



Bowie State University (BSU)  
and the  
American Federation of State, County  
and Municipal Employees (AFSCME)

**EXEMPT BARGAINING UNIT**

Effective December 12, 2014 through June 30, 2017

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## **PREAMBLE**

This Memorandum of Understanding ("Agreement" or "MOU") is entered into by Bowie State University ("University" or "Employer") and the American Federation of State, County and Municipal Employees, AFL-CIO ("Union" or "AFSCME") and its Local 1297 and has as its purpose the promotion of harmonious relations between the employer 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 relationship.

## **ARTICLE 1 -- RECOGNITION**

### **Section 1. Exclusive Bargaining Agent**

The University recognizes AFSCME as the sole and exclusive bargaining agent in all matters establishing and pertaining to wages, hours and others terms and conditions of employment for all full-time and regular part-time employees in the exempt bargaining unit. In recognition of the exclusive representative status of AFSCME, the University will not negotiate, attempt to negotiate, confer, or otherwise entertain talks with any other organization, individual, corporation or entity who presents itself as bargaining agent of any or all of the employees in the bargaining unit on matters which are within the scope of collective bargaining as outlined in Md. Code. Ann State Personnel & Pension § 3-407.

### **Section 2. Definition of Exempt Bargaining Unit**

All job classifications and positions considered within the exempt bargaining unit as to the date of the Union's certification, as outlined in Certification No. HELRB C2002-08 and any new non-management or confidential job classifications and positions created thereafter, shall be considered bargaining unit positions. All employees occupying such positions in a full-time or part-time basis, and who are under probationary or regular status, are considered the bargaining unit and shall enjoy the benefits, rights, obligations and protections stipulated in this Agreement in addition to any other rights provided by law.

### **Section 3. New Job Classifications**

Should any new exempt job classification(s) be created, the Employer shall notify the Union at least thirty (30) days prior to the intended date of implementation. The Employer shall inform the Union as to whether it intends to place the new job classification in the exempt bargaining unit. At the request of the Union, the parties will meet for the purpose of negotiating on any issues within the scope of collective bargaining affecting the new job classification. Any disputes between the Employer and the Union as to the placement of a new job classification in the bargaining unit may be submitted to the State Higher Education Labor Relations Board at the request of either party. The decision of the Board shall be final and binding on both parties.

## **ARTICLE 2 -- NON-DISCRIMINATION**

The Employer agrees not to discriminate or in any way promote, condone, support, or allow discrimination to occur against employees because of their exercise of rights under this Agreement, the laws of the State of Maryland, and any other law applicable to their employment and retention rights with the Employer. Forms of discrimination include but are not limited to: discrimination based on race, age, color, religion, creed, sex, sexual orientation, political affiliation, union participation, nationality or country of origin, disability, and marital status.

## **ARTICLE 3 -- MANAGEMENT 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, Md. Code. Ann State Personnel & Pension §3. 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 meet and discuss the proposed change. It is understood and agreed by the parties that, except as limited by specific sections of this MOU, the Employer possesses all other rights, powers, duties, authority and responsibilities to operate and manage all aspects of its operations but not limited to its departments, agencies and programs and to carry out constitutional, statutory and administrative policy mandates and goals, including but not limited to the right to:

- A. 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;
- B. Maintain and improve the efficiency and effectiveness of operations;
- C. Determine the services to be rendered, operations to be performed, and technology to be utilized;
- D. Determine the overall methods, processes, means and classes of work or personnel by which University operations are to be conducted;
- E. Hire, direct, supervise, and assign employees;
- F. Promote, demote, discipline, discharge, retain, and lay off employees;
- G. 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;
- H. Set the qualifications of employees for appointment and promotion, and set standards of conduct;



- I. Promulgate and/or implement State, University System of Maryland ("USM"), University or department rules, regulations, policies or procedures;
- J. Provide a system of merit employment according to the standard of business efficiency; and
- K. 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 access to areas in which bargaining unit employees work for the purpose of providing representation to bargaining unit members and to conduct Union business. AFSCME must inform the University prior to contacting employees during working hours through its Labor Relations Representative. It is understood, that such representatives and officers will not disturb the work of employees while visiting the employer's facilities.

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

Upon request of a member(s) of the bargaining unit, Union representatives including staff representatives, Union job stewards, elected local officers, or any authorized person acting on behalf of the Union shall have the right to meet and confer with employee(s) for the purpose of interviewing, consulting and preparing for meetings with management representatives regarding any aspect of the administration of this Agreement or any issues related to wages, hours, and other terms and conditions of employment. Union representatives who are employees of the University must get release time prior to meeting with employees. Union representatives shall have release time increments of one (1) hour.

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

The Union and the employees of the bargaining unit shall be permitted to use University e-mail, for membership and bargaining unit meetings. Additionally the Union has the right to communicate to employees through the use of fax machines and telephones. The use of fax machines, telephones and email shall not impede the work flow of the department and/or University. Confidentiality shall be maintained subject to the University's security needs.

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

The University agrees to provide the Union with appropriate space for Union bulletin boards in a conspicuous place in each of the Henry Administration Building, CLT Building, the Thurgood Marshall Library, the Wiseman Centre, and the Physical Plant and Computer Science Building. The University and Union will mutually agree on the placement of lockable bulletin boards at each location. The Union shall ensure that items are not illegal, defamatory, and that no item is directly detrimental to the safety and security of the institution. Within two (2) business days

prior to posting the Union shall provide a copy of all items to the Labor Relations Manager or his/her designee.

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

The Union has the right to request, and the employer has the obligation to provide information that is required by applicable law.

Additionally, the Employer shall provide the Union with the following information:

- A. A monthly report listing all current members of the AFSCME bargaining unit. The report shall include the name, job title, assigned salary grade, office and department, date of hire, email address and telephone extension number of every employee within the Exempt bargaining unit. The report can be submitted by email to an address designated by the Union.
- B. A monthly report listing the names, job title, office and department of all employees who retired, resigned, or otherwise separated from employment in the previous month.
- C. Upon initial employment and upon each change in job classification thereafter, each full-time or part-time bargaining unit employee upon request and within ten (10) working days after the request, shall be furnished a copy of his/her job description, applicable salary, assigned work location, daily work schedule, and prescribed standard workweek.

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

Two Union officers or job stewards, as designated by the Union, shall be granted fifteen (15) minutes during new employee orientation sessions organized by the employer to welcome the new employees and to make a presentation on behalf of the Union. In the event the Employer does not provide for an employee orientation, a Union representative and the new employee will be allowed fifteen (15) minutes without loss of compensation, to meet during work time to discuss information pertaining to the role of the Union.

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

The Union will appoint or elect certain employees to serve as Union job stewards. Job stewards will be responsible for investigating and processing grievances. The Employer shall allow reasonable release time, without loss of compensation, to job stewards for the purpose of investigating and presenting grievances to the Employer on behalf of an employee. Such times are to be documented in writing and available within ten (10) working days after the written request from the Labor Relations Manager or designee is received by the steward. The job steward agrees to acknowledge receipt of request for documentation in writing immediately. As a general rule, there should be one job steward for every twenty (20) bargaining unit members. It is understood and agreed that the minimum number of stewards shall be four (4); however in the event the bargaining unit contains less than sixty (60) employees the minimum number of stewards shall be three (3).

The Union will submit a list of job stewards to the Employer within sixty (60) days after the ratification of this Agreement, and thereafter will notify the Employer in writing as to any additions or deletions to the job stewards' list. In the case of changes to the initial job steward list, the Union will notify the Employer in writing as to the changes and the Employer shall acknowledge receipt of these changes in writing immediately. The University must acknowledge in writing the names of the employees serving as job stewards before those employees may assume their duties. The Employer agrees not to delay having the new job stewards assume their duties by unreasonably delaying the acknowledgement of the changes to the steward list.

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

The Employer agrees to provide, at no cost to the Union, meeting space to conduct Union related meetings provided that the Union submits a request for the use of facilities at least five (5) working days in advance notice from the date of the meeting to the Labor Relations Manager or his/her designee. The use of these facilities by the Union will not interfere with the instructional activities of the University and will not involve employees who are working unless authorized otherwise. 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.

### **Section 9. Link to Union Website**

The University will add the exempt and non-exempt MOU's along with contact information of all AFSCME local representatives on the University website.

### **Section 10. Local Meetings**

The University will provide release time of up to one (1) hour for bargaining unit members to attend local meetings not to exceed once a month.

## **ARTICLE 5 -- EMPLOYEE RIGHTS**

### **Section 1. General**

In addition to all rights granted under this Agreement, all employees in the bargaining unit shall enjoy the following protections and rights to:

- A. Take part or refrain from taking part in forming, joining, supporting, or participating in any employee organization or its lawful activities;
- B. Be fairly represented by their exclusive representative in collective bargaining; and
- C. Engage in collective bargaining or other concerted activities for the purposes of collective bargaining, except as prohibited by Md. Code. Ann State Personnel & Pension §§ 3-303 and 3-305.

## **Section 2. Direct Discussions with University**

An employee covered by the Agreement may, without the intervention of Union representation, discuss any matter with the University.

### **ARTICLE 6 -- SCOPE OF AGREEMENT**

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

The employer and the Union acknowledge 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 Md. Code. Ann State Personnel & Pension § 3, and applicable State Higher Education Labor Relations Board ("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 employer and the Union agree that for the life of this MOU, each waives the right, and neither shall be obligated to bargain collectively with respect to: 1) any subject specifically referred to in this MOU; 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. The parties further agree and intend that the waiver set forth herein shall be construed as consistent with the provisions of the preamble to this MOU and enforceable.

The University and the Union acknowledge their mutual obligation to negotiate as defined and limited by law and this MOU over employer proposed changes in wages, hours and other terms and condition of employment which affect bargaining unit employees and which are not specifically covered by this Agreement and not reserved to the University as a management right. In such circumstances, the obligation to bargain is limited to those changes that will affect the working conditions of bargaining unit employees and that are subject to bargaining under applicable law. The minimum notice to the Union of the intended change in working conditions subject to this obligation is thirty (30) calendar days prior to the proposed implementation of the change. If required to meet a legislative mandate or an emergency situation (including an emergency fiscal management issue), management will notify the Union as soon as possible prior to the proposed implementation of the change. This notification must indicate the legislative mandate or emergency situation as well as known timeframes in conjunction with this mandate. The Union may request bargaining within this notice period. Where the Union does not request bargaining, the University is free to implement the changes. Where the Union does request bargaining, but does not request information, the Union shall submit proposals in response to the Employer's intended changes within ten (10) calendar days of its request to bargain, and the parties will meet promptly to discuss the changes and any proposals submitted by the Union. This ten (10) day time limit may be extended by written agreement of the parties. It is understood and agreed by the parties that, in the event the Union requests information relevant to the proposed change(s), the timeframe associated with the submission of proposals

shall commence upon the University providing to the Union the information to which the Union is entitled. The Union agrees that it will tailor its information requests so as not to unduly delay this process.

The Union's ability to negotiate does not provide the Union with "veto" power over employer initiated changes, and it shall not unduly delay the implementation of such changes. The University may implement the proposed changes that are subject to this process even if after good faith negotiations there has not been mutual agreement. Where bargaining is required and requested by the Union over changes necessary to meet a legislative mandate or emergency condition, the parties will negotiate in good faith, and the employer may implement any changes necessary to meet the legislative mandate or emergency condition, including any applicable timeframes, even if no agreement is reached with the Union.

## **ARTICLE 7 -- HOURS OF WORK**

### **Section 1. Workweek**

The standard workweek for full-time employees consists of five (5) consecutive days with eight (8) hours per day, Monday through Friday. This section shall not be interpreted as to preclude the Employer and the Union from agreeing to designate certain job classifications for alternative workweek schedules when such is necessary according to the operation needs of the Employer.

### **Section 2. Work Schedules**

A work schedule is defined as the employee's assigned work hours, including starting and ending times during the work day, and the days included during the standard workweek. Employees may request and the Employee's supervisor may approve temporary changes in their regular work schedule.

### **Section 3. Work Break**

Based upon the exempt status of bargaining unit employees, employees shall be allowed to take work breaks so as not to interfere with the operation needs of the University.

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

There shall be a duty-free unpaid lunch break of at least thirty (30) but no more than sixty (60) minutes for employees.

### **Section 5. 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 with written approval on file in their personnel jackets, employees to telecommute when prior written approval from the immediate supervisor or department director has been obtained. The decision to allow an employee to telecommute 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 that are excluded from telecommuting. Nor shall the section be construed to prevent the University from requiring an employee's physical presence at:

- A. Any reasonable time, with reasonable prior notice to the employee; or
- B. Anytime in response to an urgent need.

## **Section 6. Flex Time.**

The BSU Flexible Work Schedule (FWS) is an opportunity to maintain employee productivity and increase employee morale. The FWS is an alternate work schedule in which a full-time employee has a basic work requirement of eight hours\* each day, Monday through Friday, and forty (40) hours each week. This alternate work schedule will be available to PIN Exempt and Nonexempt and Contingent II employees to assist in meeting their work performance goals. The FWS is voluntary and employees are not required to change their current work schedule.

Supervisors must ensure departmental coverage when they allow employees the FWS option. The FWS option may not be available to employees who are shift workers. The supervisor has the discretion to grant approval to shift workers provided that the University needs are met. Consideration will be given in instances where creative work schedules have been shown to accomplish efficiency/effectiveness and personal goals; to provide coverage for individual department operations and to serve the University as a whole with increased productivity.

### **A. Supervisory Roles and Responsibilities**

Supervisors should not unreasonably deny the FWS option to employees. If the FWS option is denied to employees, the supervisor shall provide the reasons in writing. Appeals of a denial may be made to the appropriate Vice President. The supervisor is responsible for identifying if the FWS option is workable within his or her department by assessing the impact and outcome in terms of production, quality and the employee's history of absenteeism. One or a combination of the above is in the best interests of the University, department, and employee.

The Vice President for Administration and Finance has the general responsibility of overseeing implementation of this policy, through the Office of Human Resources in accordance with legal requirements. Any requests for exceptions to this policy should be made in writing to the Vice President/Provost responsible for the area in consultation with the Vice President for Administration and Finance. Appeals of decisions may be made to the President or his/her designee.

### **B. Appeals of Decision**

The staff member may appeal the supervisor's denial of FWS to the Vice President of the employee's department or division. Such appeal must be in writing to the Vice President with a copy to the supervisor.

### C. Monitoring of Flexible Work Schedule

The supervisor shall review and monitor the work schedules of the staff member on a periodic basis to ensure that the arrangement is productive and the needs of the department and the University are met. Such review by the supervisor may include periodically working during the hours of the alternate work scheduled, monitoring the work generated and the level of customer support provided. Supervisors may continue the FWS after such review or may modify the schedules with appropriate notice.

### D. General

1. BSU has implemented the option of a Flexible Work Schedule (FWS) Policy for employees in offices where a flexible schedule will not adversely affect the delivery of services. The purpose of the FWS is to allow BSU to respond to employee needs while increasing productivity and ensuring that organizational goals are being met.
2. The FWS is based on an employee working for a minimum of eighty (80) hours per pay period. A participant's normal work day could begin between the following timeframes: 7am – 4pm; 8am – 5pm; and 9am – 6pm.
3. Employees are not eligible if they are shift workers, have excessive absenteeism, performance problems, or are Contingent I employees.
4. Each staff member must complete the FWS form and obtain approval from their supervisor and department head. A copy of the completed form must be forwarded to the Office of Human Resources for retention in the personnel file.

### E. Time Parameters

1. Full-time employees must work a minimum of eight (8) hours each day\*.
2. Peak hours are 9:00 to 11:00 am and 2:00 to 4:00 pm.
3. Scheduled lunch periods are sixty (60) minutes.
4. An employee's work schedule will be approved ahead of time. A work schedule does not have to be the same for each day of the week.
5. Each individual on FWS will have his/her work schedule fixed for a period of six months. Supervisors will periodically review schedules and may continue or modify schedules, with appropriate notice, as needs arise.
6. Each manager is responsible for ensuring that his/her area is adequately staffed during the core hours 9:00 a.m. and 4:00 p.m.

#### **F. Schedule Conflicts and Changes**

1. Any schedule conflicts which may arise will be resolved by the University in a fair and equitable manner.
2. An employee on FWS may choose to return to his/her previous work schedule, or to the normal 8 am to 5 pm workday after providing sufficient notice, if such change will not cause a scheduling conflict.
3. The University may return an employee to the normal 8 am to 5 pm workday if the employee's schedule proves unworkable, if the employee abuses the schedule, or if it is in the best interest of the organization.
4. The University has the discretion to modify work schedules when needed, and with appropriate notice, to accommodate peak work periods.

\*Duty Day employees must work a minimum of forty (40) hours a week.

#### **Section 7. Hours of Service for Commercial Driver's License (CDL)**

The University will adhere to the laws in accordance with the U.S. Department of Transportation and the State of Maryland.

### **ARTICLE 8 -- PROBATIONARY PERIOD**

#### **Section 1. New Employees**

The Probationary period for newly hired employees shall be twelve (12) months. Employees who have completed a probationary period in any position shall not be required to serve a new probationary period when transferring to a similar position in the same classification with a different department.

#### **Section 2. Newly Converted Employees**

Contractual employees who have served an original probationary period and are converted to a permanent status shall not be required to serve an additional probationary period.

### **ARTICLE 9 -- WAGES**

#### **COLA and Merit Adjustment**

Subject to the approval and funding by the General Assembly, wages, cost of living adjustments (COLA) and merit increases will be provided to bargaining unit employees at whatever amount is provided in the state legislative appropriations.



## **ARTICLE 10 -- PAID HOLIDAYS**

### **Section 1. Recognized Paid Holidays**

All employees in the bargaining unit are entitled to the following recognized paid holidays:

- New Year's Day
- Dr. Martin Luther King's Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Election Day (State of Maryland)
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Day
- Any day of national observance declared by the Governor of the State of Maryland or by the President of the University.

It is understood by both parties that Columbus Day and Veteran's Day will be observed on a later date (normally taken during the Winter Break) and President's Day (normally taken during the Spring Break). The University shall observe three (3) additional University holiday leave days, which shall be granted each calendar year and observed at the discretion of the University President or his/her designee.

### **Section 2. Day of Observance**

Normally, a holiday will be observed on the day in 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 Sunday, the following Monday will be deemed to be the holiday.

### **Section 3. Holiday Pay**

To be eligible for paid leave, in conjunction with holidays, including University holidays, employees must be in a paid employment status on the calendar date of the holiday. Employees shall receive a regular day's compensation at their regular hourly rate for every holiday the employee observes.

If an employee is scheduled or is otherwise authorized to work during his or her scheduled holiday the employee shall have the option of (1) receiving, in addition to his/her holiday pay, one and one-half (1-1/2) times the employee's regular rate of pay for all hours worked on that day; or (2) receiving, in addition to his/her holiday pay, compensatory time off for all hours worked equal to the rate of one and one-half (1-1/2) times for all hours worked on that day.

#### **Section 4. Payment of Carried Over Holiday**

Employees are entitled to carry-over unused earned holiday leave into the next calendar year. All carry-over unused holiday leave must be used by January 31st of the new calendar year. Any unused holiday leave will be paid out prior to separation. The University shall not unreasonably deny any employee's carry-over leave requests in January of the new calendar year.

#### **Section 5. 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.

#### **Section 6. 24/7 Employees**

Employees in 24/7 positions whose regularly scheduled day off falls on the day that the University observes a holiday shall receive an alternate day off. This alternate holiday can be used forty-five (45) days after the observed date of the official holiday.

### **ARTICLE 11 -- LEAVES**

#### **Section 1. Annual/Vacation Leave**

##### **A. Purpose and Applicability**

This section governs the accrual and use of annual leave, and applies to all regular exempt employees of Bowie State University.

##### **B. Annual Leave Earned**

Exempt employees- full-time exempt employees earn twenty-two (22) days of annual leave per calendar year which shall accumulate on bi-weekly basis from the beginning of employment. Beginning with the 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. Part-time employees working fifty-percent (50%) or more shall earn annual leave on a pro-rated basis.

##### **C. Leave Accumulation**

Annual leave with pay shall be available only to the extent earned, provided that the dates of such leave have been approved in advance by the employee's supervisor. Such approval shall not be unreasonably denied. A maximum of fifty (50) workdays of annual leave may be carried into a new calendar year by all full-time exempt employees. This maximum will be pro-rated for part-time exempt employees working fifty-percent (50%) or more.

#### D. Payment of Denied Annual Leave

At the end of each calendar year, a supervisor may, through appropriate channels, recommend to the University President or designee that an employee be paid for days of annual leave lost pursuant to Section C. The supervisor's recommendation for payment for lost annual leave shall be accompanied by a written explanation of why the lost annual leave was not taken at another time during the calendar year.

Payment is at the discretion of the University President and his/her designee. It is also limited to unused annual leave that is in excess of the maximum accumulation and that is lost by the employee at the end of the calendar year.

#### E. Leave Transfer

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.

#### F. Termination Payment

Employees who leave the University System of Maryland are entitled to compensation for any unused annual leave that has been credited and available for use as of the date of separation.

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

Personal Leave for employees covered by this MOU is governed by USM Policy VII - 7.10 Policy on Personal Leave for Regular Exempt Employees approved by the Board of Regents on 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 fifty-percent (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 that 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 "Cash Out"**

Employees shall be allowed to cash out any amount of accumulated annual leave, at the time of separation of employment due to retirement, resignation, discharge, or transfer to another institution within the University System of Maryland, in compliance with applicable law.

#### **Section 4. Leave Reserve Fund**

The employee, or someone on the employee's behalf, may submit to the Senior Director of Human Resources of Bowie State University a written request to use leave from the Leave Reserve Fund, together with documentation that the employee has:

- A. Completed at least one year of service with the University System of Maryland;
- B. A temporary medical disability which is authenticated by a licensed or certified medical provider in accordance with established leave authorization procedures, and by the institution or State Medical Director; and when the employee has a reasonable expectation of return to work;
- C. Used all available sick leave, annual leave, personal leave, compensatory leave, advance sick leave, extended sick leave; and
- D. A satisfactory record of sick leave use and work performance.

In addition, each request must specify the number of days requested and must provide a justification for the number of days requested. The maximum number of days which may be requested from the LRF shall not exceed one day for each month of creditable service, as defined by the Maryland State Retirement and Pension Systems.

#### **Section 5. Maternity and Paternity Leave**

Pregnancy-related disabilities, childbirth, and immediate recovery there from.

- A. A female employee may request the use of the accrued sick leave for any period of time related to temporary disability during pregnancy or related to childbirth and immediate physical recovery there from.
- B. A female employee planning to request the use of sick leave for the purposes listed in this subsection shall be governed by the provisions of this policy.
- C. The employees shall keep the Senior Human Resources Director or designee informed of any changes to her condition which affect the length of time that she will need to be away from work.
- D. Birth of a child or placement of a child with the employee for adoption
  - 1. Up to a maximum of thirty (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 formal adoption and shall be granted only if the employee making the request is the person having primary reasonability for furnishing the care and

nurture of the adoptee. In the event that both parents are USM employees, sick leave to care for the child, as provide under this section is available to only one parent.

2. The Senior Director of Human Resources or designee shall grant the employee's request if the employee has furnished satisfactory documentation of the birth of the employee's child or an agreement of placement for adoption.
3. An employee who returns to regular USM service within two years of separation shall have the unused sick leave earned during the prior service restored, provided the employee returns to a position eligible to earn sick leave.

#### **Section 6. Family and Medical Leave. ("FMLA" Leave)**

Family and Medical Leave for employees covered by this MOU is governed by USM Policy VII-7.50 Policy on Family and Medical Leave, (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 7. Religious Observance Leave**

Employees shall be allowed to use personal or annual leave in order to observe a religious holiday or to attend services or acts associated with their religion. The employee's supervisor shall not unreasonably deny an employee's request to take leave for religious observance. The supervisor may deny the use of accrued leave for religious observance in the case of extreme circumstances, after consultation with the University Labor Relations Manager.

## **Section 8. Military and War Leave**

An Employee who is a member of the Army, Navy, Air Force, Marine 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 change 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 USM Policy VII - 7.24 Policy on Call-Up to Active Military Duty During a National or International Crisis or Conflict.

## **Section 9. Jury Duty, Administrative Hearings and Arbitrations**

Leave of absence with pay shall be granted to employees for time spent in jury duty, as a witness in court proceeding, administrative hearing, arbitration or disciplinary meeting involving the employee or another employee. 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 schedule workday when such is feasible.

## **Section 10. Leave of Absence Without Pay**

Regular full-time exempt employees may request a full or partial personal leave of absence without pay up to a maximum of a two-year (24 month) period with the approval of supervisor and/or department head.

## **Section 11. Administrative Leave (USM Policy VII-7.20)**

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

Administrative Leave may be granted when emergency conditions exist.

The President 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.

## **ARTICLE 12 -- 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 Article 12 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 Article 12 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 fifty-percent (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 Article 12, Section 4 - Verification of Absences Charged to Sick Leave.
- 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 Article 12 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 Article 12, Section 4.F. 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 Article 12, Section 4.F. that cannot be scheduled during non-work hours and are not taken pursuant to Article 12, Family and Medical Leave, Section 4.
  - 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 Article 13, Section 4.F. 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 Article 13, Section 4, Family and Medical Leave. 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 number 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 Article 13, Sick Leave, Section 4.F. with a copy 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 USM institution, 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 for 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 Article 13, Sick Leave, Section 4.F.

- C. Verification of Illness for Absences for 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 (12) 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 Article 13, Section 4D. 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 Article 13, Section 4.F.) 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 Article 13. Such information does not need to include information about the specific illness or health condition of the employee.

#### F. Medical verification as outlined in Article 13 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 Article 13, 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 Article 13, Sections 4A. and 4.F.
- 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 (1/2) 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 Article 13, 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 (5) years;
  2. Have exhausted all types of accrued leave and advanced sick leave; and
  3. 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 Article 13 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 (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 Article 13, Sections 4A. and 4F.
- 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 Article 13, Section 3.B.3 shall apply.

### **ARTICLE 13 -- 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 by the University during a fiscal year may not exceed one (1) day for every thirty (30) of its bargaining unit employees of Bowie State University 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 Article 26.
- C. All requests for union leave shall be submitted to the Senior 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 Union representative and the accuracy of the time being requested, the Senior 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 Article 13 Section B. 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 Senior 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 14 -- PERFORMANCE EVALUATIONS**

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

Each employee shall receive the following written performance evaluation(s) at the end of their probationary period and annually, but no later than April 30th of each year thereafter. The purposes of the performance evaluations 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 performance goals and objectives established by the supervisor and the employee at the beginning of the review period. Employees shall receive performance ratings, which will be as follows: (see attached Performance Management Process (PMP) form (Appendix A))

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

The University shall not apply forced distributions or other limitations to employee performance ratings.

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

Annual (normally May/June of each year), supervisors will meet with employees and review performance objectives in writing once a year during the beginning of the ratings period.

At the expectations meeting, the supervisor (as defined in Section 4 below) and the employee will discuss the specific expectations and performance factors to which the employee will be held accountable. The supervisor and the employee will establish the employee's performance goals and objectives for the upcoming year. This review may include a review of the employee's written position description, which accurately explains the incumbent's duties and responsibilities upon which the employee will be evaluated by the supervisor. 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 the supervisor and the employee utilizing Section 4 Operational Objectives of the PMP Form.

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

#### **A. Probationary Period Evaluation:**

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 supervisor (as defined in Section 4 below), 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 supervisor can work to address issues that have arisen.

The employee and the supervisor 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 that will alter an employee's bargaining unit status; it is understood and agreed that the University will advise the Union thirty (30) days in advance of the proposed date of modification to the employee's job description. It is further understood that the University reserves the right to promote employees, in accordance with this MOU, to a position that may be outside the bargaining unit.
2. Specific tasks and standards established by the supervisor, and the employee, that will assist the employee in accomplishing the employee's overall objectives for the next evaluation period;
3. Any training needs established.

#### B. Regular Exempt Employee Mid-Year Performance Evaluation

The supervisor may prepare a written mid-year performance evaluation within six (6) months after the beginning of the current ratings period, if the employee's performance deteriorates during the current rating period, the supervisor must conduct an evaluation. If a mid-year performance evaluation is conducted, the supervisor must meet to discuss the mid-year 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 that will alter an employee's bargaining unit status; it is understood and agreed that the University will advise the Union thirty (30) days in advance of the proposed date of modification to the employee's job description. It is further understood that the University reserves the right to promote employees, in accordance with this MOU, to a position that may be outside the bargaining unit.
2. Specific tasks and standards established by the employee and the supervisor, which will assist the employee in accomplishing his/her overall objectives for the next evaluation period.
3. Any training needs established.



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

The year-end annual performance evaluation shall include the following:

- A. An overall performance rating.
- B. The specific tasks, which the employee needs to achieve during the next evaluation period and performance objectives, which are established at the Annual Expectations Meeting (see Section 2 above).
- C. Modifications of the employee's job description that will alter an employee's bargaining unit status; it is understood and agreed that that the University will advise the Union thirty (30) days in advance of the proposed date of modification to the employee's job description. It is further understood that the University reserves the right to promote employees, in accordance with this MOU, to a position that may be outside the bargaining unit.
- D. Recommendations for training as appropriate. (See Annual Expectations Meeting, Section 2 above.)

The supervisor conducting the performance evaluation shall be the employee's immediate supervisor, who is in the ordinary course of business the individual responsible for assigning and reviewing the employee's work, signing time sheets, and approving leave. If the supervisor has been the employee's supervisor for less than six (6) months, the employee's former supervisor if available will provide input.

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 shall take into consideration impediments to an employee's job performance, which are beyond the control of the employee. 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 employee's second level supervisor reserves the right to make valid changes or modification(s) to approve an employee's end-of-the-year evaluation prior to the employee's signature. This approval must be secured prior to the end-of-year evaluation meeting with the employee. The supervisor shall give the employee a copy of the end-of-the-year evaluation, which will be signed by the employee, and a copy will be placed in the employee's personnel file with the job description attached. A statement of an employee's objection or comments may be submitted to the first and second level supervisor within thirty calendar thirty (30) days of receipt of the current evaluation. A copy of the employee's comments shall also be forwarded, by the

appropriate supervisor, to the Office of Human Resources for placement in the employee's personnel file.

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

In the event a supervisor 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, the supervisor 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.

### **Section 6. Performance Evaluation Salary Increase**

Employees, who achieve an annual rating of "Meets Standards" or above, shall receive whatever merit increase is granted in accordance with Article 9 Wages.

An employee's ability to file a grievance is directly linked to the provisions of Article 9 Wages. Employees shall have the right to appeal their performance evaluation ratings for procedural deficiencies or for overall ratings that result in "Below Standards" or "Unsatisfactory" through the grievance process.

In those circumstances where an employee has a complaint regarding a performance evaluation but was not deprived of a merit pay increase in conjunction with Article 9 Wages, such grievance(s) may only be allowed to be grieved through Step 2 of the Grievance Procedure.

All performance evaluation grievances shall be filed in accordance with the Grievance Procedure outlined elsewhere in this MOU.

## **ARTICLE 15 -- GRIEVANCE PROCEDURE**

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 Md. Education Code Ann. § 13-201, et seq., 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 an exempt 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. *Step One.* Step one is the initiation of a complaint. Grievances shall be initiated within thirty (30) calendar days of the action involved, or within thirty (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 five (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 five (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 five (5) days.
- C. 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.
- D. *Step Two.* The appeal shall be submitted to the President of the University or the President's designated representative within five (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 ten (10) days of receipt of the written grievance appeal and render a written decision within fifteen (15) days after the conclusion of the conference.

- E. *Step Three.* In the case of any still unresolved grievance between an employee and the University, the aggrieved employee, after exhausting all available procedures provided by the University, 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 ten (10) days after the receipt of any written decision pertaining to that grievance and issued by the University. 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.
- F. 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.
- G. 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 the institution, or by a temporary or contractual employee of the institution, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of the 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 the 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 five (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 thirty (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 fifteen (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 Senior Director of Human Resources 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 ten (10) days after receipt of the written University decision.
- B. Involuntary demotions - Within five (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 twenty (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 fifteen (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 ten (10) days after receipt of the written University decision.
- C. Rejection on probation.
  - 1. Rejection on Original Probation. Within five (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 twenty (20) days, if possible, after receipt, the President or the President's designated