



## MEMORANDUM OF UNDERSTANDING

-between-

UNIVERSITY OF MARYLAND  
EASTERN SHORE

-and-

AMERICAN FEDERATION OF STATE, COUNTY, AND  
MUNICIPAL EMPLOYEES

NON-EXEMPT BARGAINING UNIT

9/10/04 through 9/9/07

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## PREAMBLE

This Memorandum of Understanding (MOU) is entered into by the University of Maryland Eastern Shore (Employer or University) and the American Federation of State, County, and Municipal Employees (Union or AFSCME). It is understood that the Board of Regents of the University System of Maryland (USM) must approve this MOU and that agreements on issues requiring funding or approval by the General Assembly of Maryland are tentative pending approval and funding by the General Assembly of Maryland. The provisions of this MOU shall in no way diminish or infringe any rights, responsibilities, powers or duties conferred by the Constitution of the State of Maryland, or the Annotated Code of Maryland, including State Personnel and Pensions Article (SPP), Title 3, Annotated Code of Maryland. In the event of an inconsistency between this MOU and the law, the law shall prevail.

## ARTICLE 1 - RECOGNITION

### Section 1. Exclusive Representative

The University recognizes the Union as the exclusive representative of the employees, as defined in Section 2 of this Article, for the purpose of negotiating collectively with the University pursuant to SPP, Title 3, with respect to wages, hours, and other terms and conditions of employment. For employees covered by this MOU, the University will not negotiate with any other union or employee organization on matters recognized by the State Higher Education Labor Relations Board as required subjects of bargaining.

### Section 2. Definition of Nonexempt Bargaining Unit

The term "employees", "bargaining unit employees" and "employees covered by this MOU" as used in this MOU shall mean all nonexempt employees in the Nonexempt Employees Bargaining Unit at UMES, exclusive of managerial, supervisory and confidential employees as certified by the SHELRB.

### Section 3. New or Changed Job Classifications

Should any new nonexempt job classification(s) be created, the Employer shall notify the Union at least thirty (30) days prior to the intended date of implementation. If it is believed that the bargaining unit status of a classification has changed, the University or the Union, whichever is proposing the change, shall notify the other. In either event (i.e., new classification(s) or change in status), if the parties are in disagreement over whether or not the classification(s) at issue should be included in the unit and covered by this MOU, they will meet and attempt to resolve the matter. Where they are unable to resolve the matter, either party may elect to pursue the matter in a timely fashion before the SHELRB. The decision of SHELRB shall be final and binding on both parties subject to any appeal rights provided by law.

## ARTICLE 2 – NON-DISCRIMINATION

It is the policy of the parties to prohibit discrimination in employment against any employee because of race, age, color, religion, creed, gender, sexual orientation, country of national origin, disability, marital status, veteran status, labor organization affiliation or lack of affiliation, and to promote and implement a positive and continuing program of equal employment opportunity.

## ARTICLE 3 – MANAGEMENT RIGHTS

### Section 1. Scope of Rights

The Employer retains the sole and exclusive authority for the management of its operations and may exercise all rights, powers, duties, authority and responsibilities conferred upon and invested to it by all laws including, but not limited to, Title 3, SPP. It is agreed by the parties that any section of this MOU that conflicts with current law, in particular Title 3, SPP, can be changed by the Employer after providing the Union with an opportunity to bargain over the proposed change. It is understood and agreed by the parties that the Employer possesses all other rights, powers, duties, authority and responsibilities to operate and manage all aspects of its operations including but not limited to its departments, agencies and programs and carry out constitutional, statutory and administrative policy mandates and goals, including but not limited to the right to:

1. Determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means and personnel by which its operations are to be conducted, technology needed, internal security practices, relocation of its facilities;
2. Maintain and improve the efficiency and effectiveness of operations;
3. Determine the services to be rendered, operation to be performed, and technology to be utilized;
4. Determine the overall methods, processes, means and classes of work or personnel by which governmental operations are to be conducted;
5. Hire, direct, supervise, and assign employees;
6. Promote, demote, discipline, discharge, retain, and layoff employees;
7. Terminate employment because of lack of funds, lack of work, under conditions where the employer determines continued work would be inefficient or nonproductive, or for other legitimate reasons;
8. Set the qualifications of employees for appointment and promotion, and set standards of conduct;
9. Promulgate and/or implement State, USM, University or department rules, regulations, policies or procedures;
10. Provide a system of merit employment according to the standard of business efficiency; and
11. Take actions, not otherwise specified in this Article necessary to carry out the mission of the Employer.

## **ARTICLE 4 - UNION RIGHTS**

### **Section 1. Right of Access**

Union representatives shall have reasonable access to areas in which employees work with prior notice and approval by the Employer for the purpose of administration of this MOU. It is understood that such representatives will not disturb the work of employees while visiting the Employer's facilities. Approval for access described in this section will not be unreasonably denied.

### **Section 2. Representation Rights**

Upon request, a bargaining unit employee may have union representation in the processing of a complaint, as provided in Article 17, or in a disciplinary matter as provided in Article 16.

### **Section 3. Means of Communication**

The Union shall be permitted to use internal University mail systems, including computer/electronic mail/fax, or mailings to the employees covered by this MOU, provided that such use does not interfere with the Employer's operations and is for legitimate Union business purposes. If the Employer can illustrate that the Union is not using equipment or services in a manner consistent with this Section, the Employer shall notify the Union and provide the specific usage(s) it finds in violation of this Section. A meeting between the Employer and the Union shall take place within two (2) business days in which the parties shall attempt to resolve the matter. If no agreement is reached, the Employer may revoke the Union's use of the equipment and services. The Union may submit to the Grievance Procedure outlined in this MOU the issue of whether the Employer's revocation is in compliance with this Article. Confidentiality shall be maintained subject to the Employer's security needs. Mass mailings through the Employer's mail processing department, shall be limited to four (4) per calendar year.

### **Section 4. Bulletin Boards**

The Employer shall provide space for a lockable bulletin board, provided by the Union, at the Physical Plant, Frederick Douglass Library, Richard A. Henson Building, Office of Residence Life Maintenance Building, J. T. Williams Administration Building, and the Student Services Center. These bulletin boards shall be for the exclusive use of the Union. The Union shall be responsible for the posting of all items on the bulletin board. The Employer shall designate reasonable conspicuous space in work or break areas for the placement of the bulletin boards, and the bulletin boards must be consistent with the interior design and furnishings of the particular building. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that posted items are not illegal, defamatory, factually inaccurate, partisan, or political and that no item is detrimental to the safety and security of the University. At the time of posting, the Union shall provide an informational copy of all items to the Employer (Human Resources Director).

### **Section 5. Right to Information**

The Employer will provide a monthly report listing all newly hired employees. The report shall



include the name, job title, assigned salary grade, office or department of every new hire. The report can be submitted on floppy disk, CD ROM, or paper copy format and shall be mailed to an address designated by the Union.

Upon request by the Union, the Employer will also provide, in accordance with the Maryland Public Information Act, any other relevant and necessary information that the Union is entitled to as the exclusive representative of bargaining unit employees.

#### **Section 6. New Employee Orientation**

One Local union officer or job steward, shall be granted twenty (20) minutes during the new employee orientation sessions organized by the Employer to meet with new bargaining unit employees and to make a presentation on behalf of the Union. In the event the Employer does not provide for an employee orientation, a Local 1833 union officer or job steward and the new bargaining unit employee will be allowed twenty (20) minutes, with notification to and approval of their respective supervisors, without loss of compensation, to meet during work time to discuss information pertaining to the role of the Union. The Union Officer or job steward will coordinate the twenty (20) minute information meeting through the Human Resources Director or designee. The Human Resources Director will arrange the meeting within a reasonable time.

#### **Section 7. Union Job Stewards**

The Union may appoint or elect certain bargaining unit employees to serve as union job stewards. There will be a total of six (6) job stewards representing employees covered by this MOU. Consistent with operational needs, the Employer will allow reasonable release time as defined in Article 17 of this MOU, without loss of compensation, to job stewards for the purpose of presenting grievances to the Employer on behalf of an employee. Typically, a grievance will have no more than one union representative (President or job steward) in attendance at a grievance hearing. Exceptions may be granted by mutual agreement of the parties. This limitation does not apply to non-university employee staff representatives. The Union will submit a list of job stewards to the employer within ninety (90) days after the ratification of this MOU, and thereafter will notify the Employer in writing as to any changes to the job stewards' list. No employee may serve or act as a job steward until officially designated by the Union.

#### **Section 8. Meeting Space**

The Employer agrees to provide, at no cost to the Union, meeting space to conduct four union related meetings per year provided that the Union submits a written request for the use of facilities a minimum of two weeks in advance of the date of the meeting and complies with University reservation procedures. The University will respond to a written request within three (3) business days. When a request for use of meeting space is denied, the Employer will state the reasons for the denial in writing. The Employer shall not discriminate against the Union or its members when assessing the feasibility of providing meeting space for Union business, nor shall the Employer unreasonably deny a request.

## ARTICLE 5 – EMPLOYEE RIGHTS

### Section 1. In General

In addition to all rights granted under this MOU, all employees in the bargaining unit shall enjoy the protections and rights codified in Section 3-301, Title 3, of the State Personnel and Pensions Article, Annotated Code of Maryland.

## ARTICLE 6 -- SCOPE OF AGREEMENT

The specific provisions of this MOU supersede the corresponding specific terms of the previously established policies and procedures maintained by the University at the time this MOU is ratified. This MOU may be modified only by the written agreement of the University and the Union. All Board of Regents (BOR) and University policies and procedures shall remain in full force and effect unless modified specifically by this MOU or as provided below.

The University and the Union acknowledge and agree that during the negotiations that resulted in this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject of bargaining as provided in SPP, Title 3, and applicable SHELRB regulations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU. The University and the Union agree that for the term of this MOU, each waives the right to bargain collectively, and neither shall be obligated to bargain collectively with respect to: 1) any subject specifically referred to in this MOU unless such bargaining is initiated by the University pursuant to this MOU's savings clause or because of an emergency condition or legislative mandate; 2) subjects on which the Union made, or could have made, proposals during bargaining, but about which no agreement was reached, so long as the Union was aware or reasonably should have been aware of the subject during the bargaining process; and, 3) subjects on which the University made specific proposals but about which no agreement was reached, unless any such subject is raised by the University pursuant to this MOU's savings clause or because of a legislative mandate or emergency condition. The parties further agree and intend that the waiver set forth in the sentence above ("Waiver") shall be construed as consistent with the provisions of the Preamble to this MOU and enforceable.

Except as provided in the Waiver, the University and the Union acknowledge their mutual obligation to negotiate as defined and limited by law and this MOU over University proposed changes in wages, hours and other terms and conditions of employment which affect bargaining unit employees and which are not reserved to the University as a management right or otherwise allowed by this MOU. In such circumstances, the obligation to bargain is limited to those changes that will affect the wages, hours and other terms and conditions of employment of bargaining unit employees and that are subject to bargaining under applicable law.

The University must provide thirty (30) calendar days notice prior to the implementation of any such proposed change in wages, hours and other terms and conditions of employment, to the Union, provided however, that if the proposed change is to meet a legislative mandate or an emergency situation (including an emergency fiscal management issue) the University may provide the Union

with less than thirty (30) days notice but such shorter notice must be as soon as reasonably possible prior to the implementation of the proposed change. In such circumstance the notification must indicate the legislative mandate or emergency situation as well as any known timeframes in conjunction with the mandate or emergency.

In circumstances where the proposed change is not required because of an emergency situation or legislative mandate and the thirty (30) days notice is given, the Union, within ten (10) days of receipt of the University's notice, may request bargaining in connection with the proposed change by notifying the University in writing and may also submit a written request to the University for information which is relevant and necessary to the proposed change. Where the Union does not request bargaining during the ten (10) day period, the University is free to implement the change immediately. Where the Union does request bargaining but does not request information, the Union shall submit its written proposals in response to the University's proposed change(s) within ten (10) days of the University's notice of proposed change, and the parties will meet promptly to discuss the change(s) and any proposals submitted by the Union. This ten (10) day time limit may be extended by written agreement of the parties.

In the event the Union requests information relevant and necessary to the proposed change(s), any such information request must be submitted to the University within ten (10) days of receipt of the University's notice, and the Union must submit its written bargaining proposals to the University within five (5) days of the Union's receipt of the University's good faith response to the Union's information request. The Union agrees that it will tailor its information request so as not to delay the bargaining process.

In circumstances where the proposed change is required to meet a legislative mandate or an emergency situation, and the proposed change implementation date is less than thirty (30) days, the University may provide the Union with less than thirty (30) days notice, and the Union may request bargaining within a proportionate amount of time (request for bargaining is to ten (10) days as shorter University notice is to thirty (30) days). The Union must also submit to the University its written proposals within this proportionate time period (where shorter notice is given) or the ten (10) day period, whichever is applicable. Where the Union does not request bargaining, the University is free to implement the change. When the Union does request bargain and submits its proposals within the required timeframe, the parties will meet promptly. The Union may also request information relevant and necessary to the proposed change. The Union will tailor its information request so as not to delay the bargaining process. The University will provide its good faith response to the Union's information request as soon as reasonably possible.

The Union's ability to negotiate under this Article does not provide the Union with a "veto" power over the University's proposed changes, and it shall not delay the implementation of such changes. The University may implement the proposed changes that are subject to this bargaining process as scheduled even if after good faith negotiations there has not been mutual agreement.

Where bargaining is requested by the Union over changes necessary to meet a legislative mandate or emergency condition, the parties will negotiate in good faith, and the University may implement any changes necessary to meet the legislative mandate or emergency condition, including any applicable timeframes, regardless of whether an agreement has been reached. The parties understand and agree the University's implementation of the proposed change(s) within the

time frame identified to meet the emergency condition or legislative mandate is paramount. Failure of the Union to submit a timely information request, or failure of the University despite good faith efforts to respond to any such request, or the failure of the parties to complete bargaining shall not be deemed as a failure to discharge any obligations under the law or this MOU, and the University may implement any proposed change within the identified time frame.

This Article is also subject to Article 29 Severability.

## **ARTICLE 7 – HOURS OF WORK AND OVERTIME**

### **Section 1.a. Workweek and Work Schedules.**

A work schedule is defined as the employee's assigned work hours, including starting and ending times during the day, and the days included in the employee's standard workweek. Unless modified by the Employer, the normal standard workweek is forty (40) hours per week, and runs from Monday through Friday. It is understood that there may also be workweeks other than Monday through Friday in 24/7 or other special operations. The administrative workweek for purposes of reporting work time begins at 12:00 a.m. on Sunday and ends at 11:59 p.m. on Saturday. All overtime pay is based on the administrative workweek and the Fair Labor Standards Act (FLSA). There is no guarantee of the number of hours of work in a day or week.

### **Section 1.b. Work Schedule Changes.**

The Employer has the right to implement any work schedule change it deems appropriate so long as the work schedule and employee compensation comports with the Fair Labor Standards Act (FLSA) and this MOU. Where the workweek schedule is changed, the University will provide the employee with as much advanced notice of the schedule change as reasonably possible. An employee who does not receive notice of a workweek schedule change before reporting for work as regularly scheduled will not be deprived of the opportunity to work his/her regularly scheduled hours that day because of the schedule change. The number of hours in an employee's regularly scheduled work week will not be changed to avoid paying overtime pay resulting from an employee working on the day the employee was scheduled to observe a holiday. In the event the Employer implements a permanent change in an employee's work schedule, the Employer will provide the affected employee with seven (7) calendar days advance notice. The notice period may be shorter where the permanent schedule change relates to an emergency situation.

Employees may request and, in accordance with operational needs and with the approval of the supervisor, be approved temporary changes in their regular work schedule including flextime, "make-up" time and shift changes.

### **Section 2. Timesheets.**

Employees are required to record all hours worked and absences (paid and unpaid) on their time sheets.

### **Section 3. Work Breaks.**

There shall normally be two paid duty-free rest periods of fifteen (15) minutes each for full-time assignments. Rest periods shall be scheduled towards the mid point of the first and second parts

of the daily schedule. Rest periods begin and end at the employee's work location, with prior notification to the appropriate supervisor. (For this section only, work location shall mean the building/area where an employee is assigned on a particular day.) During a break period, the employee is free to move about the campus.

#### **Section 4. Lunch Break.**

There shall be a duty-free unpaid lunch break of at least thirty (30) minutes for employees working on assignments of eight (8) hours or more. Lunch breaks should normally be scheduled at approximately the mid point of the employee's regular work shift. Employees, with prior approval of the supervisor, may choose a daily schedule encompassing nine (9) hours, which allows a sixty (60) minute duty-free unpaid lunch break.

Due to the nature of the operation, employees serving as stationary engineers are to take up to a thirty (30) minute paid meal break while on duty with notification to or approval of the supervisor. While attending training, such employees will take an unpaid meal break that coincides with the training schedule, except that application of this unpaid meal provision shall not result in an employee receiving less than eight hours pay for that day. Stationary engineers who are on paid lunch break may not leave campus while on duty without supervisor approval and must be available to return to their job duties immediately where necessary.

#### **Section 5. Copy of Job Description.**

The Employer retains the right to change an employee's job-related duties. Upon initial employment and upon each significant change in the employee's duties and/or job classification thereafter, the affected employee shall be furnished a copy of his/her revised job description.

#### **Section 6. Overtime.**

The amount of overtime shall be determined by the Employer. Employees shall receive 1-1/2 times their regular rate of pay for hours worked in excess of forty (40) hours per week in accordance with the FLSA. All hours worked and paid in excess of forty (40) in a week must be pre-approved by the employees supervisor. Hours worked shall include paid sick, annual, holiday, administrative, and personal leave.

#### **Section 7. Distribution of Overtime.**

The Employer will make reasonable efforts to distribute overtime opportunities as equally as possible among all qualified employees within a specific job classification in their respective department/office on a semi-annual calendar year basis. Refusal of overtime work will be taken into account for overtime distribution purposes. Management will maintain a list containing the name and the number of hours of overtime offered, worked, and refused for each employee in his/her department/office. The Employer may assign mandatory overtime work without regard to the foregoing to meet operational needs.

#### **Section 8. Payment for Overtime Worked.**

Payment for overtime hours worked under this MOU shall be paid to the employee in accordance with the FLSA and this MOU and in accordance with University and Central Payroll procedures.

**Section 9. Advance Notice.**

The Employer shall normally provide notice of required scheduled overtime work at least twenty-four hours in advance of such overtime. Notice of emergency or unscheduled overtime work will be given as soon as reasonably possible. Refusal of scheduled overtime work by employees on the basis that management did not provide advance notice within the time limits (24 hours) shall not be charged against those employees as an overtime opportunity refused. The Employer retains the right under any circumstances to require the least senior qualified employees to perform the overtime work.

**Section 10. Compensatory Time Off.**

At the request of the employee and subject to management approval, overtime may be compensated in the form of compensatory time off. Where compensatory time off is granted, it is earned at the rate of one and one-half (1 ½) hours for each hour of employment for which overtime compensation is required. Subject to management approval, earned compensatory time off shall be used within the twelve-month period following when it was earned. Compensatory time not used within this time period will be paid to the employee. Compensatory time off in excess of forty (40) hours will be automatically paid.

**ARTICLE 8 - PROBATIONARY PERIOD**

**Section 1. New Employees and Converted Contractual and Temporary Employees**

Probationary periods shall be administered per provisions of USM Policy VII – 1.21 Policy on Probation for Nonexempt Employees, except that extensions of original and status change probationary periods are limited to ninety (90) days rather than six (6) months. The Employer agrees to provide the Union with an opportunity to comment on any proposed changes to the aforementioned policy before implementing the changes.

**ARTICLE 9 – WAGES**

**Section 1. Merit Pay Adjustment**

For FY 2005, the USM Board of Regents has requested of the Governor and the Governor has recommended to the General Assembly a 2.5% merit pay adjustment for employees of the institutions comprising the University System of Maryland. Subject to approval and funding, or as required by the General Assembly, merit pay adjustments will be provided to eligible bargaining unit employees who “meet standards” at whatever amount is provided in the legislative appropriation.

**Section 2. Cost of Living Adjustment**

Additionally, for FY 2005, the Governor has recommended to the General Assembly a cost of living adjustment of 1.6%. Subject to approval and funding by the General Assembly, a cost of living adjustment will be provided to bargaining unit employees at whatever amount is provided in the legislative appropriation.

### **Section 3. FY06 and FY07**

For FY06 and FY07, cost of living adjustments, if any, and merit pay adjustments for "meets standards," if any, are addressed in Article 31 Duration, Renewal and Reopeners.

## **ARTICLE 10 -- OTHER COMPENSATION**

### **Section 1. Shift Differential**

- A. An employee who regularly works a qualifying shift is eligible for shift differential pay for hours actually worked subject to the conditions set forth below. A qualifying shift means a full-time or permanent part-time shift that starts at or after 2:00 P.M. and at or before 1:00 A.M. The rate of shift differential pay is one-dollar (\$1.00) per hour. Shift differential will be included in the regular rate calculation for the computation of overtime. The following provisions establish eligibility:
1. To qualify for shift differential, an employee must be employed on a fifty percent (50%) or more basis of full-time employment.
  2. Shifts and eligibility for shift differential pay are not established by the time the employee begins to work, but rather by when an established shift starts.
  3. An employee who works any part of a qualifying shift is eligible for shift differential pay on a prorated basis.
  4. Shift differential is authorized for an employee who is permanently assigned to a qualifying shift while on approved leave with pay. An employee who is on a permanent schedule of rotating shifts is eligible to claim the shift differential only for leave taken while scheduled for a qualifying shift. However, such payment of shift differential will cease after ten (10) full workdays of continuous paid leave for which there has been a shift payment.
- B. In an overtime situation where the employee continues working from a non-qualifying shift into a qualifying shift, the employee is eligible for a prorated shift differential provided the employee works at least one-half (1/2) of the qualifying shift.

### **Section 2. Acting Capacity Pay**

- A. When an employee is appointed to a higher level position on a temporary basis, the employee is in acting capacity and shall be eligible for acting capacity pay beginning on the 31<sup>st</sup> consecutive calendar day of work in the acting capacity, retroactive to the first day that the employee served in the acting capacity.
- B. The employee is eligible for a salary increase of not less than six percent (6%). Upon conclusion of the acting appointment, the employee's salary reverts to the employee's last regular salary rate in effect prior to the acting appointment, subject to adjustment for any intervening salary adjustments, other than acting capacity pay, that have occurred. An

employee who is in acting appointment status must meet the minimum qualifications of the position to which he or she is appointed.

### Section 3. On Call

- A. Employees may be placed in an on-call status at the direction of the University. The following guidelines apply:
1. An employee assigned to on-call status is eligible to receive compensation in the amount of twenty-four dollars (\$24) per day, plus appropriate wages for all hours worked. On-call pay shall be included in the computation for overtime wages.
  2. The employee must be accessible at all times and must immediately notify his/her supervisor if inaccessible. If inaccessible, on-call pay will be forfeited.
  3. An employee cannot be designated on-call for more than seven (7) consecutive days, however he/she may be on-call for 24 hours on each of those days.
  4. An employee who is assigned to on-call status and cannot be reached, or does not report within two (2) hours of being contacted, will face disciplinary action and will not receive on-call pay for that day.
  5. Employees will not receive on-call compensation if performance of the duties is an extension of the regular workday or workweek.
  6. Essential employees are not automatically assigned to on-call status.
  7. The University will make reasonable efforts to allocate on-call assignments among qualified eligible employees on a rotating basis.

### Section 4. Call Back

The University may, at its discretion, require an employee(s) to report to work in "call-back" capacity. Employees who are called to report to work on their regular day off, or that have been recalled to work after having left the Employer's premises, shall be guaranteed a minimum of two (2) hours of pay plus travel time at the applicable rate of pay. If an employee is called back on a shift, which qualifies for shift differential pay, the employee will receive the shift differential pay.

## ARTICLE 11 – HOLIDAYS

### Section 1. Recognized Holidays

All employees in the bargaining unit are eligible to earn holiday leave for the following recognized holidays:

#### Holiday

#### Date Earned

New Year's Day  
Dr. Martin Luther King Jr.'s Birthday  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Election Day (General and/or Congressional)

January 1  
3<sup>rd</sup> Monday in January  
3<sup>rd</sup> Monday in February  
Last Monday in May  
July 4  
1<sup>st</sup> Monday in September  
2<sup>nd</sup> Monday in October  
1<sup>st</sup> Tuesday in November  
(even-numbered years)



Veterans' Day	November 11
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Friday after Thanksgiving Day	4 <sup>th</sup> Friday in November
Christmas Day	December 25

In addition, employees are eligible to earn holiday leave for three (3) University holidays, which shall be observed at the discretion of the University President or designee. The actual dates of observance for paid holidays and University holidays vary from year to year. The current year's listing of observed dates for holidays may be found on the University personnel web page and in the campus directory.

To earn holiday leave, employees must be in a paid employment status on the date the holiday is earned. To earn holiday leave for University holidays, employees must be in paid employment status on the calendar date the holiday is observed.

Part-time employees on at least fifty (50) percent basis of fulltime employment shall earn holiday leave on a prorated basis.

Employees covered by this MOU shall also earn holiday leave for any other holiday that the President of the University determines will be observed by the University.

**Section 2. Day of Observance**

When a holiday falls on a Saturday, it is observed the Friday before, and when a holiday falls on a Sunday, it is observed on the following Monday. The Employer reserves the right to determine when holidays are observed.

**Section 3. Holiday Pay for Regular Operations**

Employees shall receive holiday leave at their regular hourly rate for every holiday the employee is entitled to observe. If an employee is required to or authorized to work on the day the employee is entitled to observe a holiday, the employee will be paid at the applicable rate of pay under the FLSA for all hours worked and will receive earned holiday leave for that day.

**Section 4. Holiday Pay for 24/7 or other Special Operations**

Holidays in 24/7 or other special operations are prescheduled based upon the workweek schedule rotation. The Employer reserves the right to assign holidays in accordance with this schedule rotation and shall make best efforts to grant the employee the day off requested, subject to operational needs. Management will work with 24/7 employees to allow them to take their pre-scheduled holidays; however, due to operational needs, an employee may be required to work on the employee's prescheduled holiday. When this occurs, the employee will be paid at the applicable rate of pay under the FLSA for all hours worked on the day the employee was prescheduled to observe the holiday and will receive earned holiday leave for that day.

**Section 5. Form of Payment**

When an employee earns overtime compensation during a week in which the employee worked on a day the employee was scheduled to observe a holiday, the employee will be paid for the overtime

on a cash basis, provided however, that the supervisor and the employee may mutually agree to compensatory time in lieu of cash payment as outlined in Article 7, Hours of Work and Overtime.

**Section 6. Use of Holidays**

Holiday and University holiday leave may not be carried on the books for use at other times.

**Section 7. Holiday Termination Payment**

Employees who leave their employment at the University for any reason are entitled to be paid for any unused holiday leave that has been earned as of the date of separation. If a holiday is taken and the employee severs employment before the holiday is earned, the employee will pay back the holiday upon severance.

**ARTICLE 12 – LEAVES**

**Section 1. Annual Leave (USM Policy VII-7.00)**

Annual Leave for employees covered by this MOU is governed by USM Policy on Annual Leave (VII-7.00 approved by the Board of Regents April 25, 1991) and is subject to all the terms and conditions set forth therein with the following modification:

Annual leave for full-time employees in the bargaining unit will be earned according to the following schedule. (Part-time employees in the bargaining unit working 50% or more will earn annual leave on a pro-rated basis.)

From 0 to 6 months: Leave is earned but cannot be used until the employee completes six months.

Beginning with the 7 <sup>th</sup> month through the completion of the 4 <sup>th</sup> year:	10 days
Beginning with the 5 <sup>th</sup> year through the completion of the 10 <sup>th</sup> year:	15 days
Beginning with the 11 <sup>th</sup> year through the completion of the 20 <sup>th</sup> year:	20 days
Beginning with the 21 <sup>st</sup> year and thereafter:	25 days

**Section 2. Personal Leave (USM Policy VII - 7.10)**

Personal Leave for employees covered by this MOU is governed by USM Policy on Personal Leave (VII - 7.10 approved by the Board of Regents, December 3, 1999). Full-time employees shall receive three days (not to exceed 24 hours) of personal leave in each calendar year. Part-time employees working 50% or more shall receive personal leave on a pro-rated basis.

Personal leave must be used by the end of the first pay period which ends in the new calendar year. Any personal leave that is unused as of that time shall be forfeited by the employee and shall be contributed to the USM Leave Reserve Fund in accordance with the then current USM Policy on Leave Reserve Fund. No employee shall be paid for unused personal leave.

The use of personal leave shall require prior notification to the employee's supervisor.

**Section 3. Leave Reserve Fund (USM Policy VII - 7.11)**

Leave Reserve Fund for employees covered by this MOU is governed by USM Policy on Leave Reserve Fund (VII - 7.11 approved by the Board of Regents, April 25, 1991; Amended December 6, 2002; Amended January 1, 2003) and is subject to all the terms and conditions set forth therein with the following clarification:

Section III C. should read as follows

used all available sick leave, advanced sick leave, extended sick leave, annual leave, personal leave, and compensatory leave; and

Personal leave unused by an employee shall be remitted to the Leave Reserve Fund available for University employees. The Leave Reserve Fund provides paid leave to full time and part-time employees who become temporarily medically disabled. A person authorized to act on the employee's behalf may make the leave request on behalf of the employee when the employee is unable to do so. A request for leave under the Leave Reserve Fund shall be submitted directly to the Office of Human Resources/ Personnel Department.

**Section 4. Family and Medical Leave ("FMLA" Leave) (USM Policy VII - 7.50)**

Family and Medical Leave for employees covered by this MOU is governed by USM Policy on Family and Medical Leave (VII - 7.50 approved by the Board of Regents, August 27, 1993) and is subject to all terms and conditions set forth therein with the following modification:

This type of leave is based on federal law as described in the Family and Medical Leave Act of 1993 (FMLA). The University shall make FMLA leave available to employees in accordance with the FMLA and USM policies.

FMLA leave is not a separate form of accrued leave, like sick or annual leave. FMLA leave allows a qualifying employee to take employment-protected leave (by first using available sick and annual leave and then unpaid leave) for up to twelve (12) weeks for any of the following reasons.

- 1) To care for the employee's child after birth, or placement for adoption or foster care;
- 2) To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
- 3) For a serious health condition of the employee, including pregnancy and recovery time, that renders an employee unable to perform his or her job; or
- 4) Any other reasons stated in USM Policy VII-7.50 as of February 18, 2004.

To qualify for FMLA Leave:

- 1) The employee must have worked for the University for at least twelve (12) months, and
- 2) The employee must have worked at least 1040 hours in the twelve (12) months immediately preceding the date the leave is to commence.

In addition to USM Policy VII-7.50, the Sick Leave Article contains specific provisions dealing with Family and Medical Leave.

**Section 5. Jury Service and Legal Actions Leave (USM Policies VII-7.21 and VII-7.22)**

Jury service and legal actions leave for employees covered by this MOU are governed by USM Policy on Jury Service (VII-7.21 approved by the Board of Regents, February 28, 1992; Amended May 7, 1993) and USM Policy on Leave for Legal Actions (VII-7.22 approved by the Board of Regents, February 28, 1992) and is subject to all the terms and conditions set forth therein with the following modification to USM Policy VII-7.21:

Employees who are dismissed from jury duty will be expected to return to work for the balance of their scheduled workday if the amount of time left in the employee's workday exceeds three (3) hours.

**Section 6. Educational Leave and Professional Improvement Leave (USM Policy VII-7.12)**

Employees may be granted educational or professional leave for up to two years pursuant to USM Policy Leave of Absence without Pay (VII-7.12 approved by the Board of Regents May 1, 1992; Amended November 12, 1993), subject to all of the terms and conditions therein.

**Section 7. Administrative Leave (USM Policy VII-7.20)**

Administrative Leave for employees covered by this MOU is governed by USM Policy on Administrative Leave (VII-7.20, approved by the Board of Regents, February 28, 1992).

Administrative Leave may be granted when emergency conditions exist.

The institution Chief Executive Officer (CEO) may approve a request for administrative leave or may require an employee to take administrative leave for any purpose considered to be in the best interests of the institution.

**Section 8. Military Leave With Pay (USM Policy VII-7.23)**

Military Leave for employees covered by this MOU is governed by USM Policy on Military Leave (VII-7.23 approved by the Board of Regents, February 28, 1992; Amended December 6, 2002; Amended October 17, 2003) and is subject to all the terms and conditions set forth therein.

An employee is entitled to Military Training Leave with pay for military training purposes for a period of not more than fifteen (15) workdays (pro-rated for part time employees) in any calendar year. Military Training Leave applies to employees who are members of the organized militia or the Army, Navy, Air Force, Marines or Coast Guard Reserves.

**Section 9. Call-Up to Active Military Duty During a National or International Crisis or Conflict (USM Policy VII-7.24)**

Military leave for call up to Active Duty during a national or international crisis or conflict for employees covered by this MOU is governed by USM Policy VII – 7.24 (Approved by the Board of Regents, October 5, 2001; Amended December 6, 2002; Amended October 17, 2003) and is subject to all the terms and conditions set forth therein.

**Section 10. Leave of Absence Without Pay (USM Policy VII-7.12)**

Leave of Absence Without Pay for employees covered by this MOU is governed by USM Policy on Leave of Absence Without Pay (VII-7.12 approved by the Board of Regents, May 1, 1992; Amended November 12, 1993) and is subject to all the terms and conditions set forth therein. Employees may request full or partial leave without pay for a two-year (24-month) period in accordance with the provisions of the USM Policy VII – 7.12. Approval of unpaid leave will be at the discretion of the University President or designee. No employee shall be denied unpaid leave unreasonably.

**Section 11. Leave for Disaster Service (USM Policy VII-7.26)**

Disaster Service Leave for employees covered by this MOU is governed by USM Policy on Leave for Disaster Service (VII-7.26 approved by the Board of Regents, October 11, 2002) and is subject to all terms and conditions set forth therein.

**Section 12. Accident Leave (USM Policy VII-7.40)**

Accident Leave for employees covered by this MOU is governed by USM Policy on Accident Leave (VII-7.40 approved by the Board of Regents, May 1, 1992; Amended November 12, 1993; Amended December 13, 1996) and is subject to all the terms and conditions set forth therein.

## **ARTICLE 13 – SICK LEAVE**

**Section 1. Purpose and Applicability**

This Article governs the accrual and use of sick leave for all employees covered by this MOU. When a provision of this Article provides an employee with the eligibility to use sick leave that is also covered by the Family and Medical Leave Act (FMLA), the sick leave and the leave under the FMLA run concurrently. Also, employees must use their accrued sick leave in accordance with the specific provisions of this Article and exhaust all accrued annual leave and personal leave prior to using unpaid FMLA leave.

**Section 2. General**

- A. Sick leave is paid leave granted to employees in an effort to provide some protection against the loss of earnings due to absences for health reasons.
- B. A full-time employee shall earn sick leave at the rate of fifteen (15) workdays per year. Employees who are appointed at least 50% time shall earn sick leave on a pro rata basis. Sick leave is accumulated and carried forward from year to year without limit.
- C. An employee may request that his/her illness, injury, or disability occurring during a period of annual or personal leave be charged to sick leave. Verification of such illness, injury, or disability may be required by the Office of Human Resources as provided in Section 4 of this Article.
- D. An employee may use on a continuous basis, subject to the terms and conditions of this MOU dealing with such leaves, earned leave (sick, annual and personal leave), advanced sick leave, extended sick leave, leave granted through the leave reserve fund, or unpaid family medical leave, as needed for personal illness.

- E. Earned sick leave is granted by the Department Head or designee (normally the immediate supervisor) pursuant to the terms and conditions of this Article when an employee is absent because of:
1. Illness, injury, or disability of the employee.
  2. A pre-scheduled medical appointment, examination, or treatment for the employee with an accredited, licensed or certified medical provider listed in Section 4 F. of this Article that cannot be scheduled during non-work hours. Employees will provide three (3) working days' advance notice if possible, but in no event less than one day's advance notice. Employees shall make every effort to schedule the appointment either at the beginning or the end of the scheduled workday in order to reduce time away from work. However, the University shall not unreasonably deny medical appointments when the time available overlaps with the employee's regular work hours.
  3. Illness or injury in the employee's immediate family and medical appointments, examinations or treatments for the immediate family member with an accredited, licensed or certified medical provider listed in Section 4.F. of this Article that cannot be scheduled during non-work hours and are not taken pursuant to the Family and Medical Leave provisions of Article 12 Leaves of this MOU.
    - a). Immediate family as used in this section means a spouse, child, step-child, foster child, grandchild, mother, father, mother-in-law, father-in-law, brother, sister, grandparent, or legal dependent of the employee irrespective of residence. Use of sick leave may also be granted to care for any other relative who permanently resides in the employee's household for whom the employee has an obligation to provide care. The Office of Human Resources may require an employee to provide certification by a medical provider listed in Section 4.F. of this Article to demonstrate this obligation or to authenticate the need for the employee to care for the ill family member. Certification from a medical provider does not need to include information about the specific illness or health condition of the family member or relative.
    - b.) Up to fifteen (15) days of accrued sick leave shall be granted by the Office of Human Resources pursuant to the terms and conditions of this Article during any one (1) calendar year for medical care of a family member when the need for such care is not pursuant to Family and Medical Leave, as defined in Article 12 of this MOU. When the need for such leave is pursuant to Family and Medical Leave, sick leave may be used to the extent it is accrued and available.

4. Death of a relative.

- a) For the death of a close relative, the Department Head or designee (normally the immediate supervisor) may grant the use of up to five (5) days of accrued leave. If the death of a close relative requires an employee to travel requiring staying away from home overnight, upon request the Department Head or designee (normally the immediate supervisor) may grant the use of up to a maximum of seven (7) days of accrued leave for this purpose.
- b) Close relative as used in this Section means a spouse, child, step-child, foster child, mother, father (or someone who took the place of a parent), mother-in-law, father-in-law, grandparent of the employee or spouse, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, or other relative who permanently resided in the employee's household.
- c) The Department Head or designee (normally the immediate supervisor) or designee may grant the use of up to a maximum of one (1) day of sick leave for reasons related to the death of the employee's or his/her spouse's aunt, uncle, niece, or nephew.

5. Integration of Sick Leave and Family and Medical Leave

When an employee requests and is granted leave for reasons defined as "qualifying events" under the Family and Medical Leave Act (FMLA), the employee may use accrued sick leave, to the extent it is available, for any portion of that leave pursuant to the provisions of this MOU on FMLA. In all instances where leave is granted pursuant to the FMLA, employees must exhaust all accrued paid leave, including sick, personal, and annual, prior to moving to unpaid Family and Medical Leave. Advanced sick leave shall only be granted for the illness of the employee. Leaves under FMLA will not be considered when determining if any employee has a satisfactory attendance record.

6. Pregnancy, childbirth and adoption.

Pregnancy, childbirth and adoption are considered "qualifying events" under the FMLA and as such are governed by Section 5 above. Advanced sick leave shall only be granted for the portion of leave during which the employee is incapacitated.

**Section 3. Directed Use of Sick Leave/Medical Examinations**

- A. The Office of Human Resources, in accordance with the provisions of this MOU dealing with Family and Medical Leave, may direct an employee to use accrued sick leave if it believes that an employee is unable to perform the essential responsibilities of his/her position due to illness, injury or disability.

- B. While either in active work status or on any type of employee-related sick leave, an employee may be required to undergo a medical examination(s) and evaluation(s), and may be required to provide verification of fitness for duty, as directed by the Office of Human Resources to ascertain whether the employee is able to regularly and routinely perform the responsibilities of his/her position. Such determination will be made in writing by a certified medical provider as defined in Section 4. F. of this Article, with copies provided to the Office of Human Resources and to the employee.
1. If the examination is conducted by a certified medical provider selected by the USM institution, the institution shall bear the costs of such medical examination. The employee may, however, see his/her own physician at the employee's own cost.
  2. If the examination(s) reveal(s) that an employee is unable to regularly and routinely perform the responsibilities of his/her position, action may be taken by the Office of Human Resources in accordance with policies on voluntary separation, termination, reasonable accommodation, modified duty or disability retirement, if applicable.
  3. In cases where there is a conflict between the evaluation, prognosis, diagnosis or recommendation of the employee's personal health care provider and the certified medical provider selected by the University, the President or designee may choose which health care provider's report to follow or may require subsequent medical examinations and evaluations in deciding what steps should be taken regarding the employee's sick leave status or continued employment. If subsequent medical examinations and evaluations are required, the employee's medical provider and the University's medical provider shall by agreement select the third medical provider who will render an opinion. In the event they are unable to reach agreement on a third medical provider, the third provider will be selected by the University. In selecting the third provider, the University shall not select a provider that has been under contract, or that at the present time is under contract with the University. The decision of the President or designee regarding the employee's fitness for duty will take into account the medical opinions rendered. The decision of the President or designee is final. The expense of obtaining the third medical provider's opinion will be borne by the University.

#### **Section 4. Verification of Absences Charged to Sick Leave**

- A. In order to verify that the employee's use of sick leave is in accordance with this Section, to assure medical attention for an employee or to prevent the abuse of sick leave usage, the University may require an employee to submit verification of the reason for the use of accrued sick leave, advanced or extended sick leave.
- B. Verification of Illness for Absences of Five (5) or More Consecutive Days

The University may require an employee to provide an original certificate of illness or disability in cases where an absence is for five (5) or more consecutive



workdays. The certificate required by this Section shall be signed by a certified medical provider as defined in Section 4.F. below.

C. Verification of Illness for Absences of Less than Five (5) Consecutive Days

The University may require an employee to submit an original certificate of illness or disability for absences of less than five (5) consecutive days on the following conditions:

1. Where an employee has a consistent pattern within a twelve-month period of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization.
2. Where an employee has unusual absence patterns such as Monday/Friday, or the day before and/or the day after a holiday.
3. Where an employee has five (5) or more occurrences of undocumented sick leave usage within a twelve (12) month period.
4. Where an employee has three (3) or more occurrences of undocumented sick leave usage of two (2) or more consecutive days in a twelve month period.

D. Procedures for Certification Requirement

Prior to imposing a requirement on an employee for documentation of sick leave use, under Section C above, the University shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future occurrences of sick leave. If the employee has another undocumented absence after such counseling, the University may, subject to the concurrence of the Office of Human Resources, then put the employee on written notice that he/she must certify all sick leave usage for the next six (6) months if the undocumented absence accumulated in accordance with this Section 4. At the conclusion of the six (6) months, the certification requirement will be rescinded provided the employee has complied with the certification requirement and is in compliance with this Article. If the employee has not complied with the certification requirement and is not in compliance with this Article, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement. Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplications of this procedure. Failure of the employee to provide certification as described in this section may subject the employee to disciplinary action.

- E. Verification may include but may not be limited to:
1. A written statement from the medical provider (as listed in Section 4.F. of this Article) indicating that the employee is required to be absent from work due to illness;
  2. The duration of absence from work;
  3. Prognosis of employee's ability to return to work;
  4. Title and original signature of an accredited, licensed or certified medical provider; and
  5. Any other information necessary to verify that the employee's use of sick leave is in accordance with this Article. Such information does not need to include information about the specific illness or health condition of the employee.
- F. Medical verification as outlined in this Article may be obtained from an accredited Christian Sciences practitioner, or from the appropriate of any of the following licensed or certified medical providers:
1. Physician;
  2. Physical Therapist;
  3. Clinical Psychologist;
  4. Dentist;
  5. Oral Surgeon;
  6. Chiropractor;
  7. Podiatrist;
  8. Certified Nurse Practitioner;
  9. Certified Nurse-Midwife; or
  10. Licensed Certified Social Worker-Clinical

### **Section 5. Advanced Sick Leave for the Employee's Own Illness**

- A. An employee who sustains a temporary, recoverable illness, injury or serious disability may request advance use of sick leave subject to the following four conditions:

The employee shall:

1. have completed six months of continuous USM service;
2. have completed an original probation period, if applicable;
3. have exhausted all other types of accrued leave; and
4. has performed at a "meets standards" or better level of performance and has not been placed on a sick leave certification requirement as provided in Section 4 or been disciplined for a sick leave related offense during the past 12 months.

- B. Advanced sick leave is not an entitlement. The granting of requests for advanced sick leave is at the discretion of the Office of Human Resources.

- C. Advanced sick leave shall not be granted in instances where the illness or injury or disability occurred on the job, and the employee has been granted accident leave or temporary total disability benefits by the Workers' Compensation Commission.
- D. Written requests for advanced sick leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed, or certified medical provider as outlined in Sections 4.A. and 4.F. of this Article.
- E. Sick leave may be advanced at the rate of fifteen (15) working days per year of service to a maximum of sixty (60) working days in any one calendar year.
- F. The use of advanced sick leave constitutes a debt for which payment shall be enforceable upon the employee's return to work or upon the employee's separation from employment, whichever is earlier. Upon return to work the minimum rate of payback for advanced sick leave shall be at one-half the rate that sick leave and annual leave is earned. An employee may elect to pay back advanced sick leave by applying any earned leave or by reimbursing the USM with cash.
- G. Annual, sick and holiday leave earned, and personal leave credited while on advanced sick leave shall be applied as earned/credited.
- H. Additional requests for advanced sick leave will not be granted until all previously granted advanced sick leave has been repaid. The only exception to this provision is in cases where the maximum amount of advanced sick leave had not been requested originally and additional advanced sick leave, consecutive to that already granted, is needed to cover the employee's continued absence arising from the original illness, injury or disability.
- I. The Office of Human Resources may refer an employee who is on advanced sick leave as follows:
  - 1. The employee may be referred to a USM institution-named certified medical provider paid for by the institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
  - 2. If there is a conflict between the employee's physician and the USM institution-named physician, the provisions of Section 3.B.3. shall apply.

**Section 6. Extended Sick Leave for the Employee's Own Illness**

- A. An employee who sustains a temporary, recoverable illness, injury or serious disability may request extended sick leave, subject to the three following conditions:

The employee shall:

- 1. have been in USM and/or State service for at least five years;
- 2. have exhausted all types of accrued leave and advanced sick leave; and

3. have performed at a “meets standards” or better level of performance and have not been placed on a sick leave certification requirement as provided in Section 4 or been disciplined for a sick leave related offense during the past twelve (12) months.
- B. Extended sick leave is not an entitlement. The granting of requests for extended sick leave shall be at the discretion of the Office of Human Resources.
  - C. The maximum cumulative total of extended sick leave available to an employee in USM or State service is twelve (12) work months ( fifty-two (52) work weeks).
  - D. Annual, sick and holiday leave earned, and personal leave credited while on extended sick leave shall be applied as earned/credited.
  - E. Written requests for extended leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed or certified medical provider as outlined in Sections 4. A. and 4.F. of this Article.
  - F. The Office of Human Resources may refer an employee who is on extended sick leave as follows:
    1. The employee may be referred to a USM institution-named certified medical provider paid for by the institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
    2. If there is a conflict between the employee's physician and the institution-named physician, the provisions of Section 3.B.3. shall apply.

## **ARTICLE 14 – UNION LEAVE**

- A. AFSCME may request that bargaining unit employees be released from their normal duties for the purpose of participating in approved union activities.
- B. The total amount of union leave granted at any institution during a fiscal year may not exceed one day for every thirty (30) of its bargaining unit employees of that institution as of July 1 of the current fiscal year, provided that a minimum of seven (7) days union leave will be granted by the University each fiscal year covered by this MOU. No employee outside of the bargaining unit will be counted in the leave calculation under this Article.
- C. All requests for union leave shall be submitted to the institution Director of Human Resources in writing by Council 92 fifteen (15) working days in advance of the day on which the leave is to begin and shall include:
  1. A general description of the activity and its purpose;

2. The date and location of the activity;
3. The name(s) of the employee(s) for whom union leave is being requested.

Where the leave request is for eight (8) hours or less, the minimum notice required is seven (7) working days.

- D. After verifying the validity of the request with a staff union representative and the accuracy of the time being requested, the institution Director of Human Resources may approve union leave if the employee's services can be spared without impairing the services of the department(s) involved and union leave is available pursuant to Section B of this Article. Approval of leave under this section shall not be unreasonably denied.
- E. If the employee organization needs to substitute an employee or employees for those previously granted union leave, or substitute new dates, such requests will be submitted as soon as possible to the institution Director of Human Resources for approval. Such substitutions may be approved if the substitution will not impair the services of the unit. Approval of substitutions or dates shall not be unreasonably denied.

## **ARTICLE 15 - PERFORMANCE EVALUATIONS**

### **Section 1. Performance Ratings**

Employees shall receive a written performance review at the end of their probationary period and annually (normally March) thereafter. The purposes of the performance evaluation are to establish a communication tool to ensure that employees are performing at acceptable levels and to provide a means by which to document performance and to establish a procedure for correcting performance problems should they occur. An employee shall be rated on the achievement of performance goals and objectives established by the supervisor in collaboration with the employee during the annual expectations meeting as well as employee performance related to an established set of performance factors, established by the Employer and discussed with the employee at the expectations meeting. An employee shall receive one of the following ratings:

1. Outstanding
2. Above Standards
3. Meets Standards
4. Below Standards
5. Unsatisfactory

### **Section 2. Expectations Meeting (Establish Goals and Objectives)**

Annually (normally March of each year), an employee will meet with the Department Head or designee who will be responsible for conducting the employee's performance review for the upcoming year.

At the expectations meeting, the Department Head or designee and the employee will discuss the specific performance factors for which the employee will be held accountable and the supervisor, in

collaboration with the employee will establish the employee's performance goals and objectives for the upcoming year. Performance factors and performance goals and objectives should be reasonably specific, attainable, measurable, and job-related. The expectations meeting will be documented in writing and signed by both the Department Head or designee and the employee.

### **Section 3. Probationary and Mid-Year Performance Evaluations**

An expectations meeting, in accordance with Section 2 of this Article, will be held with each employee at the time of hire.

When the employee's probationary period ends, the Department Head or designee, with input if applicable from the lead worker or "supervisor" to whom the employee is assigned, will prepare a written performance evaluation of the employee. The end of probationary period performance evaluation may include a self-assessment prepared by the employee, and shall address both an evaluation of the employee's performance and suggestions for ways that the employee and the Department Head or designee can work to address issues that have arisen.

The employee and the Department Head or designee will meet to discuss the end of probationary period performance evaluation, and will document in writing the results of the evaluation and will include in that documentation:

1. Any modifications made to the employee's job description;
2. Specific tasks and standards established by the Department Head or designee, in collaboration with the employee, that will assist the employee in accomplishing the employee's overall objectives for the next evaluation period;
3. Any training needs established.

In addition, although optional, supervisors are strongly encouraged to conduct mid-year performance evaluations, according to the aforementioned protocol, for all employees. Where an employee receives a year-end performance evaluation that is "Below Standards" or is exhibiting performance below "Meets Standards" during the first half of the evaluation period and the employee remains employed, the employer will conduct a mid-year performance evaluation and take other appropriate remedial measures until the employee's performance meets standards or the employee is terminated or demoted.

### **Section 4. Year End Performance Evaluation**

The end-of-year evaluation shall be based on those performance factors and goals and objectives established at the expectations meeting and shall include the following:

1. An overall performance rating;
2. Modification of the employee's job description (if applicable);
3. Recommendations for training as appropriate

Where an employee did not have an opportunity to perform work described by a performance standard or goal and objective, that standard or goal and objective will not be considered in the year-end performance evaluation. All applicable performance factors and goals and objectives will be applied fairly and objectively. The University should take into account any equipment and resource problems, lack of training, frequency of work interruptions, and other matters outside of

an employee's control when applying performance factors and goals and objectives. Time off on approved leave (sick, personal, annual, etc.) and authorized time for union representational purposes and other authorized activities will not be considered negatively in the application of performance factors and performance goals and objectives, provided that where an employee has been placed on notice regarding a sick leave usage problem, the employee's sick leave usage may be taken into account.

The performance evaluation requires a second signature. An individual superior to the individual preparing the performance evaluation and with knowledge of the department and the employee must review and approve the employee's end-of-year evaluation. This approval must be secured prior to the end-of-year evaluation meeting with the employee.

The Department Head or designee shall meet with the employee, discuss the performance evaluation, and give the employee a copy of the end-of-year evaluation. The employee must sign the evaluation and a copy will be placed in the employee's personnel file.

A statement of an employee's comments and/or objections to an evaluation may be attached and put in the employee's personnel file. Overall performance evaluations of Meets Standards or above may only be grieved through Step 2 of the grievance procedure; overall performance evaluations of Below Standards or below may be grieved through the entire grievance process.

The Employer will not apply forced distributions or any other limitation to employee ratings.

#### **Section 5. Deficient Performance**

In the event management concludes that an employee's job performance is at a level which will result in an evaluation below "Meets Standards", therefore jeopardizing his/her eligibility to receive a merit increase, management will notify the employee. The employee will be given a reasonable amount of time to correct the performance deficiencies before a year-end performance evaluation is conducted unless the deficient performance warranting the denial of the merit increase occurs late in the evaluation period. Failure to notify the employee pursuant to this provision shall not entitle the employee to a merit increase if the employee's performance does not warrant it.

#### **Section 6. Evaluation of the Department Head or Designee**

Employees may anonymously evaluate on an annual basis, in writing, on a form provided by the Employer, the Department Head or designee.

#### **Section 7. Performance Evaluation Pay Adjustment**

Merit pay adjustments for employees with an annual rating of "Meets Standards" or above shall be governed by provisions of Article 9, Wages, of this MOU. Employees who receive ratings of "Below Standards" or "Unsatisfactory" are not eligible for merit increases, and may be subject to other corrective measures.

## ARTICLE 16 – DISCIPLINARY ACTIONS

### Section 1. Progressive Discipline

The University subscribes to the tenets of progressive discipline, where appropriate. However, the University reserves the right to administer any discipline deemed appropriate by the University. No employee shall be disciplined without cause.

### Section 2. Disciplinary Actions

Progressive disciplinary actions may include but are not limited to the following actions: counseling, verbal reprimand, written reprimand, forfeiture of leave, suspension without pay, involuntary demotion, and termination. The Employer is not required to utilize all of the above-listed actions when administering discipline.

### Section 3. Right to Union Representation

Whenever the University is investigating conduct which might reasonably lead to disciplinary action against the employee, at the employee's option, the employee shall have the right to union representation at any meeting, hearings, or formal or informal discussions with the employee pertaining to the investigation or imposition of discipline relating to such conduct. This provision does not preclude an employee from discussing any matter with the University without the presence of a union representative.

## ARTICLE 17 - GRIEVANCE PROCEDURE

### GENERAL

In the event of an alleged violation or disagreement over any of the provisions of this MOU, a bargaining unit employee represented by AFSCME, which shall be the exclusive employee organization to represent the employees, shall have the right to file a grievance in accordance with Section 13-201 *et seq.*, of the Annotated Code of Maryland Education Article, a copy of which is set forth below for convenient reference.

### Title 13, University of Maryland – General Provisions: Subtitle 2. University of Maryland Classified Employee Grievance Procedures

#### § 13-201. Definitions.

- (a) *In general.*- In this subtitle, the following words have the meanings indicated.
- (b) *Day.*- "Day" means, except as otherwise provided, a working day, Monday through Friday, regardless of work schedule, weekend work, or midweek days off.
- (c) *Grievance.*- "Grievance" means any cause of complaint arising between a classified employee or associate staff employee and his employer on a matter concerning discipline, alleged



discrimination, promotion, assignment, or interpretation or application of University rules or departmental procedures over which the University management has control. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

§ 13-202. (Omitted)

§ 13-203. Steps in grievance procedure.

- (a) *Availability of procedure; number of steps.* - If, following informal discussion with the supervisor, a dispute remains unresolved, the grievance procedure is available. There are three steps in the grievance procedure.
- (b) (1) Step One. Step one is the initiation of a complaint. Grievances shall be initiated within 30 calendar days of the action involved, or within 30 calendar days of the employee having reasonable knowledge of the act, unless these time limits are further delimited as stated in § 13-205. Appeals within the grievance procedure shall be timed from receipt of the written opinion of management or from when such opinion is due, whichever comes first. An aggrieved employee or the employee's designated representative may present the grievance in writing to the department head or chairman or designee for formal consideration. If the grievance is presented to the department head or chairman or designee, within 5 days after the receipt of the written grievance a conference shall be held with the aggrieved or the employee's designated representative and within 5 days after the conclusion of the conference a decision shall be rendered in writing to the aggrieved or the employee's designated representative. If the aggrieved employee is not satisfied with the decision rendered at this step, the employee or the employee's designated representative may appeal in writing to step two within 5 days.  
  
(2) Both employee and department head or chairman or designee shall continue to review the matter, either privately or with the help of others in the employee's immediate work unit who are directly involved in the grievance. Each department head or chairman or designee shall use judgment in keeping superiors informed of the status of each grievance and, if necessary, request guidance, advisory committees, or other assistance consistent with departmental policy. If either the employee or the department head or chairman or designee feels the need for aid in arriving at a solution, the campus personnel department may be requested to provide resource staff or any other available resource personnel may be invited to participate in further discussions. The addition of such participants does not relieve the department head or chairman or designee and the employee from responsibility for resolving the problem.
- (c) Step Two. The appeal shall be submitted to the president of the constituent institution or the president's designated representative within 5 days after the receipt of the written decision at step one. The president or the president's designated representative shall hold a conference with the aggrieved or the employee's designated representative within 10 days of receipt of the written grievance appeal and render a written decision within 15 days after the conclusion of the conference.
- (d) Step Three. In the case of any still unresolved grievance between an employee and the constituent institution, the aggrieved employee, after exhausting all available procedures

provided by the constituent institution, may submit the grievance to either arbitration or to the Chancellor who may delegate this responsibility to the Office of Administrative Hearings in accordance with Title 10, Subtitle 2 of the State Government Article. In either case, the appeal shall be submitted within 10 days after the receipt of any written decision pertaining to that grievance and issued by the constituent institution. If the grievance is arbitrated, the parties shall select an arbitrator by mutual agreement. If they are unable to reach a mutual agreement, an arbitrator shall be supplied by the American Arbitration Association by their procedures. Any fees resulting from arbitration are assessed by the arbitrator equally between the two parties. The arbitration award is advisory to the Chancellor or administrative law judge, as appropriate, and an additional appeal or hearing may not be considered. The Chancellor or administrative law judge, as appropriate, shall make the final decision that is binding on all parties.

(e) *Authority of Chancellor or administrative law judge.*- The Chancellor or administrative law judge, as appropriate, shall have the power to award back pay in any grievance and the president of the constituent institution shall enforce such order. In any reclassification case in which the Chancellor or administrative law judge, as appropriate, or his designated representative, determines that an employee has been misclassified, the Chancellor or administrative law judge, as appropriate, may, in his discretion, award back pay to the employee for a period not to exceed one year prior to the initial filing of the grievance.

(f) *Coercion, discrimination, interference, reprisal and restraint prohibited.*-

(1) During any stage of a complaint, grievance, or other administrative or legal action that concerns State employment by a full-time or part-time employee of an institution, or by a temporary or contractual employee of an institution, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of an institution solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(2) An employee of an institution may not intentionally take or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(3) An employee who violates the provisions of this subsection is subject to disciplinary action, including termination of employment.

#### **§ 13-204. Decisions.**

A decision may not be made at any step of the grievance procedure that conflicts with or modifies a policy approved by the Board of Regents of the University or with any applicable statute or with any administrative regulation issued under appropriate statutory authority or that otherwise delimits the lawfully delegated authority of University officials unless prior approval has been obtained from the responsible official.

#### **§ 13-205. Suspensions pending removal; involuntary demotions; rejection on probation; disciplinary suspension.**

(a) *Suspensions pending removal.*- Within 5 days from the date on which the employee receives the charges for removal as evidenced by the return receipt or other evidence of delivery of the charges to the employee an employee who is suspended under charges for removal may request an opportunity to be heard in his own defense. Within 30 days if possible after receipt, the president or the president's designated representative shall investigate the charges and give the employee an opportunity to be heard. Testimony shall be taken under oath and both the department head or chairman or designee and the employee have the right of representation by counsel and the right to present witnesses and give evidence. Within 15 days following the conclusion of the conference, the written decision shall be rendered to the employee. In the case of appeals from charges pending removal, the department head or chairman or designee may request through appropriate channels the Attorney General's representative to the University to serve as counsel. In case no hearing is timely requested, the Campus Director of Personnel shall act upon the charges or order such other actions as are indicated by the findings in the case. If a hearing is timely requested and the removal is upheld, step three of the grievance procedure shall be available to the removed individual. The appeal shall be submitted within 10 days after receipt of the written University decision.

(b) *Involuntary demotions.*- Within 5 days, an employee who is notified of demotion may file a written answer with the president or the president's designated representative and request an investigation of the demotion. Within 20 days, if possible, after receipt, the president or the president's designated representative shall investigate the demotion and give the employee an opportunity to be heard. Within 15 days following the conclusion of the investigation, the written decision shall be rendered to the employee. If an investigation is timely requested and the demotion is upheld, step three of the grievance procedure is available to the demoted employee. The appeal shall be submitted within 10 days after receipt of the written University decision.

(c) *Rejection on probation.*-

(1) Rejection on Original Probation. Within 5 days of the notice of rejection, an employee who is rejected on original probation may file a written request with the president or the president's designated representative for a hearing. Within 20 days, if possible, after receipt, the president or the president's designated representative shall conduct a hearing. Within 15 days following the conclusion of the hearing, the written decision shall be rendered to the employee. If the hearing is timely requested and the rejection is upheld, step three of the grievance procedure is available. The appeal shall be submitted within 10 days after receipt of the written University decision. Rejection for cause is not required in the case of an employee rejected on original probation.

(2) Rejection on Promotional, Transfer, or Horizontal Change Probation. Within 5 days of receipt of the recommendation of the department head or chairman to reject, an employee who is promoted and then rejected within the probationary period for the new class and for whom a vacancy in the former class is not available may file an answer with the president or the president's designated representative and request an investigation of the proposed rejection. Within 20 days, if possible, after receipt, the president or the president's designated representative shall investigate the proposed rejection. The same rule applies to an employee who has completed a probationary period in one classification and makes a horizontal change to a new classification, and is rejected

in the new classification or who transfers to another department in the same classification and is rejected. Within 15 days following the conclusion of the investigation, the written decision shall be rendered to the employee. If the investigation is timely requested and the rejection is upheld, step three of the grievance procedure is available to the rejected employee. The appeal shall be submitted within 10 days after receipt of the written University decision.

(d) *Disciplinary suspension.*-

(1) This subsection does not apply to suspensions pending charges for removal.

(2) Alleged infractions shall be investigated by the responsible supervisor or administrator or designee at the earliest opportunity following knowledge of it, and the investigation shall be promptly completed. All suspensions of employees shall be implemented within 3 days of the alleged infraction or knowledge of the alleged infraction by the responsible supervisor or administrator. All suspension days shall be consecutive.

(3) The employee or the employee's designated representative may submit a written appeal on a disciplinary suspension to the president or the president's designated representative within 5 days of notification of the suspension, or the employee or the employee's designated representative may appeal the suspension within 3 days of notification of the suspension to the department head or chairman or designee. The department head or chairman or designee shall hear the case within 3 days from the receipt of the written appeal. If the appeal is unheard or unanswered as a result of management delay, the employee shall be reinstated with full back pay.

(4) If the suspension is upheld by the president or the president's designated representative, step three of the grievance procedure is available to the employee. If the employee chooses to appeal to the department head or chairman or designee, any further appeals shall proceed through steps two and three of the grievance procedure.

(e) *Preliminary hearing.*-

(1) If an employee is suspended without pay pending a hearing on disposition of charges for removal, the president or the president's designated representative shall notify the employee in writing of the reasons for the suspension at the time of the notice of the suspension.

(2) Within 5 working days of the notice of suspension, the employee may request in writing that the president or the president's designated representative, in addition to conducting a hearing on the merits, conduct a preliminary hearing to determine whether or not the employee may continue to work with pay pending the disposition of the charges.

(3) The president or the president's designated representative shall conduct a preliminary hearing within 5 working days after the president or the president's designated representative receives in writing the request from the suspended employee for the preliminary hearing.

(4) The preliminary hearing shall be limited to the issues of:

- (i) Whether suspension without pay is necessary to protect the interests of the University of Maryland or the employee pending final disposition of the charges; and
- (ii) Whether other employment and status alternatives should be considered.

(5) At the preliminary hearing, the employee may:

- (i) Rebut the reasons given for the suspension;
- (ii) Allege mitigating circumstances; and
- (iii) Offer alternatives to the suspension, including:
  1. Return to the position with pay;
  2. Transfer to another position with pay; or
  3. Suspension with pay.

(6) Within 5 days after the preliminary hearing is completed, the president or the president's designated representative shall render a written decision that is conclusive as to the issue of whether or not the employee may continue to work with pay pending the disposition of the charges.

#### **§ 13-206. Miscellaneous provisions.**

- (a) In cases of appeal to an arbitrator, each party is responsible for any expense incurred in the preparation and presentation of its own case and for any record or transcript it may desire.
- (b) Upon the formal or informal initiation of a grievance an employee designated as a grievance procedure representative shall not suffer any loss of pay for investigating, processing or testifying in any step of the grievance procedure. Release time from normal work schedules is to be granted all witnesses to attend grievance hearings. Expenses incurred in connection with attendance by employees at grievance hearings shall be borne by the employee's department.
- (c) Similar grievances may be consolidated and processed together as a single issue. Where a number of individual grievances have been reduced into a single grievance, not more than three employees selected by and from the group may be excused from work to attend a grievance meeting called by the responsible administrator at step one and not more than five employees at steps two and three unless, at any step, prior permission is granted by the person hearing the grievance.
- (d) Employee complaint forms shall be available in the campus personnel department. The University form shall be used.
- (e) It is the responsibility of the head of each organizational unit to assure that each employee understands the channels of communication and appeal, specifically who is the department head or chairman and who acts in their absence.
- (f) An employee may not leave the post of duty to engage in grievance handling without the knowledge of and permission from the designated supervisor.

- (g) A formal grievance may be filed by the aggrieved employee; the request to appeal a grievance must bear the signature of the employee or the employee's representative at each step of the procedure.
- (h) A record of each grievance and its disposition shall be furnished to the employee involved. A file copy of each grievance shall be maintained at the last step at which the grievance was processed, and an additional copy shall be filed with the campus personnel department which shall be available to the employee or the employee's representative.
- (i) At any point in the grievance procedure, the employee may elect to obtain, change, or dismiss the representative by providing a written notice to the person hearing the grievance. However, the action does not allow the grievant to return to a previous step in the procedure.
- (j) A hearing officer may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence or witnesses.
- (k) Each step of the grievance procedure shall be processed as quickly as practicable within the specified time limits. Failure to appeal at any step constitutes acceptance. Failure to answer is a denial to which an appeal may be made. By mutual agreement, the time limits and/or steps may be waived.
- (l) It is the responsibility of each party to the grievance procedure at each step of the procedure to duplicate the grievance form prior to filing it with the employer or returning it to the employee and to retain one copy of the form.
- (m) A grievance may start with a complaint or request by a permanent or temporary employee.
- (n) An employee may be represented at every step of the grievance procedure by a party or organizational representative.
- (o) An employee shall receive a copy of this grievance procedure upon employment at the University.
- (p) Both parties shall make an effort to resolve the grievance at the lowest possible level.
- (q) All grievance hearings shall be open hearings unless either party requests that the hearing be closed.
- (r) At any step of the grievance procedure, either party may require that witnesses be excluded from the hearing room until called.
- (s) Any party who elects to use this procedure for resolution of a problem is presumed to agree to abide by the final disposition arrived at in this procedure and the final disposition may not be subject to review under any other procedure within the University.
- (t) Any question concerning the timeliness of a grievance or whether a complaint is subject to the grievance procedure shall be raised and resolved promptly, unless the person hearing the

grievance or appeal determines that the decision on a motion to dismiss will be deferred pending a hearing on both the merits and the motion.

**§ 13-207. Sovereign immunity; satisfaction of awards.**

- (a) *Defense of sovereign immunity unavailable.* - The defense of sovereign immunity may not be available to the University, unless otherwise specifically provided by the laws of Maryland, in any administrative, arbitration, or judicial proceeding held pursuant to this section, or the personnel policies, rules, and regulations for classified employees of the University System of Maryland involving any type of employee grievance or hearing, including, but not limited to charges for removal, disciplinary suspensions, involuntary demotions, or reclassifications.
- (b) *Funds provided for satisfaction of awards.* - The Governor shall provide in the annual State budget adequate funds for the satisfaction of any final monetary or benefit award or judgment that has been rendered in favor of the employee against the University in any administrative, arbitration, or judicial proceeding.
- (c) *Awards which have not been satisfied.* - Awards under this section that have not been satisfied pursuant to subsection (d) of this section, shall be reported to the Comptroller of the Treasury, who shall maintain and report annually to the Governor an accounting of existing awards. Upon appropriation of funds by the legislature, the Comptroller of the Treasury shall satisfy existing awards in order of date of award.
- (d) *Timeliness of satisfaction.* - If the University has sufficient funds available to satisfy any award under this section at the time the award is rendered, the award shall be satisfied as soon as practicable but not more than 20 days after the award becomes final.

**ARTICLE 18 – MISCELLANEOUS**

**Section 1. Access to Recreation Centers**

Subject to University rules and regulations, employees and their dependents have access to and use of all appropriate campus facilities, including but not limited to all health and fitness facilities, sports complex, dining facilities, the library, and computer facilities that are otherwise open to employees. Employees will pay the same fees as other employees when using University facilities.

**Section 2. Release Time for Campus Sponsored Committees**

Employees shall be allowed paid release time with the approval of the supervisor based upon operational needs to serve as members of employment-related, campus-sponsored committees to which they are appointed or elected.

**Section 3. Attendance at Job-Related Trainings**

Employees will be paid for time spent in University required training consistent with the provisions of this MOU and the FLSA. The Employer will make reasonable efforts to have employees attend required training during their regularly scheduled work hours. All travel undertaken in conjunction with approved University required training must be documented by the employee and pre-approved by management. All out-of-state travel must have a pre-approved travel request form. Expenses

properly incurred in conjunction with approved University required training are reimbursable to the extent allowed by and as provided by University regulations.

**Section 4. Attendance at Job Interviews**

Employees shall be allowed reasonable paid release time to attend job interviews on the University campus for University job opportunities.

**ARTICLE 19 -- UNIFORMS AND EQUIPMENT**

**Section 1. Uniformed Job Classifications.**

Where the Employer has determined that a specific job classification should wear a uniform, the Employer will determine the nature of the uniform (shirt, shirt and pants, etc.) and will provide that uniform. The Employer will provide appropriate uniforms to agricultural technicians and laboratory technicians beginning in FY 05. Where uniforms are provided, employees must wear them.

**Section 2. Replacement of Uniforms**

The Employer will replace uniforms on a department-by-department basis consistent with current practices. Replacement uniforms shall be in new condition, fit properly, and be provided at no cost to the employee. Employees are responsible for maintenance and upkeep. If a uniform is damaged or lost through the fault of the employee, replacement shall be at the employee's expense.

**ARTICLE 20 – INSURANCE BENEFITS**

Employees covered by this MOU who are otherwise eligible may participate in the health and other insurance plans as offered by the State of Maryland and the University System of Maryland, as they may exist from time to time, on the same basis and subject to the same terms and conditions including the payment of all applicable premiums, co-pays, deductibles and other fees and expenses as established for other University and State employees.

**ARTICLE 21 – RETIREMENT**

Employees covered by this MOU who are otherwise eligible may participate in the Maryland State (Employees' and Teachers') Retirement Systems and the Maryland State (Employees' and Teachers') Pension Systems, as appropriate, subject to all of the terms and conditions of those Systems and their respective Plans, including any modifications made to those Systems and Plans during the term of this MOU. All disputes or grievances regarding the Retirement and/or Pension Systems shall be resolved in accordance with the procedures specified in the plan or by applicable law.



## ARTICLE 22 -- TUITION REMISSION

### Section 1.

Tuition remission shall be administered by UMES consistent with UMES Procedure and *USM Policy VII-4.10, Policy on Tuition Remission for Faculty and Staff* and *USM Policy VII-4.20, Policy on Tuition Remission for Spouses and Dependent Children of Faculty and Staff*, and/or any USM successor tuition remission policies that may be adopted during the duration of this MOU.

### Section 2.

In the event that during the duration of this MOU, the Board of Regents adopts a policy, which rescinds or modifies in whole or in part the afore-referenced tuition remission policies, the University may implement those changes after consultation or bargaining, if required, with the Union. The parties further agree that the University's tuition remission program must at all times comply with applicable law and that the University may implement any modifications necessary to come into compliance with applicable law. Where the modifications or changes that the University intends to implement are subject to the obligation to bargain collectively under *SPP 3-101 et. seq.*, the process outlined in Article 6 - Scope of Agreement of this MOU applies.

## ARTICLE 23 -- HEALTH AND SAFETY

### Section 1. General Duty

The Employer and all employees covered by this MOU shall comply with all safety rules and regulations established by the Employer, as well as all applicable safety-related laws and regulations.

### Section 2. Safety Concerns

Where an unsafe condition is alleged to exist, the affected employee shall first notify his/her immediate supervisor who shall take whatever necessary corrective action the supervisor deems appropriate. Employees are encouraged to bring forth their safety concerns and are not subject to adverse actions for doing so. Where the matter is not resolved to the satisfaction of the employee, the matter will be submitted to the University's Safety Officer for review. The Safety Officer will advise the employee of the results of his investigation and any corrective action taken or proposed to be taken within thirty (30) days of receiving notice of the employee's concern or explain why additional time is needed. Nothing in this Article requires the Employer to take any specific corrective actions proposed by an employee. However, corrective actions shall be implemented in accordance with the judgment of the University.

### Section 3. Joint Health and Safety Committee

As a way to promote and maintain safe and healthy working conditions in the workplace, the Employer and the Union agree to establish a campus-wide Health and Safety Committee comprised of representatives from all areas of the campus community. The Union shall select a

total of four representatives (clerical staff (1), housekeeping staff (1), and trades and labor pool staff (2)) to act as representatives to the Health & Safety Committee along with other employees. The Health and Safety Committee shall be the primary advisory group on matters pertaining to accident and injury prevention, reduction, and management. The committee shall be chaired by the University Safety Officer and shall meet every other month.

#### **Section 4. Duties of the Health and Safety Committee**

The Health and Safety Committee is responsible for:

- a) Recommending that adequate health and safety rules and regulations are implemented and monitored.
- b) Reviewing and monitoring potential risks and hazards that exist in the work environment, including unsafe work practices, and making recommendations for their elimination or reduction.
- c) Monitoring and evaluating the need for health and safety training for employees.
- d) Reviewing accident records and statistics in order to determine the need for corrective action.
- e) Promoting health and safety education.
- f) Reviewing the availability and adequacy of first aid supplies and equipment and recommending improvements as necessary.
- g) Maintaining and reviewing minutes of all committee meetings.

#### **Section 5. Investigative Reports**

The committee shall be entitled to copies of any investigative report produced by any State, County or Federal agency or any report prepared by any member or sub-committee of the Committee as a result of investigating any situation described under Section 4 above.

#### **Section 6. No Loss of Compensation**

Members of the Health and Safety Committee will receive paid work release time while performing approved duties associated with the responsibilities of the Committee, and/or attending training or conferences required by the Employer. All time spent by the employee on Committee Activities must be consistent with operational needs and pre-approved by the employee's supervisor.

#### **Section 7. Personal Protective Equipment**

The Employer shall provide personal protective clothing and equipment (not including safety shoes or prescription safety glasses) that, as determined by the Employer, are required by applicable state laws and regulations. In the event the Employer requires an employee to wear safety shoes on the job, the Employer, upon proof of purchase will reimburse the employee on a one-time basis during the duration of this MOU \$75.00 (but not to exceed the cost of the shoe) towards the cost of one pair of safety shoes approved by the Employer and purchased by the employee during the duration of the agreement. The Employer will provide guidelines in conjunction with what constitutes an Employer approved safety shoe (type, specifications, etc.). The Employer will make available non-prescription safety glasses to employees who are required to wear them as part of their job.

**Section 8. Communicable Diseases**

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Training by a certified entity shall be provided, at least once a year, to educate employees in the area of recognition and prevention of such diseases and blood borne pathogens. The training shall be based on the standards established by OSHA.

**Section 9. Hepatitis B**

Employees who have any contact with blood and other body fluids shall be offered Hepatitis B vaccination at a location designated by the Employer and at the Employer's expense. The Employer will cover any costs of the vaccination that are not covered by the employee's health insurance.

**Section 10. Cardiopulmonary Resuscitation (CPR) Training**

Employees assigned to job classifications where, as determined by the Employer, training in CPR may be a valuable skill, shall be offered CPR training.

**Section 11. Asbestos**

All employees who work with or around asbestos shall have the proper required training and personal protective equipment. When an asbestos hazard is discovered, employees shall be immediately notified of the existence and location of the hazard, and the Employer shall take precautionary measures to protect the employees from exposure. The Employer shall conduct periodic inspection and monitoring to detect the presence of asbestos at least once a year.

**Section 12. Physical Examinations for Agricultural Technicians**

Agricultural Technicians will be provided the opportunity to take a physical examination annually at a location determined by the employer. The Employer will cover any costs of the routine physical examination that are not covered by the employee's insurance.

**Section 13. Medical Monitoring**

Medical Monitoring is according to the schedule set by the Maryland Asbestos Program.

**Section 14. Inspection by Governmental Agencies**

A copy of any investigation report prepared by any government agency, which conducted an investigation on the premises of the Employer, shall be furnished to the Union upon request.

**ARTICLE 24 -- CONTRACTING OUT**

**Section 1. Bargaining Unit Work**

- A. The Employer retains the right to contract out services that are performed or that could be performed by employees covered by this MOU. The University understands that the Union opposes the contracting out of public services. Where the Employer decides to contract out a service that is performed by employees covered by this MOU, the Employer will provide the Union with written notice of its decision no less than sixty (60) days before the effective date of the service contract. The notice shall include the following:

1. A statement of what efforts will be made by the University to place affected employees in University positions that are vacant at the time of notice;
  2. A statement of what employment possibilities are available with the contractor; and
  3. A statement of which employees, if any, will be laid off as a result of the contracting out of the services. Employees who are laid off are subject to Article 30 – Layoff and Recall.
- B. The parties specifically agree that this Article is intended to state the complete obligation of each party with regard to bargaining over the effects of a decision by the Employer to contract out.

## **ARTICLE 25 – PARKING**

Employees may park in the University parking lots on an as available basis provided that any employee electing to do so pays the same parking fees as applicable to all other University employees and complies with all parking regulations, provided that the University will not raise parking fees by more than 50% a year.

## **ARTICLE 26 -- ESSENTIAL EMPLOYEES**

### **Section 1.**

An essential employee is an employee of a facility who has been designated as vital to the operation of the facility, whose presence is required regardless of the existence of an emergency condition, and whose absence from duty could endanger the safety and well being of the campus population and/or physical plant. The University has the sole authority to designate which employees are essential.

### **Section 2.**

If the University is closed due to emergency conditions, essential employees must, pursuant to University policy, report to work. If an essential employee fails to report for duty after he/she has been notified by his/her supervisor to report to work, he/she will not be paid for that day/days and may face disciplinary action.

### **Section 3.**

Employees who are required to perform duties after an emergency condition has been declared shall, in addition to pay for work performed, be compensated on an hour-for-hour straight time basis for hours worked during the period of declared emergency up to the number of hours of administrative leave granted on that day because of the emergency to non-essential employees. At the option of the Employer, the employee may be paid compensatory time, for the administrative leave portion on the same basis, but in lieu of, cash payment.

## **ARTICLE 27 – LABOR – MANAGEMENT COMMITTEE**

### **Section 1. Purpose of The Committee**

The University and the Union agree to create a Labor-Management Committee for the purpose of identifying issues of concern to either party and to jointly procure solutions to such concerns. The Committee shall also serve as a forum of discussion for any issues associated with the implementation of any aspect of this MOU. However, the Committee shall not serve as a substitute for formal negotiations when such is necessary and required.

### **Section 2. Composition of The Committee**

The University and AFSCME shall appoint four (4) members each to the Labor-Management committee. The committee shall meet at least once a month for the first six months and every other month or as needed after that. Each of the parties shall alternate as chair.

## **ARTICLE 28 - NO STRIKE AND NO LOCKOUTS**

Consistent with State Personnel and Pensions Article Section 3-303, employees are prohibited from engaging in any strike. The Employer may take disciplinary action, including termination of employment, against any employee who participates in a strike. "Strike", as defined in Section 3-303, means any concerted action to impede the full and proper performance of employment duties in order to induce, influence, coerce, or enforce demands for a change in wages, hours, terms, or other conditions of employment, and includes a total or partial refusal or failure to report to work; refusal or failure to perform employment duties; withdrawal from work; work stoppage; or, work slowdown. The Union agrees that it will not engage in or encourage any strike activity and agrees that it shall take all necessary steps to obtain immediate compliance with this Article by employees covered by this MOU. The Union is subject to all penalties and remedies under law for a violation of this Article or Section 3-303.

Consistent with State Personnel and Pension Article Section 3-304, the University may not engage in any lockout. "Lockout", as defined in Section 3-304, means action taken by the University to interrupt or prevent the continuity of the employees' usual work for the purpose and with the intent of coercing the employees into relinquishing rights guaranteed by Title 3 of the State Personnel and Pensions Article, or any action taken by the University to bring economic pressure on employees for the purpose of securing the agreement of their exclusive representative to certain collective bargaining agreement terms.

## **ARTICLE 29 – SEVERABILITY**

This MOU is subject to all applicable laws. Should any part of this MOU be declared invalid by operation of law, the part at issue will be unenforceable and the remainder of the MOU shall not be affected but shall remain in full force and effect. In the event a provision is thus rendered invalid, upon written request of either party, the Employer and the Union shall meet promptly and attempt to negotiate a substitute for the invalid provision.

## ARTICLE 30 – LAYOFF AND RECALL

### Section 1. Layoff Notice

When the University decides to layoff an employee or employees, a notice shall be given to the affected employee(s) and the Union at least ninety (90) calendar days in advance of the effective date of such layoff. Notices of layoff shall be in writing and shall be acknowledged in writing by the employee. The written notice shall include the reason for the layoff (i.e., position abolished, discontinued or vacated because of a lack of supporting funds, program change, change in departmental organization or stoppage or lack of work). The Employer may place an employee who receives a notice of layoff on administrative leave for any portion of the ninety (90) calendar day notice period. Administrative leave will not be unreasonably denied.

### Section 2. Order of Layoff

The University shall determine in which classifications layoffs will occur. Layoffs will occur by division. Within each classification affected, layoffs shall occur in the following order:

1. All regular status employees serving an original probationary period in the classification and division in which the layoff is to occur; then
2. All regular status employees who have completed an original probationary period, in the classification and division in which the layoff is to occur, in order of seniority, with the employee having the lowest number of seniority points being laid off first.

### Section 3. Seniority Points

The formula for establishing seniority points shall be as follows:

- (A) One point shall be given for each complete month of credited service for the following:
  - (1) University System (and/or predecessor organizations) and State service including service as medical system University personnel as defined in the Education Article, Section 13-1B-01(r)
  - (2) Service with the division where the layoff is to occur: and
  - (3) Service in the job classification and its job series where the layoff is to occur.
- (B) For creditable service of less than a complete month, the employee shall be credited with .032 points for each day of creditable service.
- (C) For part-time employees, creditable service shall be determined by the funded percentage of the position.
- (D) The combined total of all points shall determine the order of layoff. If two or more employees in the same classification have the same number of seniority points: the Divisional Vice President, with approval of the Chief Executive Officer, will determine the employee(s) to be retained based upon a reasonable written evaluation of the specific objective skills, knowledge, and abilities of each employee, prepared by the Division Head or Chairperson.

#### **Section 4. Displacement Rights**

Employees covered by this MOU who are notified that they are being laid off may elect to exercise displacement rights as provided herein. An employee's election to exercise displacement rights must be made by giving written notice to the Office of Human Resources within fifteen (15) calendar days of the notice to the employee of the layoff.

- (1) An employee in a position which is to be abolished, discontinued, or vacated shall be allowed to displace another employee with less seniority in the same job classification, or, if not available either
  - a. Progressively to each lower classification in the same job series; or
  - b. In any other classification in which the employee held satisfactory regular status.
- (2) The displacement as applied in one (1) above, shall be limited to the division in which the employee is employed at the time that the notice of layoff is given.
- (3) An employee who elects not to displace another employee or who is ineligible to displace another employee in accordance with this Section shall be laid off.
- (4) An employee who is displaced under this Article is subject to the terms and conditions of this Article.

#### **Section 5. Recall List**

An employee who is laid off shall be recalled for reappointment following a layoff if, within two (2) calendar years from the effective date of layoff, the specific position from which the layoff occurred is reestablished, provided the employee continues to meet minimum qualifications of the job.

For a period of three (3) calendar years from the effective date of the layoff the employee will be notified of job vacancies at the University and, if interested, shall be granted interviews for appointment to vacancies in the classification in which the employee was laid off, any lower classification in that job series, any classification for which the employee has completed an original probationary period, or any other position vacancy for which the employee meets the minimum qualifications.

- (1) Notice of recall from a layoff shall be sent to the employee by certified mail, return receipt requested.
- (2) The recalled employee shall have up to ten (10) workdays following receipt of the recall notice to notify the University of their intention to return to work.
- (3) The recalled employee shall have up to twenty-one (21) workdays following receipt of the recall notice to actually return to work.

#### **Section 6. Severance Package**

Laid off employees who are eligible may receive the following severance package:

1. Tuition Remission:
  - a) Employees who are laid off, who have completed less than ten (10) years service with the University and who are receiving tuition remission at the time of layoff may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for

one additional full-time semester or two additional part-time semesters, not to exceed a total of 18 credit hours, at UMES only.

- b) Employees who are laid off, who have completed more than ten (10) years service with the University and who are receiving tuition remission at the time of layoff, may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for two additional full-time semester or four additional part-time semesters, not to exceed a total of 36 credit hours, at UMES only.
- c) For purposes of this Section, full-time shall be considered twelve (12) credit hours or more. Part-time shall be considered to be less than twelve (12) credit hours.
- d) The tuition remission benefit described in this Section is for the employee only, with the exception that any employee dependent enrolled in coursework in the semester in which the employee is laid-off and receiving tuition remission may continue to receive tuition remission for the balance of that semester.

2. Employment Assistance

The Office of Human Resources will be available to assist employees laid off with the following:

- Developing a resume
- Composing a cover letter
- Interviewing skills
- Mock interviews
- Conducting a job search
- Employment agency contacts
- Recommended readings

3. The Office of Career Services will be available to assist the laid off employee with the following:

- Career Counseling
- Job/Internship Posting & Searches
- Resource Library
- On campus recruitment and interviews
- Career Fairs
- Resume and cover letter assistance

## ARTICLE 31 – DURATION, RENEWAL AND REOPENERS

### Section 1 – Duration

This MOU shall become effective when all conditions precedent to its effectiveness have been met. No portion of this MOU shall be implemented until all of its provisions are effective. No provision of



this MOU has retroactive application unless required by law. This MOU expires at 11:59 p.m. on the day before its third anniversary date. The parties shall ensure that their respective ratification processes are completed as promptly as possible after the conclusion of negotiations.

### **Section 2 – Renewal**

Should either party desire to renew this MOU, they may only do so by providing written notification of its intent to do so to the other party at any time prior to the last twelve (12) month period of its duration. After notification is provided, the parties shall then commence negotiations for a successor MOU, during the last year of this MOU at dates and times agreed to by the parties.

### **Section 3 – Limited Reopeners for FY 2006 and FY 2007**

Notwithstanding the provisions of Section 1 above (Duration), either party may reopen this MOU during the month of June in each year (2004 and 2005) for the sole and limited purpose of negotiating over the subjects of what cost of living adjustment, if any, what merit pay adjustment for "meets standards," if any, and what funding conditions and requirements, if any, for both items shall be included in the USM budget request submitted to the Governor for the next fiscal year. All other terms and conditions of this MOU shall remain in full force and effect during any such reopener and throughout the duration of this MOU.

SIGNATURE PAGE

UNIVERSITY OF MARYLAND,  
EASTERN SHORE

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES

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**William E. Kirwan**  
Chancellor, University System of Maryland

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**Zachary Ramsey**  
Executive Director, AFSCME, Council 92

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**Thelma B. Thompson**  
President, University of Maryland  
Eastern Shore

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**Curt Ostrander**  
Chief Negotiator  
American Federation of State, County &  
Municipal Employees

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**Frank W. Stegman,**  
Chief Negotiator UMES Bargaining Team  
University of Maryland Eastern Shore

**AFSCME LOCAL 1833 ELECTED  
NON-EXEMPT BARGAINING TEAM**

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**Marie H. Billie**  
Director, Office of Human Resources  
University of Maryland Eastern Shore

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Douglas Bloodsworth

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**Leon Bivens**

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Theola Corbin

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**Preston Cottman**

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Robert Gale

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Joe Hartman

APPROVED AS TO FORM BY:

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Mattie Wells

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**Jessica Carter, Esquire**  
Assistant Attorney General