

**University of Maryland, College Park  
and  
AFSCME**

**Exempt Employee Unit**

**2004 Memorandum of Understanding**

This Memorandum of Understanding (“Agreement” or “MOU”) is entered into by the University of Maryland, College Park (“University” or “Employer”) and the American Federation of State, County and Municipal Employees, Council 92, AFL-CIO (“University Professionals United Local 1072”, “Union” or “AFSCME”), and has as its purpose the promotion of harmonious relations between the University and the employees in the exempt bargaining unit and its representatives. The parties to this agreement shall make a sincere effort to ensure that its administration is conducted in a fair and expeditious manner and for the benefit of establishing stability and understanding in the parties’ labor management relations. This preamble is a statement of principle only and shall not be used in the interpretation of any of the provisions of this Agreement.

**Article 1. Recognition and Scope of Agreement**

Section 1. Exclusive Bargaining Agent

The University recognizes AFSCME as the exclusive bargaining agent in all matters establishing and pertaining to wages, hours, and other terms and conditions of employment for all regular full-time and part-time employees in the exempt employee bargaining unit. Excluded from the unit are individuals excluded from the bargaining unit under the State Higher Education Labor Relations Act, Section 3-102, Title 3, of the State Personnel and Pensions, Annotated Code of Maryland.

Section 2. New Job Classifications

The University shall inform the Union of any new exempt job classification created by the University. The University shall inform the Union of any classification that in its judgment shall not be included in the exempt bargaining unit. Notification shall be provided no later than ten (10) working days after a job classification is officially filled.

Within ten (10) workdays from receipt of notification, the Union may request a meeting with the University to review the reasons for the exclusion of any job classification excluded by the University.

A meeting shall take place within five (5) workdays from the date that the Union requests a meeting if practicable. At this meeting the University and the Union shall attempt to resolve any differences of opinion regarding the exclusion of a job classification.

Section 3. Effect of USM Board of Regents and UMCP Policies

- (a) Except as specifically provided for in this Memorandum of Understanding, all University System of Maryland and University of Maryland, College Park policies, procedures, rules, practices, and conditions of employment governing bargaining unit employees (“Policy”) are and shall remain in full force and effect. Where a portion of any existing Policy is modified by this MOU, the remainder of that Policy not in conflict with the MOU remains in full force and effect.
- (b) This MOU is subject to applicable Federal and State laws and regulations, and the Charter and by-laws of the Board of Regents and the University System of Maryland, as well as any contracts between the University and a third-party pre-dating the ratification of the MOU.
- (c) The Policies may not be modified with regard to the terms and conditions of employment for bargaining unit members without first furnishing the Union with at least 30 days notice of any changes and an opportunity for the Union to bargain with regard to the change. The Policies may be changed to conform with changes to any corresponding Federal or State law or regulations.

Section 4. Bargaining Unit Work/No Contracting Out

Unless otherwise provided by law, the University recognizes the integrity of the bargaining unit and will endeavor to use bargaining unit employees to perform bargaining unit functions in preference to contracting out with the private sector. In the event the University proposes to use non-bargaining unit individuals to permanently displace bargaining unit employees, it will provide the Union with notice at the earliest opportunity, but normally at least sixty (60) days in advance and will be available to meet upon written request from the Union within ten (10) days after the request is made.

However, it shall not be considered a violation of this MOU for non-bargaining unit employees to perform duties traditionally and customarily performed by bargaining unit members in accordance with present practice provided that said work does not directly result in the layoff of bargaining unit members.

## **Article 2. Non-Discrimination**

### Section 1. Non-Discrimination

The parties agree not to discriminate against bargaining unit employees in violation of the laws of the State of Maryland or the Government of the United States.

### Section 2. Employee Rights

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, Annotated Code of Maryland. The Union agrees that at least five (5) working days prior to the filing of a unfair labor practice charge with the State Higher Education Labor Relations Board on behalf of itself or any employee(s), the Union will confer with the University regarding the subject matter of the ULP and reasonably attempt to resolve the issue.

## **Article 3. Hours of Work and Overtime**

### Section 1. Schedule Requirements

Employees in Exempt positions should be assigned a reasonable work schedule. The work of employees in Exempt positions is not measured solely by the hours worked. Employees in Exempt positions are expected to work the hours necessary to complete assignments on a schedule that satisfies the requirements of the job. A full-time commitment typically requires a minimum of eighty (80) hours per bi-weekly payroll period. Although not required and not an entitlement, a limited amount of compensatory leave may be granted, with the prior written approval of the institution CEO or designee. Compensatory leave shall be used within one year from the date it is earned. Use of compensatory leave is subject to the advance approval of the employee's supervisor, which shall not be unreasonably withheld. No compensation shall be paid for compensatory leave that is unused at the time the employee leaves University service except that if an employee has been denied use of compensatory leave due to work demands within the last four (4) months prior to separation, the employee shall be paid for up to twenty (20) hours of such denied compensatory leave. Such leave shall not be restored upon reinstatement.

### Section 2. Breaks

Exempt employees are permitted to take a lunch and other breaks. Such breaks shall be coordinated between the employee and the immediate supervisor.

### Section 3. Copy of Job Description

Upon initial employment or a new position each bargaining unit employee shall be furnished a copy of his/her job description. It is understood that the job description is a general statement of responsibilities and duties.

Within thirty (30) days of any change in supervisor, the employee and supervisor will meet and discuss the supervisor's expectations of the employee.

No change to an employee's job description shall occur without providing written notice to the incumbent employee.

### Section 4. Telecommuting

Due to the nature of exempt employment and the nature of the services provided by professional employees at the University, the University may allow employees to telecommute or work from a different location when prior written approval from the immediate supervisor or department director has been obtained. The decision to allow an employee to telecommute or work from a different location shall be made on a case-by-case basis depending on the nature of the employee's duties and responsibilities. However, nothing in this section precludes the employer from establishing positions where the employee is expected to be regularly present on the job. Nor shall the section be construed to prevent the University from requiring an employee's physical presence 1) at any reasonable time, with reasonable prior notice to the employee or 2) at any time in response to a critical operational need.

### Section 5. Relief Period

When an Exempt employee is recalled to campus after the completion of a normal daily work session, or is required by his or her supervisor to significantly extend his or her daily work session, that employee may request, subject to supervisory approval, to be relieved from all physical presence requirements for a 10-hour period following the end of the extended work session.

#### **Article 4. Wages and Compensation**

##### Section 1. Salary Increases

- (a) In July of each year of the MOU, the University and the Union shall meet and negotiate regarding possible salary increases for bargaining unit members, if any, to be included in the University's asking budget for the following fiscal year.
- (b) For FY 2005, the Governor has recommended, and the legislature has approved, a cost of living adjustment of \$752. Such increase will be distributed to bargaining unit employees provided that the State Legislature appropriates specific funds for such increases, to the extent funded, and/or the University is specifically directed by the Board of Regents through their annual Salary Guidelines to distribute such increases.
- (c) For FY 2005, the Regents have requested, and the legislature has authorized, a 2.5% salary increment. Such increase will be distributed to bargaining unit employees provided that the State Legislature appropriates specific funds for such increases, to the extent funded, and/or the University is specifically directed by the Board of Regents through their annual Salary Guidelines to distribute such increases.

##### Section 2. Acting Capacity Pay

When employees are placed in a Temporary Assignment or an Acting Appointment, duration, salary adjustments, if any, and other terms and conditions regarding the Assignment or Appointment shall be treated by the University consistent with USM Policy VII-9.50 Policy on Temporary Assignments and Acting Appointments applicable to non-exempt employees.

In the event of a Temporary Assignment, when assigning additional duties to an employee, the supervisor will identify the employee's work priorities and make adjustments to work assignments as necessary.

Temporary Assignments and Acting Appointments normally shall not be made for more than twelve (12) months. However, where operationally necessary, Acting Appointments may be extended for up to an additional twelve (12) months.

## **Article 5. Performance Evaluation**

Employees shall receive performance reviews annually. Performance reviews of bargaining unit employees shall be administered in accordance with USM Policy VII-5.20 and UM VII-5.20(A) concerning the Performance Evaluation Program. Each stage of the performance evaluation process shall be completed by the established deadlines. In the event the assigned deadline is not met, the employee shall provide notice to the Department of University Human Resources, which shall respond accordingly.

## **Article 6. Health and Welfare**

### Section 1. Maintenance of Benefits

All employees who are eligible for health insurance benefits coverage offered by the State of Maryland Employees Benefits Division shall receive said coverage on the same terms and conditions and pay premium or periodic charges on the same basis and to the same extent as the State establishes for State employees.

### Section 2. EAP Program

The Employer shall continue offering the current Employee Assistance Program (EAP) to all employees in the bargaining unit.

## **Article 7. Tuition Remission**

The parties recognize the importance of Tuition Remission. Tuition Remission shall be available to bargaining unit members, their spouses and dependent children consistent with applicable University System and University policies. Any changes in Tuition Remission, as set forth in this Section, by the University shall be subject to applicable law under the State Higher Education Labor Relations Act.

## **Article 8. Probationary Period**

### Section 1. Probationary Period

- a. The probationary period for newly hired employees shall be twelve (12) months.
- b. An employee who has satisfactorily completed a probationary period in any exempt position and who is appointed to another position in another department or unit as a result of a promotion, demotion, horizontal

change, transfer or reinstatement, shall be required to serve a nine (9) month probationary period.

- c. An employee who has completed a probationary period in any exempt position and is then transferred or reinstated by the University to another position in the same department or unit shall be considered to have been reassigned and shall not be required to serve an additional probationary period.

#### Section 2. Probation of Contingent II Employees

The probationary period for employees being assigned to the bargaining unit as a result of a conversion from contingent appointment to regular status shall be thirty (30) days, provided the employee is assigned to the same job in the same department and has employment service of at least one (1) year. Otherwise, the probationary period shall be one (1) year.

### **Article 9. Leaves of Absence**

#### Section 1. Eligibility for Leaves of Absence

All regular employees appointed to at least 50 percent of full-time basis are eligible to earn leave with pay at a rate proportionate to the individual's work schedule as defined in this Article. Leave is accrued each pay period and is used in terms of hours and minutes.

#### Section 2. Annual Leave

All employees may carry-forward 50 days of leave from year-to-year. The employee shall receive payment at his or her regular rate of pay for all leave in excess of 50 days as of December 31 of each year, the use of which was requested but denied for business reasons. The University shall not deny the use of annual leave after it was approved by a supervisor or a member of management, except in extraordinary circumstances. In cases where denial causes an employee to incur unavoidable financial losses, i.e., airplane tickets and/or hotel reservations, the University shall reimburse the employee upon proof of loss including any late cancellation charges and applicable taxes. Reimbursement shall occur on the employee's next paycheck.

Employees making timely and periodic requests for leave shall not be denied the use of any annual leave during an entire calendar year, except for business reasons as defined by shortage of staff or high demand seasons. Under no circumstances will an employee be denied use of any annual leave for two (2) consecutive years.

When an employee is denied use of annual leave due to business reasons, the employee shall receive notice of such denial within five (5) working days from the time the request is submitted, unless the employee's supervisor is absent from work in which case the employee shall receive notice within two (2) working days of his/her return.

### Section 3. Annual Leave Accrual

Employees in the bargaining unit will earn twenty two (22) days of annual paid leave per year which shall accrue on a bi-weekly basis from the beginning of employment. Beginning with the twenty-first (21<sup>st</sup>) year of USM and/or State of Maryland employment, annual leave shall be earned at the rate of twenty-five (25) days per calendar year. A maximum of fifty (50) work days of annual leave may be carried into a new calendar year by full-time employees; this maximum will be pro-rated for part-time employees working 50 percent or more.

### Section 4. Annual Leave Advancement

An employee may be advanced five (5) days of annual leave with the advance approval of the immediate supervisor provided that no other annual or personal leave is available to the employee. Such advancement cannot be obtained until the employee has paid back any borrowed leave. An employee cannot use this provision more than once per year.

Use of advanced annual leave constitutes a debt for which payment shall be enforceable upon the employee's return to work or separation from employment, whichever is earlier. Upon return to work, the minimum rate of payback for advanced annual leave shall be at one-half the rate annual leave is earned. An employee may elect to pay back advanced annual leave by applying any earned leave or reimbursing the University with cash.

### Section 5. Sick Leave

Employees in the bargaining unit will earn paid sick leave at the rate of fifteen (15) workdays per year. Said sick leave is available for use only to the extent earned. Earned sick leave shall be cumulative from year to year without limit. Sick leave shall be granted when an employee is absent due to:

- (a) Illness, injury or disability of the employee. A pre-scheduled medical appointment, a medical emergency, treatment for the employee with an accredited, licensed, or certified medical provider. Employees will attempt to schedule appointments during non-work hours.

- (b) 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. Employees will attempt to schedule appointments during non-work hours.
- (c) Immediate family as used in this section shall include a spouse, biological, adopted, step child, foster child, grandchild, mother, father, mother-in-law, father-in-law, sister, grandparent, brother-in-law, brother, sister-in-law, or legal dependent of the employee irrespective of residence, or for any relative who permanently resides in the employee's household for whom the employee has an obligation to provide care. The Employer may require an employee to provide certification by a medical provider to authenticate the need for the employee to care for the ill family member.
- (d) Continuous use of earned leave including sick, annual, personal, advance sick leave, extended sick leave, leave granted through the leave reserve fund, or unpaid family and medical leave shall be granted to an employee as needed for personal illness.
- (e) An employee who becomes ill, injured, or suffers a disability while on vacation, may request that his/her leave be charged to sick leave. The University may require an employee to provide certification of illness or injury by a medical provider when the employee requests a change of leave.
- (f) Advanced sick leave may be granted to an employee who sustained a temporary, recoverable illness, injury, or serious disability. Approval of this leave requires the employee to have completed an original probationary period at the USM and that all other types of accrued leave have been exhausted. Requests for advanced sick leave shall not unreasonably be denied.

Advanced sick leave may be granted 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. 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 reimbursing the University with cash.

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.

- (g) Extended sick leave may be granted, subject to management approval on the basis of verification of medical need by an accredited, licensed, or certified medical provider to an employee who sustained a temporary, recoverable, illness, injury, or serious disability. Approval of this leave requires the employee to have 1) completed at least five (5) years of USM or State service, 2) exhausted all other types of accrued leave, and 3) a satisfactory record of sick leave usage and work performance.

The maximum available cumulative total of extended sick leave is twelve (12) work months.

Annual, sick, and holiday leave earned, and personal leave credited while on extended sick leave shall be applied as earned/credited.

The employee may be required to provide periodic evidence of continued disability.

- (h) Up to maximum of 30 days of accrued sick leave may be used to care for a child immediately following the birth of a child or placement of the child with the employee for adoption. In the case of an adopted child, sick leave is only available in connection with a documented formal adoption. In the event that both parents are UMCP employees, sick leave to care for the child as provided for in this section, is available to both parents to be divided among the parents at their discretion. When possible, employees are expected to provide advance notice of time taken under this section to their immediate supervisor.

#### Section 6. Proof of Illness or Injury

If the University has reason to believe there is an abuse or pattern of absence, the University may require the employee to provide a doctor's note. If a request for a doctor's note is made, the supervisor shall provide advanced notice to the employee that he/she must present a doctor's note upon returning to work. This does not prevent the University from taking disciplinary action against the employee based on the abuse or pattern of absence.

Verification shall include:

- (a) A written statement from the medical provider indicating that the employee is required to be absent from work due to illness;
- (b) The duration of the absence from work;
- (c) Prognosis of the employee's ability to return to work; and
- (d) Title and authorized signature of an accredited, licensed, or certified medical provider.

The verification is not required to contain information related to the specific illness of the employee.

Verification may be obtained from an accredited Christian Sciences practitioner, or by the appropriate of any of the following licensed or certified medical providers, or any certified provider accepted under State of Maryland law:

Physician  
Physical Therapist  
Dentist  
Oral Surgeon  
Chiropractor  
Podiatrist  
Certified Nurse Practitioner  
Certified Nurse-Midwife  
Licensed – Certified Social Worker  
Optometrist  
Psychologist  
Physician's Assistant  
Acupuncturist

#### Section 7. Personal Leave

Employees shall be credited with three (3) days of personal leave on January 1 of each year. The use of personal leave shall require reasonable prior notification to the employee's supervisor. Personal leave shall not be cumulative from year to year so that unused personal leave at the end of a calendar year is forfeited and automatically contributed to the Leave Reserve Fund.

Section 8. Religious Observance

Employees shall be allowed to use Personal Leave in order to observe a religious holiday or to attend ceremonies or acts associated with their religion. With supervisor pre-approval, employees shall be allowed to use annual leave for these purposes as well.

Section 9. Military and War Leave

An employee who is a member of the National Guard, of the Army, Navy, Air Force, Marines, or Coast Guard Reserve shall be entitled to a leave of absence for military training for a period of not more than fifteen (15) workdays (pro-rated for part-time employees) in any calendar year without loss of pay or charge to any leave. Leave due to call-up to active military duty during a national or international crisis or conflict shall be in accordance with the University System of Maryland policy.

Section 10. Jury Duty, Administrative Leave and Arbitrations

Leave of absence with pay shall be granted to employees for time spent in jury duty or if the employee is subpoenaed as a witness of another employee in a court proceeding, administrative hearing, or formal disciplinary hearing/meeting with University officials. Employees who are dismissed from jury duty or released as witnesses under any procedures listed in this section will be expected to return to work for the balance of their scheduled workday.

Section 11. Bereavement Leave

Bereavement leave is a new type of leave and replaces the use of sick leave for these purposes. Employees in the bargaining unit shall be granted paid bereavement leave, not to exceed three (3) work days, or five (5) days if overnight travel is required, on account of the death of any member of the employee's immediate family. For the purpose of this section, the immediate family is defined as the spouse, mother, father, mother-in-law, father-in-law, grandmother, grandfather, or a grandchild of the employee or the spouse, son, son-in-law, daughter, daughter-in-law, foster child still living with the employee, brother or sister of the employee, brother-in-law or sister-in-law, or any relative permanently living in the immediate household of the employee.

Employees shall be granted one (1) day of paid bereavement leave on account of the death of the employee's or his/her spouse's aunt, uncle, niece, or nephew.

Section 12. Administrative Leave

Employees in the bargaining unit shall be permitted to use administrative leave with pay as follows:

- (a) During emergency situations as defined by the University System of Maryland.
- (b) The University shall create a paid release time account for union business purposes not otherwise provided for in this MOU. On January 1 of each year, the University shall credit the Union's release time account with one (1) day of release time for every sixty (60) bargaining unit members. Any member of the bargaining unit will be allowed to use release time consistent with this Section. This leave may be used for paid Council 92 and Local 1072 President's Leave as provided for in this MOU. Release time may be used in one-hour increments. Once the leave bank is exhausted, employees will not be entitled to administrative leave for union business unless otherwise provided for in this MOU.

All requests for Administrative Leave for union business shall be submitted to the Director of the Department of University Human Resources or his/her designee seven (7) calendar days in advance of the event and shall include 1) a general description of the event necessitating the leave and its purpose; 2) the date and location of the event; 3) the name of employee members for whom Administrative Leave is being requested; and 4) the name of the employee members' immediate supervisor(s).

Leave under this section shall not be unreasonably denied. Denial based on business necessity will only occur when the employee's department/office is suffering from shortage of staff, high demand seasons or when there is an extraordinary need for the work of the employee.

- (c) For purposes considered in the best interests of the employee as approved by the University President or his/her designee.

Section 13. Council 92 President's and Local 1072 Leave

In the event a member of AFSCME who is employed at the University is elected or appointed as the AFSCME Council 92 President or the President of AFSCME Local 1072, the University agrees to provide that individual, upon request, with an unpaid leave of absence not to exceed two (2) years. No more than one employee every two (2) years may be granted said leave.

The use of union leave under this article shall not serve as basis for unsatisfactory job performance evaluations or disparaging comments from supervisors.

Section 14. Leave of Absence Without Pay

Permanent employees may request a full or partial leave of absence without pay up to a maximum of a consecutive two-year (24 month) period in accordance with the University System of Maryland policy.

Section 15. Family and Medical Leave

Generally, pursuant to current Federal law and Board of Regents policy, Bargaining Unit employees are entitled to FMLA leave if:

- (a) The employee has worked for the University at least for twelve months, and
- (b) The employee has worked at least 1040 hours in the twelve (12) months immediately preceding the date the leave is to commence.

FMLA leave allows an employee to take job-protected leave of up to twelve (12) weeks in a calendar year for any of the following reasons:

- (a) To care for the employee's child after birth, or placement for adoption or foster care;
- (b) To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
- (c) For a serious health condition, including pregnancy and recovery time, that renders an employee unable to perform his or her job; or
- (d) Any other reasons stated in the current University System Policy.

FMLA Leave can be taken continuously or in separate periods of time.

It is expressly understood that this Section provides highlights of the University's existing FMLA policy and does not constitute the University's entire policy that is hereby incorporated by reference. Employees must comply with the University FMLA policy's eligibility and usage requirements to be granted FMLA under the terms and conditions provided for under the University's policy.

The University's policy may be changed to conform with changes to the FMLA or any corresponding State law but may not otherwise be modified with regard to bargaining unit members without first negotiating any proposed changes with the Union.

#### Section 16. Leave Reserve Fund

Employees who have exhausted all earned or granted paid leaves, advanced sick leave, extended sick leave, and compensatory time, if any, may be eligible for additional leave from the Leave Reserve Fund consistent with the other eligibility and usage requirements contained in USM Policy VII-7.11 concerning the Leave Reserve Fund.

#### Section 17. Annual Leave Upon Return or Reinstatement

A bargaining unit employee who is entering or returning to University of Maryland, College Park service is entitled to credit towards the rate of annual leave service for previous USM and/or State service. This previous service must have included at least 180 days of continuous and satisfactory performance in an allocated position.

A bargaining unit employee returning to University of Maryland, College Park service with an authorized status of reinstatement within three years of separation, is entitled to earn annual leave at the same rate in effect at the time of separation from active service.

#### Section 18. Transfer of Annual Leave

When an employee transfers to another institution in the University System of Maryland or transfers to another department in the same institution and/or moves from one employment category to another, or from the State of Maryland to the USM, all unused accumulated annual leave shall be transferred. Nothing in this Section shall be read to guarantee that an institution other than the University of Maryland, College Park will accept transferred accumulated annual leave.

#### Section 19. Leave "Cash Out"

Employees shall be allowed to cash out any amount of accrued annual leave, accrued compensatory time, and/or earned but unused holiday leave at the time of separation of employment due to retirement, resignation, or discharge.

Section 20. Unscheduled Closings for Inclement Weather

In the case of closure of the campus by the University due to inclement weather, essential employees are expected to report to work as usual. Non-essential employees shall be granted administrative leave for the period of closure to cover their normal work schedule unless the employee was scheduled to be in an approved leave status. Those employees will be charged for such leave as scheduled.

**Article 10. Holidays**

Section 1. Recognized Holidays

University System of Maryland policy permits all employees in the bargaining unit to the following recognized holidays, pursuant to the applicable published University Holiday Schedule denoting when earned and observed:

New Year's Day  
Dr. Martin Luther King's Birthday  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Election Day (even-numbered years only)  
Veterans Day  
Thanksgiving Day  
Friday after Thanksgiving Day  
Christmas Day

Three additional holidays scheduled by the University.

Section 2. Days of Observance

Normally, a holiday will be observed on the day on which it falls. However, when a holiday falls on a Saturday, the preceding Friday will be deemed to be the holiday. When a holiday falls on a Sunday, the following Monday will be deemed to be the holiday. Holidays that need to be deferred in order to accommodate the academic year calendar shall be recognized and placed in the period of December 26 through December 31 of each year, in Spring Break, or in another period as designated by the University. In the event the University desires to designate holidays in another period, it shall provide the Union with reasonable advance notice.

### Section 3 Payment of Carried-Over Holidays

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.

### Section 3. Substitute Holidays

Employees expressly required by their supervisor to work on the day a holiday is observed or employees whose normally scheduled day off falls on an observed holiday shall be provided a substitute holiday within the next ninety (90) calendar days scheduled either at the discretion of the Department or the request of the employee subject to management approval. Part-time employees who are employed on a 50 percent or more basis shall be provided a substitute holiday under the same conditions on a prorated basis.

## **Article 11. Maintenance of Membership**

### Section 1. Payroll Deduction

The Employer agrees to deduct monthly dues and initiation fees, if applicable, from the wages of eligible employees who have signed a proper authorization for such deduction after said authorization has been submitted to the University Payroll Office. The authorization method as well as the amount to be deducted is a matter decided between the Union and its membership. Therefore, the University shall be held harmless on any dispute or litigation arising under the terms of this Section.

### Section 2. Remittance of Union Dues

The University agrees to remit the aggregate of the authorized union dues withheld from employee paychecks in accordance with State of Maryland Comptroller rules for dues deductions to the Union. If an error in the remittance of dues is found, it will be corrected within ten (10) working days after the affected party provides written notice and explanation of the error to the favored party.

## **Article 12. Union Rights**

### Section 1. Right of Access

Non-University employee Union representatives shall have reasonable access to bargaining unit employees on campus for the purpose of administering this MOU and conducting other lawful Union activities, subject to University policies and procedures. It is understood that such representatives and officers

will not disturb or interfere with the work of employees or other University activities while visiting campus facilities. Representatives shall notify the Department of University Human Resources twenty-four (24) hours, if practicable, prior to entering campus. The Union reserves its right to engage in protected activity under the State Higher Education Labor Relations Act not inconsistent with this Section.

#### Section 2. Right to Employee Information

The University shall provide the Union with the following information in a quarterly report listing all bargaining unit employees. The report shall include the name, job title, assigned salary, office, work number, department, and work shift, if known by the Department of University Human Resources. The report can be submitted in electronic or paper format. The University shall also provide to the Union a list of all new hires in the preceding quarter, a list of all employees who retired, resigned or otherwise separated from the University in the preceding quarter and a list of all contingent employees due for conversion within the next quarter. The Union agrees to remit to the University, an amount of payment for reasonable costs associated with the administration of this Section not to exceed \$250 for the initial report and \$100 for any subsequent reports.

#### Section 3. Meeting Space

The Union, or anyone acting on its behalf, including but not limited to bargaining unit or other employees, may request use of meeting rooms on campus pursuant to University Policy for non-University groups and are subject to said Policy. However, the Union shall only be charged rates reserved for University groups when utilizing meeting space under said Policy.

#### Section 4. Bulletin Boards

The University shall provide space for union information on a reasonable number of bulletin boards that are currently located in buildings and/or offices where bargaining unit employees perform work duties and locations where employees report to work. There shall be at least a bulletin board at each building. In the unlikely event that there is no bulletin board in a particular building, the University will provide space for a Union-provided bulletin board.

The Union shall not post materials that are unlawful or inaccurate. Postings must be dated and approved by a local Union officer.

Section 5. Electronic and Campus Mail Access

Employees may communicate with one another regarding union business via electronic mail, fax, telephone, and campus mail; such communication must be kept at a minimum and shall be limited to short messages. The Union may communicate with bargaining unit employees via mass communication using the University's electronic mail system a total of nine (9) times per calendar year. The Union shall send a courtesy copy of any mass communication to the University within twenty-four (24) hours if practicable before sending such communications and shall provide the University twenty-four (24) hours notice of the proposed scope and timing of the mailing.

Section 6. New Employee Information

The Union shall be granted twenty (20) minutes at the end of the Department of University Human Resources new employee orientation, or new employee orientation conducted by a specific department in lieu of the Department of University Human Resources orientation, to make a presentation to all newly-hired employees represented by the Union regarding the MOU, employee rights, benefits, and obligations for employees. However, it is understood that there shall only be one 20 minute AFSCME presentation at any orientation session.

Within thirty (30) days of commencing employment with the University, new employees who do not attend the Department of University Human Resources new employee orientation shall at their sole option, subject to the approval of supervisor(s) of both the new employee and the Union officer or job steward, be allowed twenty (20) minutes without loss of compensation to meet with a Union officer or job steward to obtain the information provided during the new employee orientation by the Union. The Union shall designate a representative for this purpose and notify the Department of University Human Resources.

So long as the Union qualifies for payroll deduction, the Union will be permitted to have an informational table at all employee benefit fairs conducted by the University for the purpose of disseminating information regarding insurance coverage offerings.

Section 7. Prohibited Activity

In addition to the rights and obligations under this Agreement, the Union agrees to abide by the rights and obligations contained in the State Higher Education Labor Relations Act, Section 3-303, Title 3, of the State Personnel and Pension, Annotated Code of Maryland.

## **Article 13. Job Stewards**

### Section 1. Union Job Stewards

The Union may appoint and the University will recognize up to ten (10) job stewards. The Union shall submit a list of stewards within ninety (90) days after the ratification of this MOU and thereafter will notify the University in writing as to any additions or deletions to the list within ten (10) days of said change.

Job Stewards shall receive a cumulative total of 2,400 hours of paid release time per contract year to perform all duties of a job steward, at all University locations wherever bargaining unit employees are assigned to work. Job Steward duties include, but are not limited to, the investigating and processing of grievances, meetings with management, and new employee orientation. A Job Steward should obtain prior permission from his or her immediate supervisor prior to performing Job Steward duties.

### Section 2. Duties

Job Stewards will be responsible for investigating and processing Union grievances under this MOU. Only upon an employee's request, Job Stewards will also be responsible for investigating and processing employee grievances pursuant to applicable state law.

### Section 3. Meetings with Management

Job Stewards meeting with representatives of University management for the purpose of processing either Union or employee grievances, administering the MOU, or serving on the Labor-Management Problem Solving Committee will be granted reasonable release time for the performance of these duties. This provision specifically excludes time spent in collective bargaining negotiations.

## **Article 14. Management Rights**

### Section 1. Statutory Rights

The rights of the University articulated in the State Higher Education Labor Relations Act, Section 3-302, Title 3, of the State Personnel and Pensions, Annotated Code of Maryland, and as it may be amended from time to time, are hereby incorporated into this MOU.

Section 2. Fees for Services

The Union specifically agrees that with regard to campus services offered by the University for voluntary purchase to employees for the life of the MOU, bargaining unit members shall pay the prevailing fees for such services. Parking fees will be determined according to Side Letter #1 between the parties.

**Article 15. 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 necessary and 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: oral reprimand, written reprimand, suspension with pay, suspension without pay, involuntary demotion, loss of compensation, and termination. The University is not required to utilize all of the above-listed actions when administering progressive 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.

Section 4. University Responsibilities Regarding Disciplinary Action

In conjunction with any disciplinary action, the University shall, in no particular order:

1. Investigate the alleged misconduct;
  2. Consider mitigating circumstances;
  3. Determine the appropriate disciplinary action, if any, to be imposed;
- and

4. Provide written notice to the employee of the disciplinary action of a letter of reprimand or greater.

#### Section 5. Time Limits

The University shall impose disciplinary action no later than ten (10) working days from the time it knew or should have known of the conduct giving rise to the disciplinary action. In cases involving suspension without pay, the University shall impose discipline within three (3) working days.

### **Article 16. Grievance Procedures**

In the event of an alleged violation or disagreement over any of the provisions of the Memorandum of Understanding, bargaining unit employees represented by AFSCME, which shall be the exclusive labor organization to represent such employees, shall have the right to file grievances in accordance with Annotated Code of Maryland, Education Article, Section 13-201 et. seq. Employees shall file grievances pursuant to Side Letter #2.

### **Article 17. Personal Protective Clothing and Equipment**

#### Section 1. Personal Protective Clothing and Equipment

For employees working in jobs that require protective clothing and equipment as determined by applicable laws and regulations, the University shall provide all necessary protective clothing and equipment.

#### Section 2. Safety Glasses

For those employees whose primary duties require the wearing of safety glasses, as determined by the University and pursuant to applicable safety code(s), the University shall make non-prescription safety glasses available at the work site and provide prescription safety glasses every two (2) years, if needed.

#### Section 3. Safety Shoes

For those employees whose duties require the wearing of safety shoes, as determined by the University and pursuant to applicable safety code(s), the University shall provide safety shoes as needed.

## **Article 18. Health and Safety**

### Section 1. General Duty

The University and the Union recognize the need for an effective health and safety program for the mutual benefit of employees and the University. The University recognizes the interest of the Union in the safety and health of the campus community and will act on recommendations made by the LMPSC with the mutual consent of both sides. The University further agrees to investigate, upon the request of the LMPSC, any conditions affecting the safety and health of the employees. The University agrees to comply with all applicable federal and state laws and regulations, including mandated trainings, and shall be guided by the recommendations of government agencies as applicable.

### Section 2. Duties of the Health and Safety Committee

With regard to this Article, the Labor Management Problem Solving Committee created under this MOU may review or recommend new or revised safety and health rules, discuss current safety conditions or problems and discuss laws and regulations concerning OSHA, MOSH, and/or federal and state regulatory agencies having appropriate jurisdiction over safety issues.

However, it should be understood that the establishment and enforcement of safety and health rules and regulations is a proper function of management and to this end the final determination as to adoption and implementation of safety and health rules shall be the sole responsibility of the University.

### Section 3. Cardiopulmonary (CPR) Training

Employees assigned to a job where training in CPR may be a valuable job-related skill as determined by the University shall be offered the opportunity to attend, at the University's expense, CPR training provided by a certified trainer. Denials of CPR may be appealed to the Director of Staff Relations.

### Section 4. Weather Related Conditions

With the exception of essential employees and unless the campus is under closure, delayed opening or early closure, employees at work, with the mutual agreement of their supervisor, shall be allowed to stop work and utilize accrued annual or personal leave as a result of potentially hazardous weather-related conditions.

Section 5. Hepatitis B

Employees who have any contact with blood and other body fluids shall be offered Hepatitis B vaccination at the Employer's expense.

Section 6. Communicable Diseases

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Annual training by a certified trainer shall be provided to educate employees in the area of recognition and prevention of such communicable diseases and blood borne pathogens as established and required by OSHA.

Section 7. Physical Exam

The Employer agrees to pay for any physical examinations and necessary tests, as determined by a medical provider, when the health of an employee is affected by an on the job injury or exposure to potentially harmful physical agents, toxic materials, infectious agents or by physical assault, while on campus.

Section 8. Inspection by Governmental Agencies

Subject to governmental approval, a union representative shall be entitled to accompany officials of any government agency conducting a health and safety investigation of the University where such investigation directly affects bargaining unit employees. The University shall furnish a copy of any government agency investigation report to the union representative within two (2) workdays following receipt by the University.

Section 9. Unsafe Conditions

When an employee has a reasonable basis to believe that the performance of an assigned task will subject him/her to serious injury or death, he/she may choose not to perform the task provided he has exercised all reasonable options, including consulting with his supervisor, when possible, and there is no reasonable alternative or solution to prevent risk of serious injury or death. In such cases, management shall not interpret the actions of the employee as neglecting his/her duties and no retaliation of any kind, including disciplinary action, shall apply against the employee. In all cases, the employee shall report any unsafe or dangerous conditions to a supervisor immediately after confronting a dangerous or unsafe working condition.

Section 10. Indoor Air Quality

The University shall provide healthy air quality and shall attempt to provide comfortable air temperature in all buildings, offices, and indoor spaces in which employees work consistent with federal and state air quality standards.

Section 11. No Retaliation

No retaliation or disciplinary action shall be taken against an employee solely for exercising rights under the terms of this article or under the laws and regulations established by any governmental agency regarding Health and Safety in the workplace and Occupational Hazards.

Section 12. Accident Inspections and Release Time

When the University is required to notify OSHA or any similar jurisdictional agency of an accident involving a bargaining unit employee, it will also notify the Union within forty-eight (48) hours of the accident. In such cases, a bargaining unit member of the LMPSC may be present during the Agency inspection of the accident site. The University shall provide reasonable release time for such inspections.

**Article 19. Labor-Management Problem Solving Committee**

Section 1. Purpose of the Committee

The University and the Union hereby acknowledge that each of the parties expressly intends to authorize the use of the LMPSC during the term of this MOU as a means of reviewing, by mutual agreement, the operations of the MOU. It is understood that any agreements reached cannot be implemented without prior written approval by the Union and the University.

Section 2. Scope and Composition of the Committee

The LMPSC will consist of representatives of a) the University and b) the Union and/or employees. The LMPSC shall meet to oversee and discuss issues affecting the operation of this MOU. For six months after ratification, meetings of the LMPSC shall occur every month and thereafter meet every other month if there is an agenda, beginning thirty (30) days after ratification of this MOU. Issues to be discussed at an LMPSC should be submitted to all LMPSC members in writing at least one week before a scheduled meeting.

The group shall consist of not more than a) six (6) representatives of the University and b) six (6) representatives of the Union and/or employees. Both the University and the Union shall have the sole authority to determine who

shall be their respective representatives on the problem solving group. Employee participants shall be granted up to two (2) hours paid release time for such meetings. The University and the Union respectively will appoint to the committee persons with sufficient authority to facilitate the work of the committee.

### Section 3. Committee Limitations

Both the Union and the University may raise whatever issues or problems they deem appropriate. However, the LMPSC cannot be used to supplant or replace the grievance procedure, and both parties retain all of their existing rights. Contractual provisions shall not be modified or replaced with new language without the mutual agreement of the parties. In the event that an agreement is reached to alter or change any provisions contained in the collective bargaining agreement, said agreement shall not be effective until it is reduced to writing as a side letter to this MOU and subject to the approval and execution by both the University and the Union. All issues and problems brought to the attention of the LMPSC shall be decided and implemented only by mutual written agreement of the parties.

## **Article 20. Shared Governance Related to Collective Bargaining**

The Union supports the existence of organizations in which input from employees is gathered to advise the University on matters of interest to the University community. All University committees, senates, forums, organizations and associations that existed prior to the certification of AFSCME as the exclusive bargaining agent for exempt bargaining unit employees may continue to operate, and any new University organizations created in the future may include as part of their regular business, discussions and decisions on any issue considered within the scope of bargaining as set forth in Title 3, Subtitle 5, Section 3-502 of the State Personnel and Pensions Article of the Annotated Code of Maryland, and as it may be determined by the State Higher Education Labor Relations Board or court of competent jurisdiction.

However, any recommended action made by any such committee as it pertains to bargaining unit employees on any subject which constitutes a mandatory subject of bargaining may not be approved, finalized or implemented by the University until the University notifies and bargains with AFSCME. Any recommended action made by any such committee as it pertains to bargaining unit employees on any subject which constitutes a permissive subject of bargaining may not be approved, finalized, or implemented until the University notifies and, if requested, initiates bargaining with AFSCME over the impact of said action.

- (a) The University shall provide a copy of this provision to the Campus Senate, and any other similar University organizations identified by AFSCME.
- (b) No employee who is a member of the bargaining unit shall be precluded by the University from participating or holding office in any University organization or committee.
- (c) Members of the bargaining unit who participate in shared governance or similar University organizations are not empowered to enter into any agreements or waivers regarding the provisions of this MOU or any collective bargaining rights conferred by law to the exclusive representative.

## **Article 21. Miscellaneous**

### Section 1. Attendance at Job Interviews

The University will grant up to four (4) hours quarterly per calendar year for bargaining unit employees to interview for other University positions outside the employee's own department.

### Section 2. Job Related Trainings

Employees shall be allowed paid release time to attend job related trainings subject to supervisory approval.

### Section 3. Release Time for Campus or System Sponsored Committees

Bargaining unit employees who are duly-elected representatives of the Campus Senate and/or USM councils, representatives appointed to Senate standing committees, and/or appointed by the President or Provost to a campus or system committee shall be granted paid release time to fulfill those responsibilities to the same extent granted to non-bargaining unit employees elected or appointed to those committees.

## **Article 22. Layoffs**

### Section 1. Layoff Notice

When the University determines that layoffs of exempt bargaining unit employees are necessary, a notice shall be given to the affected employee(s) and the Union at least ninety (90) days in advance of the effective date of such layoff or job abolishment. Notice shall include the specific reason for the layoff and shall also include copies of the written recommendation and

justification provided by the appropriate manager from the department or unit of layoff from which the layoff is to occur. Employees who have received notice of layoff shall have the option of having a Union representative present at subsequent meetings held to discuss available rights and services offered by the University. The University agrees to meet with the Union upon request, not later than fourteen (14) days after receipt of said request, to discuss the effect of the layoffs if there is a specific issue regarding effects raised by the Union and not covered by this Agreement. The University shall provide Layoff Guides to laid-off employees.

#### Section 2. Notification Within the Unit of Layoff(s)

When layoffs are necessary within a unit the employees to be laid off will receive notification before the other members of the unit are notified, unless the other bargaining unit employee(s) had a need to know due to his or her job responsibilities. After all of the laid off employees have been notified then the head of the unit may notify the rest of the unit that layoffs have taken place.

#### Section 3. Order of Layoff

The University shall determine in which unit of layoff, and which title and job function layoffs will occur. Within each unit of layoff, and title and job function affected, layoffs of exempt bargaining unit employees shall occur in the following order:

- (a) All employees in that job function serving an original probationary period; then
- (b) All employees in that job function who have completed an original probationary period, in order of University seniority, which shall include all prior University service and all State service, with the employee having the least University seniority being laid off first.

#### Section 4. Priority Consideration for Re-Employment

Employees who are laid off under the provisions of this Section shall be placed on a recall list for a period of three (3) years from the effective date of the layoff or until the time the employee refuses to accept a reinstatement offer under the provisions of this Section, whichever occurs first. In order to be considered for recall, the employee must notify the Department of University Human Resources in writing within thirty (30) days of the effective date of the layoff and provide address updates as needed. In the event of recall, employees who are still on the recall list shall be recalled first, in inverse order of their layoff, in the unit of layoff, and the title and function in which the layoff occurred.

#### Section 5. Re-employment Notifications

In the event the employee is given an offer for re-employment under Section 5 above, the following shall apply:

- (a) Notice of the offer of re-employment from a layoff shall be sent to the employee by certified mail, return receipt requested at the most recent address provided by the employee.
- (b) The employee shall have up to fourteen (14) calendar days from the date of the first delivery attempt of the offer of re-employment to notify the University of his/her intention to accept the position. Failure to respond will constitute a refusal of the position.
- (c) The employee shall have up to fourteen (14) calendar days following acceptance of the position to resume work or the position will be considered to have been refused.

#### Section 6. Earned Wages and Accrued Benefits

Employees who are laid off shall be entitled to receive, on the next regular scheduled pay check after being laid off, all wages and any other benefits under this Agreement to which the employee is entitled.

#### Section 7. Administrative Leave

Employees receiving a notice of layoff shall be permitted to use administrative leave for the 90-day notice period upon a) the request of the employee with approval of the University, or b) at the discretion of the University. Any employee required by the University to work during the 90-day notice period shall have his or her notice period extended by the number of days the employee is required to work.

#### Section 8. Tuition Remission

Laid off employees and their dependents shall be able to continue receiving tuition benefits for the semester in which the layoff occurs plus one additional semester following the effective date of the layoff.

#### Section 9. Units of Layoff

Within six (6) months of the ratification of the MOU, the Union and the University shall meet and confer with regard to the Units of Layoff to discuss possible modifications. The University commits that a reduction in the overall number of Units of Layoff shall occur in the first year of this agreement.

**Article 23. Duration**

Section 1. Duration

This Memorandum of Understanding shall become effective July 1, 2004 and shall remain in full force and effect until June 30, 2007, subject to ratification by the Union membership, the President of the University and the Board of Regents of the University System of Maryland.

Section 2. Renewal

This Memorandum of Understanding shall be automatically renewed from year to year after June 30, 2007, unless either party shall notify the other in writing no later than February 28, 2007 (or February 28<sup>th</sup> of any subsequent year thereafter in the case of an automatic renewal) that it desires to terminate, modify or amend this Memorandum of Understanding.

For the Union:

For the University:

\_\_\_\_\_  
Ron Barillas, Chief Negotiator

\_\_\_\_\_  
Jay P. Krupin, Chief Negotiator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**University of Maryland, College Park  
and  
AFSCME**

**Exempt Employee Unit**

**Side Letter #1 to the Memorandum of Understanding**

**Parking Service Fees**

The University and the Union hereby agree to the following side letter to the 2004 Memorandum of Understanding (“MOU”), which is hereby incorporated therein, between the parties relating to parking service fees charged by the University’s auxiliary self-support Department of Transportation Services.

1. The parties agree that employees in the bargaining unit shall pay the prevailing staff parking permit fees for parking services. The University agrees that an individual employee’s parking permit fee shall not be increased more frequently than once each fiscal year and shall not increase by more than 10% over the fee for the previous year during the term of the MOU.
2. Each bargaining unit employee may be granted, at the Union’s sole discretion, one (1) Professional Development Day each contract year. Professional Development Days may not carry over from year to year. An employee may request such leave with at least fifteen (15) days notice to the Director of the Department of University Human Resources. No more than forty (40) bargaining unit members may take a Professional Development Day on the same day. Leave under this section shall not be unreasonably withheld. If an employee’s request cannot be met due to business necessity, which will only occur when the employee’s department/office is suffering from shortage of staff, high demand seasons or when there is an extraordinary need for the work of the employee, an alternative date shall be scheduled.
3. The University agrees to negotiate in good faith with the Union with regard to parking fee increases in future MOUs.

This Side Letter to the 2004 Memorandum of Understanding is hereby executed on the date set forth below:

For the Union:

For the University:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**University of Maryland, College Park**

**and  
AFSCME**

**Exempt Employee Unit**

Side Letter #2 to the Memorandum of Understanding

Grievance Procedure

The University and the Union hereby agree to the following side letter to the 2004 Memorandum of Understanding between the parties, which is hereby incorporated therein, setting forth the text of the Grievance Procedure in Annotated Code of Maryland, Education Article, Section 13-201 et. seq. referenced in Article 16 of the MOU:

**§ 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 any other 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 hearing 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.

For the Union:

For the University:

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Date: \_\_\_\_\_

Date: \_\_\_\_\_