):**


JOSEPH J. TALUTO
Major General, NYARNG
The Adjutant General


GARRY J. COLLOTON
Chief Negotiator


THOMAS X. MASON
Lieutenant Colonel, NYANG
Negotiator


PAUL J. SAUSVILLE
Lieutenant Colonel, NYARNG
Negotiator

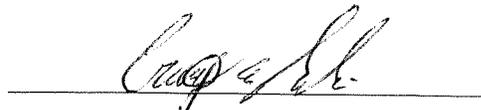

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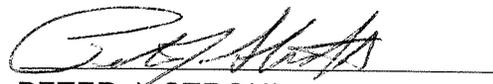

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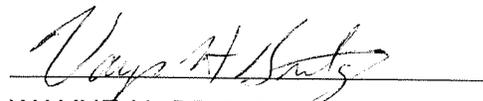

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Master Sergeant, NYANG
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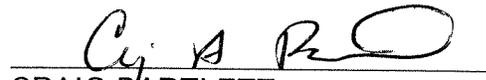

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Index

Title	Page #	Section #
Access to Regulations	20	10
Access to Safety Publications	47	9
ACT Representation List	22	2
ACT Sponsored Conventions and Training	24	6
Administrative Dismissal	48	14
Administrative Leave for Physicals	39	6
Administrative Pay During Adverse Action	29	7
Adverse Actions	28	6
Affirmative Employment Plan	13	7
Agreement Duration/Negotiating New Agreement	83	1
Agreements/Amendments Supplements	83	2
Appraisal Definitions	53	3
Appraisal Program Evaluation	53	1
Appraisal Responsibilities	54	4
Arbitration	78	
Arbitration Exceptions to Award	78	6
Arbitration Exclusions	78	5
Arbitration Fees and Expenses	78	3
Arbitration Hearing Location	79	7
Arbitration Procedures	78	4
Arbitration Purpose	78	1
Arbitration-Selection of Arbitrator	78	2
Arbitrator Time Limits	79	8
Assistant Driver	47	7
Bargaining Unit	10	1
Bargaining Unit/Exclusive Recognition	10	
Bargaining Unit Roster	19	7
Blood Donation	40	10
Bulletin Boards	34	1
Cardiopulmonary Resuscitation (CPR)	48	12
Carpooling	82	4
Changes of Authorized ACT Officials (SF 1187)	33	10
Changing Amount of Dues	33	7
Civilian Personnel Merit Promotion Plan	50	1
Civilian Titles	16	2
Classification Appeals	51	3
Cleanup Period	35	3
Compensatory Time	35	4
Compensatory Time Off Religious Observances	40	9
Consultation	18	1
Consultation Definition	18	2
Contents of Bulletin Board Postings	34	4
Contract Distribution	34	6
Contracting	82	3
Custodial Duties	82	1

Title	Page #	Section #
Decision On Improper Selection	74	5
Deduction Amount	33	6
Definitions	2,3	
Detail Documentation	68	1
Detail of Technicians	68	
Detail to a Higher Graded Positions	68	2
Disciplinary Actions	29	8
DMNA Actions During a RIF	62	4
DMNA Consultation Matters	18	3
DMNA Publications	20	11
Dues Time Periods	32	5
Dues	32	1
Dues Withholding	32	
Duration and Changes	83	
Employee Assistance Program (EAP)	14	
EAP Policy	14	1
EAP Program Responsibility	14	2
EAP Personnel Actions	14	3
Early Release Climate/Emergencies	42	
Eating Areas	46	4
EDP/HDP Procedures	49	2
EDP/HDP Purpose	49	1
EEO Discriminatory Practices	12	3
EEO General	12	1
EEO Program	12	2
EEO Program Improvements	12	4
EEO Representation	12	5
Emergencies	45	2
Employee Health Benefits Open Season	31	18
Employee Morale	19	5
Employee Rights	27	1
Environment	44	
Equal Employment Opportunity (EEO)	12	
Exception From a Travel Assignment	71	7
Excluded Consultation Matters	18	4
Exposure Time	44	3
Facility Environment	44	4
Failure of a Critical Element	56	6
Failure of a Critical Element While on Detail	57	7
Family and Medical Leave Act	39	4
Fear of Flying	71	7
Federal Wage Grade Surveys	19	6
Fire Protection	46	5
Flight Physical Failure	82	2
Formal Discussions	23	4
General	82	
Government Travel Card (GTS) and Travel Advances	71,72	8

<u>Title</u>	<u>Page #</u>	<u>Section #</u>
Grievance – ACT’s Right to Written Reply	76	9
Grievance Definition	74	4
Grievance Exclusions	73	2
Grievance Procedures	73	
Grievance Processing	75,76	8
Grievance Purpose	73	1
Grievance Representation	75	7
Grievance Rights	74	3
Grievance Time Limits	76	11
Grievances by ACT	74	6
Grievances Concerning Negotiated Agreement	76	10
Hazardous Duty Pay	49	
HDP/EDP Procedures	49	2
HDP/EDP Purpose	49	1
HDP/EDP Responsibilities	49	3
Health and Safety	45	
Health and Safety Survey	47	8
Health Benefits and Open Season	31	18
Holiday Pay	41	2
Holiday Work	41	3
Holidays	41	
Holidays	41	1
Hours of Work	35	
Hours of Work Definitions	35	1
HRO Newsletter	20	9
Identification of Performance Standards	56	5
Incentive Awards	59	
Incentive Awards Committee	60	5
Incentive Awards General	59	1
Incentive Awards Program Administration	60	4
Incentive Awards Program Objectives	59	2
Incentive Awards Program Scope	59	3
Inclement Weather Policy	42	
Leave	38	
Legitimate Union Business	17	6
Local Agreements	83	4
Local Safety Committee	47	10
Lockers	30	15
Lunch Period	35	2
LWOP for National Union Officers	17	7
Maintaining Bulletin Boards	34	3
Management’s Rights	15	2
Managements Rights Preamble	15	1
Manning Document	19	8
Mediation	77	
Mediation Policy	77	1
Mediation Procedures	77	2

Title	Page #	Section #
Members Separating From the Bargaining Unit	33	9
Membership Termination	32	4
Merit Promotion	50	
Merit Promotion Exclusions	50	2
Merit Promotion Pamphlet Changes	50	3
Monthly Safety Inspection	47	6
Negotiability Determination	83	3
New Hire Pamphlets	20	13
New Hire Printout	20	12
New Hire Training	21	14
Notification of Improved Performance	57	9
Notification of Rights	28	3
Occupational Health	48	13
Official Personnel Folder Review	31	17
Official Time	25	7
Official Time for ACT Representatives	23	5
Official Time State Chairman	26	8
Other Duties as Assigned	52	5
Overtime Work/Premium Pay	35	5
Performance Standards	53	2
Physical Fitness Program	40	11
Position Description	29	10
Position Description and Classification	51	
Position Description Changes	52	4
Position Descriptions	51	2
Posting on Bulletin Boards	34	2
Pre-Amble	1	
Precluding a RIF	67	12
Publicity	34	
Purpose	11	
Rationale for Critical Element Failure	58	12
Receiving Complaints and Grievances	23	3
Recognition of Stewards and Representatives	23	1
Reduction in Force (RIF)	61	
Remittance	33	8
Reporting Injuries/Illnesses	46	3
Representation Rights and Duties	16	3
Retirement Consultations	30	14
RIF Accomplishment	61	3
RIF Appeals of Specific Notice	66	11
RIF Application	61	1
RIF Competitive Level/Area	64	7
RIF Exceptions	61	2
RIF Notices	65	10
RIF Order of Release	65	9
RIF Placement Actions	63	6
RIF Retention Register	63	5
RIF Tenure Groups	64	8

Title	Page #	Section #
Scheduling of Training	69	3
Separation/Reduction in Grade Extensions	58	11
Severe Weather Work Restrictions	44	2
Sexual Harassment	13	6
Sick Leave Abuse	38	3
Sick Leave	38	2
Signature Page	84,85	5
Smoking Policy	16	4
Standard Form 1187	32	2
Standby Duty/Recall Compensation	36	6
State Review and Appeals Board	58	10
State Safety Committee	48	11
Supervisor's Work Folders	28	5
Supervisors Verification	10	2
Table of Contents	4	
Technician Duties	29	9
Technician Duties	51	1
Technician Performance Appraisal	53	
Temporary Assignments	60	1
Temporary Duty Assignments	30	12
Thirty (30) Day Notice	57	8
Time Spent in Charitable Activities	40	8
TPR 430 Availability	58	13
Training	69	
Training Procedures	69	2
Training Programs	69	1
Travel	70	
Travel and Transportation	70	1
Travel Compensation	30	13
Travel Compensation	70	4
Travel Expense and Orders	70	2
Travel Notification	70	5
Travel Official Business	70	3
Unfair Labor Practices	80.81	
Uniforms	30	11
Union Dues Deduction	32	3
Union Management Cooperation	18	
Union Office and Equipment	16	5
Union Representation	16	1
Union Representation	22	
Representational Rights and Duties	16	3
Union Rights	16	
Upward Mobility Plan	50	4
Use of Facilities	21	15
Use of Personal Radios	30	16
Use of Scheduled & Unscheduled Annual Leave	38	1
Use of Scheduled & Unscheduled Compensatory Leave	39	5
Title	Page #	Section #

Violations	34	5
Volunteer Fire Fighting/Ambulance Crew	39	7
Wear of Uniform During Representation	28	4
Weingarten Rights	27	2
Working Conditions, General	45	1
Working in Extreme Temperatures	44	1
Written Authorization	33	11

Approved by the Department of Defense on February 9, 2010.