

# **AGREEMENT**

between

**Regents of New Mexico State University**

and

**American Federation of State, County and  
Municipal Employees,**

**Local 2393**

**August 25, 2022 – June 30, 2025**

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## **Preamble**

This Collective Bargaining Agreement ("Agreement") is made by and between the Regents of New Mexico State University ("NMSU") and the American Federation of State, County and Municipal Employees ("AFSCME"), Council 18, Local 2393 ("Union") and is applicable to all eligible Bargaining Unit Employees ("BUEs") in the Bargaining Unit of NMSU, as defined in Article 1 of this Agreement. NMSU and the Union are referred to jointly herein as the "Parties."

NMSU will make this Agreement available on its website within thirty (30) days of the effective date of this Agreement.

## **Article 1 - Definitions**

**Bargaining Unit:** The group of certified NMSU Bargaining Unit Employees for whom the Union negotiated this Collective Bargaining Agreement.

**Bargaining Unit Employee:** A member of the Bargaining Unit, which is limited to regular, non-probationary, full-time and part-time non-exempt Employees of NMSU, employed within the State of New Mexico ("BUE," or plural, "BUEs"), and as further specified in Article 4, Section 1.

**Business Day:** Each Monday through Friday when NMSU is open for business; excludes official NMSU holidays and other NMSU closures.

**Comp Time:** Time off from work earned, in lieu of Overtime pay, at the election of the BUE.

**Continuous Employment:** Any period of employment with NMSU in a regular position that is not interrupted by the BUE's absence from work for more than one (1) year.

**Designee:** An Employee of NMSU who is designated by NMSU to act on behalf of another Employee.

**Employee:** A person hired by NMSU.

**Fit for Duty:** The ability to perform the essential functions of a position in a safe, secure, productive, and effective manner.

**Health Service Provider:** A doctor of medicine or osteopathy, dentist, podiatrist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a licensed clinical social worker who is authorized to practice in the State of New Mexico, or in the state where the Employee resides.

**HRS:** Office of Human Resource Services.

**Management Employee:** An Employee who is not a member of the Bargaining Unit and has

supervisory responsibilities and authority from NMSU to direct the work and conduct of BUEs, except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions.

**NMSU Property:** All lands, buildings, equipment, materials, technology, hardware, software, and other items under the control of the NMSU.

**Notice:** Notice by NMSU to the Union is properly given if it is sent by email to the Union Officers. Notice by the Union to NMSU is properly given if sent by email to the Assistant Vice President (AVP) HRS, Employee Relations.

**Overtime:** Any period of time pre-approved and worked by a BUE in excess of forty (40) hours during the workweek. For the purpose of calculating Overtime or Comp Time, time off for a designated holiday or alternative holiday, administrative leave, jury duty or any other paid time off from work will not be considered as time worked.

**Parties:** The Union and NMSU.

**Progressive Discipline:** The typical approach used by management to modify undesirable performance and behavior, using a range of disciplinary consequences that are applied depending on the employee's misconduct or performance, and can begin with termination.

**Regular Employee:** An Employee of NMSU with no predetermined employment termination date who works at least .5 FTE (full-time equivalent)[APR 6.03, Part 3(A)(3)].

**Seniority:** Length of Continuous Employment.

- A. NMSU Seniority. A BUE's length of continuous regular employment with NMSU.
- B. Classification Seniority. A BUE's length of continuous, regular employment in a single or specific classification.

**Seniority List:** A list of BUEs who are subject to this Agreement, listing each such BUE's name, position, and Seniority date.

**Standby:** Time that a BUE is required to be ready to report for duty or to respond to a work-related call during his/her time off where he/she cannot use his/her time off freely. Standby includes time that a BUE has been directed to remain within contact by telephone or electronic beeper in order to respond to a call within a specified timeframe during non-work hours. Standby status is never concurrent with work hours.

**Supervisor:** For BUEs, the person to whom they report and who, in the ordinary course of business, is the individual responsible for assigning and reviewing their work.

**Union:** American Federation of State, County and Municipal Employees, Local 2393, elected as

the exclusive bargaining representative for BUEs at NMSU.

**Union Representative:** An individual, including a Union steward, who is designated by the Union as a member and official of the Union, to represent and defend the interests of BUEs.

**Union Member Dues:** Total monthly amount of money paid by BUEs to the Union as the cost of membership in the Union.

**Work Days:** A BUE's required days of work, as defined or designated by NMSU.

## **Article 2 - Commitment to NMSU Mission**

The Parties are committed to NMSU's mission as the state's land-grant university, serving the educational needs of New Mexico's diverse population through comprehensive programs of education, research, extension education, and public service.

## **Article 3 - Purpose**

The purpose of this Agreement is to provide reasonable terms and conditions of employment for BUEs covered hereunder, to protect the rights of the Parties, to promote a harmonious and cooperative relationship between the Parties, to provide a means of amicable and equitable adjustment of any and all differences or Grievances that may arise under the provisions of this Agreement, and to acknowledge the obligation of the Parties to provide orderly and uninterrupted services to the public.

## **Article 4 - Recognition**

### **Section 1. Recognition.**

NMSU recognizes the Union as the exclusive bargaining representative, as that term is defined in the Public Employee Bargaining Act (PEBA) (<https://www.pelrb.state.nm.us/>) incorporated herein by reference as it currently exists or is subsequently amended by agreement of the Parties, for Employees in the following certified Bargaining Unit:

**INCLUDED** - BUEs, as defined herein, employed within the State of New Mexico as listed in Appendix A on the AFSCME/ Labor Relations web site at: <https://hr.nmsu.edu/labor/>.

**EXCLUDED** - Supervisors, managers, and confidential Employees, as defined by PEBA the Resolution; sworn police officers; Employees employed outside the State of New Mexico; any Employee who may have previously been a BUE, but was promoted into an exempt position; and any other BUEs who do not fall within the group of "included" BUEs, as defined herein. NMSU

will publish a list of Bargaining Unit classification titles with pay grades on the NMSU HRS-ELR website.

**Section 2. New Classification Recognition.**

Implementing a new classification title, a classification title change, or reclassification of an existing title covered under this Agreement, will not remove the position(s) from the Bargaining Unit, unless that change results in a change of the BUE to an exempt position. Any newly created non-exempt classification title within the scope of the certified Bargaining Unit, as recognized in Section 1 above, will become part of the Bargaining Unit covered by this Agreement in accordance with the accretion procedures.

**Section 3. Dispute Recognition.**

Any dispute concerning the inclusion of classifications, or specific Employee(s), in the Bargaining Unit, based on Supervisor, manager, or confidential Employee status, will be discussed between the Parties, and if not resolved, will be submitted to the Public Employee Labor Relations Board (“PELRB”) for disposition.

**Article 5 - Scope of Agreement**

**Section 1. Final and Complete Agreement.**

This Agreement is the final and complete Agreement and expresses the entire understanding between the Parties.

**Section 2. Policies and Practices.**

Unless stated otherwise herein, BUEs are subject to NMSU Administrative Rules and Procedures (ARP) and the Regents Policy Manual (RPM), as they currently exist or are amended in the future. Within four weeks of a change to the ARP, notice will be given to the Union. This Agreement in all respects supersedes and replaces NMSU policies and practices that contradict this Agreement. No other NMSU policies or practices are superseded by this Agreement. NMSU will provide BUEs with other economic benefits, beyond those described in this Agreement, to the same extent as provided to other NMSU Employees under its policies, rules, and regulations. References to sections of NMSU's ARP or other documents, noted in brackets, are for reference only and are not part of this Agreement.

**Section 3. Changes to Agreement.**

This Agreement will not be amended unless mutually agreed to, in writing, by duly authorized representatives of the Parties. In addition to changes initiated pursuant to its Management Rights (Article 10 of this Agreement), NMSU reserves the right to propose other changes in the terms and conditions of employment of BUEs to meet public service and operating needs. Such changes may be subject to negotiation upon written request by the Union in accordance with PEBA or any other expedited impasse resolution procedures mutually agreed upon by the Parties at the time of such

negotiations.

### **Article 6 - Savings Clause**

If any provision or any application of this Agreement to any BUE or group of BUEs is rendered invalid by operation of legislative or regulatory enactment, or by a court or other tribunal of competent jurisdiction, such provision will be inoperative. All other provisions will not be affected and will continue in full force and effect. If a provision is rendered invalid, upon written request of either Party, NMSU and the Union will meet within a thirty (30) calendar days and attempt to negotiate a substitute for the invalid provision.

### **Article 7 - Duration**

#### **Section 1. Term of Agreement.**

This Agreement will become effective at midnight (12:00 a.m.) August 25, 2022. This Agreement expires at 11:59 p.m. June 30, 2025.

#### **Section 2. Renewal.**

No earlier than one-hundred and twenty (120) days, and no later than sixty (60) days, prior to the expiration of this Agreement, either Party may provide to the other written notice of the intent to negotiate a successor agreement. After notice is provided, the Parties will begin negotiating a successor agreement at dates and times agreed to by the Parties.

## **RIGHTS OF PARTIES**

### **Article 8 - BUE Rights**

#### **Section 1. Freedom of Expression.**

- A. Free Exchange of Ideas. NMSU recognizes and promotes an intellectually open campus. The free exchange of ideas through written, spoken, and other forms of expression reflects its public land-grant heritage, support of diverse points of view, and commitment to excellence in education and research. [See ARP 3.63, Part 1].
- B. Union's Right to Freedom of Expression. The Union has the same right to any freedom of expression that is available to any other person or entity, in accordance with ARP 3.63 and state and federal law. [See ARP 3.63].
- C. Petitioning and the Distribution and Posting of Literature and Signs. The Union and BUEs



may distribute literature only during non-work time and in non-work areas, using the following methods: (1) hand-to-hand; (2) through the use of tables; or (3) by posting on designated bulletin boards and kiosks. Union-related postings will only be made in accordance with Article 9, Section 8(B) of this Agreement. All distributed Union literature must contain identifying information for someone to contact in case of litter problems. Written materials may only be placed in approved locations. Written materials may not be placed on any part of an NMSU building or structure without NMSU's permission. Posting on traffic signs, power poles, trees, and automobile windshields is not allowed. Tables are allowed if they do not interfere with pedestrian traffic. Materials may not be left on unattended tables. While advance scheduling of tables is not required, those individuals who schedule a distribution site through the Campus Activities Office or other appropriate NMSU office will have priority. [See ARP 3.63, Part 7].

- D. Policy Enforcement. The Union and its members are subject to the same sanctions as any other person or entity that violates NMSU policies, regulations and rules, including the following:
1. Directive to cease and desist or to relocate, by NMSU Employees acting within the scope their duties;
  2. Directive to leave NMSU Property by Employees acting within the scope of their authority (such as the police or a person in charge of the Property);
  3. Discipline as outlined in Article 34 of this Agreement;
  4. Arrest for violation of applicable law(s); or
  5. Restriction on future use of NMSU campus for expressive activities. [See ARP 3.63, Part 7].

## **Section 2. Access to Union Representatives.**

- A. Grievants. In addition to BUEs' rights to Union Representatives as governed by Article 34 of this Agreement, grievants are entitled to a reasonable amount of time during scheduled work hours to meet and consult with their respective authorized Union Representative regarding formal Grievances and to attend Grievance hearings. Grievants will first obtain Supervisory approval for time to meet with their Union Representative and such supervisory approval will not be unreasonably withheld. If denial of supervisory approval necessitates an extension of time for processing a Grievance, the time will be tolled for the duration of the denial until the grievant is afforded access to the Union Representative.
- B. Union Business. BUEs will conduct other types of Union business during non-work time, which is the time before their workday begins, during lunch and breaks taken during the workday, or after their workday ends.
- C. No Workplace Disruption. In exercising their rights under this Agreement, BUEs will not

disrupt the workplace or interfere with the operations of NMSU.

**Section 3. No Retaliation or Disparate Treatment.**

NMSU will not retaliate against the Union or its BUEs for exercising any right in accordance with this Agreement. [See ARP 3.63, Part 5]. NMSU will not discriminate against any employee by reason of Union membership or non-membership, or activities on behalf of, or in opposition to, the Union.

**Section 4. Non-Work Related Use of NMSU Resources.**

BUEs should always be mindful of the resources entrusted to them by the public, government entities, and private donors, including the public's perception of how NMSU conducts its business. BUEs should strive to conduct themselves consistent with the highest ethical principles, to avoid any action that may be viewed as a violation of the public trust in the use of these resources, and to act responsibly in order to preserve and safeguard NMSU resources. These resources include, but are not limited to, facilities, supplies, and equipment (such as telephones, fax machines, photocopiers, and computers) and Employee time. BUEs do not have a right or expectation to privacy as it relates to information or data contained on, or accessed through, university equipment or resources. [See ARP 3.14].

The personal, non-work related use of NMSU Resources is permitted only in compliance with NMSU rules, regulations, and policies, as may be amended. [See ARP 3.14 and ARP 15.11.] The use of assigned NMSU vehicles is subject to NMSU policy.

The application of these rules, regulations, and policies with regard to such use will depend upon the particular circumstances surrounding each such use, including factors such as the nature of the use, reasonableness, cost, time, Employee needs and work habits. BUEs should consult with their Supervisors in advance if they have questions about the appropriateness of certain practices. [See ARP 3.14].

**Section 5. Access to Campus Facilities.**

BUEs and their dependents have access to and use of all appropriate campus facilities, including all health and fitness facilities, the sports complex, dining facilities, the library, and computer facilities that are otherwise open to all BUEs and their dependents under the same terms.

**Article 9 - Union Rights**

**Section 1. Union Representatives.**

The Union will have the right to select sufficient Union Representatives to administer this Agreement. The exact number and location of Union Representatives will be determined by

agreement between the Parties, consistent with this principle. The Union will provide NMSU with a written list of the names, addresses, and telephone numbers of the stewards and other Union Representatives who are authorized to act on behalf of the Union and a statement of the extent of their authority. The Union will provide an updated list to NMSU when changes occur.

## **Section 2. Union Representative Activities.**

- A. Union Representatives. NMSU will allow Union Representatives to attend, on paid status, the following meetings: (1) meetings requested by NMSU for purposes of administration of this Agreement; (2) investigatory interviews conducted by management, as addressed in Article 34 of this Agreement; and (3) disciplinary hearings, as addressed by Article 34 of this Agreement. Union Representatives will obtain prior supervisory approval to attend such meetings, and such approval will not be unreasonably withheld.
- B. Grievances. Union Representatives are entitled to use a reasonable amount of scheduled work time to investigate and process each Grievance through the Grievance and Arbitration procedure contained in this Agreement, not to exceed a total of four (4) hours of scheduled work time for each Grievance. Union Representatives will obtain prior supervisory approval for the use of scheduled work time for this purpose, and will designate the time used for this purpose as Other Leave Time (OLT) on timesheets. Supervisory approval will not be unreasonably withheld. If denial of supervisory approval necessitates an extension of time for processing a Grievance, the time will be tolled for the duration of the denial until scheduled work time is afforded the Union Representatives to process the Grievance.
- C. Union Business during Non-Work Time. Except as provided above, Union Representatives will investigate and process Grievances and conduct other Union business during non-work time, which is the time before their workday begins, during lunch and breaks taken during the workday, or after their workday ends.
- D. No Workplace Disruption. In conducting Grievances and other Union business and activities, the Union will not disrupt the workplace or interfere with the operations of NMSU.

## **Section 3. Union Representative Access.**

Union Representatives will have reasonable access to visit any NMSU worksite for the purpose of administering this Agreement. Visits will not disrupt the workplace or interfere with the operations of NMSU. All visits must be coordinated through the Management Representative, or alternate, designated by NMSU's HRS-ELR staff. NMSU will provide a reasonable place where Union Representatives can talk with BUEs in private.

## **Section 4. Explanation of this Agreement.**

Within ninety (90) days of the effective date of this Agreement, NMSU and the Union will co-host one or more open forums for BUEs to explain the Agreement and answer questions about it.

With supervisory approval, BUEs are entitled to attend these forums on work time. Supervisory approval will not be unreasonably withheld. Each forum will last no more than two (2) hours in length.

**Section 5. Use of NMSU Property for Meetings.**

Employees and Union Representatives may use NMSU rooms to hold Union meetings by reserving the room(s) in accordance with NMSU policy, practice or approval procedure established for that room.

**Section 6. Union Presentation.**

During formal, new-Employee orientation group sessions conducted by NMSU, the Union will give a fifteen (15) minute presentation that may include the offer to enroll in supplemental Union membership benefits and programs.

**Section 7. Union Web Page.**

NMSU will provide an internet link on its HRS web page to the Union's web page.

**Section 8. Union Bulletin Boards.**

- A. Locations. The Union provides locked bulletin boards in conspicuous, mutually agreed upon, high traffic areas at the following locations: (1) Corbett Center, (2) Branson Hall, (3) Zuhl Library, (4) Gerald Thomas Hall, (5) Frenger Mall, (6) Hadley Hall, (7) Campus Health Center, (8) Educational Services Building, and (9) all NMSU branch campuses. Additional locations may be added as agreed upon by the Parties.
- B. Exclusive Use. Union bulletin boards are for the exclusive use of the Union. The Union is responsible for the posting of all items on Union bulletin boards. A Union Representative will approve, by signing and dating, each item before posting. The Union will ensure that posted items are not illegal, defamatory, obscene, factually inaccurate, partisan, or political; do not contain personal criticism of any individual or NMSU administration; and do not include any item that is detrimental to the safety and security of NMSU. At least one Business Day prior to the posting, the Union will provide an informational copy of all items to HRS. NMSU may remove bulletin board items that are not consistent with this Agreement, using the Union provided keys for each bulletin board, and will notify the Union of the removal as soon as practicable.

**Section 9. Right to Information.**

- A. General. The Union has the right to information that is relevant and necessary to represent BUEs. This includes information relevant to the administration of any part of this Agreement, disciplinary action against a BUE, allegations of misconduct, information reasonably related to and necessary for negotiations, and information on any other subject that is reasonably related and necessary to the Union's representation of BUEs, provided

that written authorization has been received from the relevant BUE with respect to any personnel information or records [Article 16, Section 2].

- B. Bargaining Unit Information. On the first of each month, NMSU will furnish the Union with an electronic report containing, if available, the name, most recent mailing address, telephone number on file, department, classification, work address, status (part-time/full-time), and the unique identification number for each BUE.

### **Article 10 - Management Rights**

Except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions, the sole and exclusive rights of NMSU Management Employees will include, but are not limited to, the following:

- A. Direct the work of, hire, promote, assign, evaluate, and transfer BUEs; and demote, suspend, dismiss, or otherwise discipline BUEs for Just Cause;
- B. Determine qualifications for employment and the nature and content of personnel examinations;
- C. Take actions as may be necessary to carry out the mission of NMSU in emergencies;
- D. Determine the size and composition of the workforce and rates of pay;
- E. Formulate financial and accounting procedures;
- F. Make technological or service improvements and change production methods;
- G. Relieve a BUE from duties because of lack of work or other legitimate reason;
- H. Determine methods, means, and personnel by which NMSU's operations are to be conducted;
- I. Determine the location and operation of its organization;
- J. Provide reasonable rules and regulations governing the conduct of BUEs (with notification to the Union); Provide reasonable standards and rules for BUEs' safety;
- K. Schedule hours, Overtime, and shifts; and
- L. Subcontract work.

## EMPLOYEE RECRUITMENT, CLASSIFICATION AND LAYOFF

### Article 11 - Background Reviews

In order to create a safe and secure workplace and to ensure that BUEs are qualified to perform the duties and responsibilities of the positions they hold, NMSU has adopted a Background Review Rule. [See ARP 6.20]. BUEs are subject to background reviews and other requirements, obligations and consequences as required by law and as set forth in the NMSU Employment Background Review Rule(s) and additional operational procedures posted on the HRS website. [See ARP 6.20]

### Article 12 - Job Vacancies and Job Postings

#### Section 1. Job Advancement Opportunities.

NMSU agrees to provide job advancement opportunities by offering all BUEs an open process for filling bargaining unit position vacancies. BUEs will be entitled to apply for all Bargaining Unit vacancies, including promotional opportunities.

#### Section 2. Job Postings.

- A. Posting Contents. The job postings for Bargaining Unit vacancies and newly created positions will contain, at a minimum, the application procedure, classification title, department, examples of job-related duties, minimum qualifications, starting wage, pay grade, expected work schedule and hours of work, and a posting date and closing date.
- B. Equal Access to Postings. NMSU will publish all job postings on the NMSU website. The Union will have equal access to all NMSU job postings. A job posting for any of the positions of Custodial Worker, Custodial Worker Sr., Groundskeeper, Groundskeeper Sr., and Facilities Tech may be posted as an open pool for up to ninety (90) days. Within such a posting it will be noted that this is a 90-day recruitment which may be used to fill multiple vacancies, if needed, during the posting period.
- C. Notice. NMSU will electronically publish job postings for Bargaining Unit vacancies for a minimum of fourteen (14) calendar days [See ARP, 6.01, Part 2].

#### Section 3. Job Vacancy Award.

NMSU will award all vacancies to the best qualified applicant as determined by NMSU. If two or more applicants are equal in qualifications, classification seniority will govern to the extent the position is within either applicant's current classification series. If classification seniority is not applicable, NMSU seniority will govern.

## **Article 13 - Seniority**

### **Section 1. Tie Breaker.**

In the event two (2) or more BUEs have the same seniority date, the seniority order of these BUEs will be determined by the last four (4) digits of the BUEs' social security numbers, with the BUE having the lowest last four (4) digits of the social security number being considered as having the greater seniority.

### **Section 2. Loss of Seniority.**

Except as otherwise provided by applicable law, a BUE's length of continuous regular service will be broken only by voluntary resignation, discharge for Just Cause, retirement, voluntary move to temporary work status, layoff status lasting longer than allowed by Article 14 of this Agreement, or failure to respond to a recall from layoff. However, if a BUE leaves work for any reason other than those listed above, the BUE will retain his/her seniority date for a period equal to his/her length of employment, up to a maximum of one (1) year. Any period of absence of more than one (1) year will represent a break in continuous service.

### **Section 3. Seniority Lists.**

NMSU will prepare and forward to the Union, seniority lists as defined in this Article. The lists will be updated monthly by NMSU and will contain each BUE's name, classification title, classification seniority date, and NMSU seniority date.

## **Article 14 - Layoff and Recall**

### **Section 1. NMSU Layoffs -Positions Not Contingent on Funding.**

- A. Layoff Notice. In instances where NMSU deems it necessary or advisable to layoff BUEs, a written layoff notice will be provided that includes, at a minimum, the effective date of the layoff and the reason for the layoff (e.g., position eliminated, discontinued, or vacated because of a lack of supporting funds, program change, or change in departmental organization). The written notice will be provided to the affected BUEs at least sixty (60) calendar days prior to the effective date of the layoff. The affected BUE will be provided separation and contact information pertaining to NMSU benefits, retirement plans, unemployment compensation, and NMSU accounts and services.
- B. Employee Preference. Prior to any layoff, BUEs will be asked to indicate their desires with respect to early retirement, part-time employment, voluntary resignation, intra-NMSU transfer, or other option offered by NMSU. NMSU will, make a good faith effort to relocate any BUE subject to layoff to a suitable vacant position within NMSU for which that Employee is fully qualified. This good faith effort to relocate a BUE need not extend beyond the effective date of the layoff.

- C. Order of Layoff. NMSU will determine in which classifications layoffs will occur. Layoffs of BUEs within affected classifications will occur in the following order:
1. Temporary non-exempt employees; then
  2. Probationary non-exempt employees; then
  3. Regular BUEs in order of NMSU seniority, with the lowest seniority being laid off first.
- D. Recall/Reinstatement. A BUE who is laid off may be recalled within ninety (90) days from the effective date of layoff provided the BUE meets the minimum qualifications of the offered position. BUEs will be recalled in reverse order of layoff.
1. Notice of recall from a layoff will be sent to the BUE's last known address, by certified mail, return receipt requested.
  2. The recalled BUE will have up to ten (10) workdays following receipt of the recall notice to provide written notification to NMSU of an intention to return to work.
  3. The recalled BUE will have up to fourteen (14) workdays following receipt of the recall notice to physically return to work.
  4. The transfer or recall of BUEs to other positions may result in a different rate of pay, pay grade, and job title. Specific plans for any area which is separating a BUE will be prepared prior to the layoff, approved by HRS and the provost. [See ARP 7.65].
  5. If the BUE fails to promptly respond to a recall notice or return to work, or otherwise rejects the first employment opportunity offered, employment will terminate and all recall rights will cease.
- E. Priority Recall. For a period of up to ninety (90 days) from the effective date of the layoff, the BUE will be eligible for priority recall/reinstatement in the classification of layoff, any lower level classification in that job series, or any classification for which the Employee has completed an original probationary period at NMSU and meets the minimum qualifications of the classification specification.
- F. Recall Application. To be considered for priority recall/reinstatement, the BUE must submit a completed NMSU employment application as soon as notified of the layoff, but no later than fifteen (15) calendar days after the effective date of the layoff. Based upon NMSU seniority, BUE applications will be submitted by HRS directly to the hiring department for an interview and consideration for priority recall/reinstatement. If the department should reject the BUE, the hiring department must provide a letter of justification to the AVP HRS, indicating why the BUE would be unable to perform the essential functions of the classification title.



- G. Recall Exhaustion or Expiration. Under no circumstances will NMSU hire new Employees into laid-off classification titles, until such time as the recall list is exhausted or has expired after ninety (90) days.

**Section 2. NMSU Layoffs - Positions Contingent on Funding.**

- A. Employment Notice at Time of Hire or Transfer. BUEs hired into positions contingent on funding will be provided with written notification at the time of hire or transfer indicating that the continuation of their employment is contingent on adequate funding. Additionally, at the time of posting, departments will clearly state in the job advertisement that a position is contingent on funding.
- B. Layoff Approval and Notice. Specific plans for any unit that is separating BUEs will be prepared prior to the layoff, approved by the AVP HRS and by the executive vice president and provost. Such plan will clearly identify the classifications to be eliminated or reduced, and the criteria used to determine the selection and order of the layoffs. [See ARP 7.65(B)]. At least sixty (60) calendar days prior to the effective date of the layoff, a written notice that includes the effective date of the layoff and the reason for the layoff, will be provided to the affected BUEs.
- C. Priority Interview Assistance. For the duration of the notice period up to the effective date of the layoff, the BUE will be eligible for interview assistance in the classification of layoff or any classification for which the BUE meets the minimum qualifications of the classification specification. BUEs will be responsible for monitoring vacancies and for requesting a priority interview from HRS. Applications for BUEs who meet the minimum qualifications for a posted vacancy will be submitted directly to the department by HRS for an interview.

**Section 3. Tuition Remission.**

Laid-off BUEs who are receiving tuition remission at the time of layoff may complete the semester, or summer session, in which the layoff occurs.

**Article 15 - Classification and Reclassification**

**Section 1. Purpose.**

The provisions of this Article apply to the creation of new non-exempt bargaining unit positions or the reclassification of existing non-exempt bargaining unit positions due to changes in the duties or responsibilities. A wage adjustment may be warranted following position reclassification.

**Section 2.     Reclassification Requests.**

If a BUE or a Supervisor or department head has initiated a reclassification review, HRS will notify the Union of the request, and provide Union Representatives the opportunity to review and comment in writing on the reclassification within two (2) Business Days.

**Section 3.     Human Resources Response.**

Within two (2) Business Days after the Union's written comment, HRS will notify the Union of the reclassification review results.

**Section 4.     Classification Re-titled.**

Changes in the classification title may occur based on changes or updates in laws (e.g., Fair Labor Standards Act), significant changes in duties and responsibilities, changes in procedures, or new initiatives or technology. A classification that is re-titled may only be removed from this Bargaining Unit when the classification is determined to be exempt in compliance with FLSA. HRS will notify the Union within five (5) Business Days after a Bargaining Unit position is changed to exempt status.

**Article 16 - Personnel Records**

**Section 1.     Maintenance of Records.**

NMSU will maintain all records concerning a BUE under secure conditions. Records may be maintained by Supervisors at the departmental level. In addition, NMSU will maintain one official set of records concerning a BUE [hereinafter referred to as "Personnel Record"]. The Personnel Record will be maintained by HRS. The Personnel Record may contain "confidential" documents, as defined in this Article. A BUE has the right to review any document filed in their official Personnel Record. A BUE may respond in writing to any matter contained in their Personnel Record. If a BUE elects to respond, such response(s) will be included in the BUE's Personnel Record.

**Section 2.     Confidentiality of Records.**

NMSU respects the privacy of its employees and will strive to maintain the confidentiality of personnel records, to the extent allowed by law and operational needs. Records about a specific BUE will not be released to the Union or any outside party not representing NMSU except: (1) when authorized in writing by the BUE; or (2) when necessary to comply with the law.

**Section 3.     Limitations on the Content of Records.**

- A.     NMSU will remove from a BUE's Personnel Record any documents critical of any BUE if the critical allegation(s) did not result in discipline, once investigation of any such

allegation is concluded or is no longer active. A BUE's performance evaluations will not be removed from the Personnel Record.

- B. Documents may be removed from a BUE's Personnel Record as part of a Grievance settlement agreement or arbitration award. When documents are removed from a BUE's Personnel Record pursuant to this Article, they will not be considered in connection with any future personnel action involving the affected Employee.
- C. NMSU will allow a BUE to inspect his or her Personnel Record. Upon request, a BUE will be provided with a copy of any documents in his or her Personnel Record, within a reasonable period following the request. The documents will be provided at NMSU's expense if the BUE is facing disciplinary action. Otherwise, the BUE will pay for the cost of copying documents.

#### **Section 4. Use of Disciplinary Records.**

After thirty-six (36) months without any further disciplinary action, the record of any prior disciplinary action relating to performance or attendance issues (but not other conduct issues) will not be used to support further disciplinary action.

### **Article 17 - Contracting of Work**

#### **Section 1. Contracting Out.**

In the event NMSU decides to contract out work that has been traditionally performed by BUEs, it will provide the Union with written notice, not less than twenty-one (21) days prior to the proposed implementation, describing the work to be contracted, the basis for the decision to contract out, and the anticipated effect on BUEs. The Union may request bargaining within twelve (12) days of receiving this notice. In the event of an impasse in bargaining, NMSU may implement its last offer and the Union may not invoke impasse arbitration. Work "traditionally performed" will not include work temporarily contracted out to meet emergency needs or mandates of higher authorities or work contracted out in accordance with existing practice.

#### **Section 2. Returning Work to NMSU Service.**

Where the Union contends that work being performed under a service contract can be more economically, efficiently and qualitatively performed by BUEs, it will notify NMSU of its contention in writing, supported by a statement setting forth the reasons why it believes such work can be more economically, efficiently and qualitatively performed by BUEs. NMSU will, upon a specific written request, furnish the Union with information reasonably available and relevant to its analysis, subject to withholding such information after receiving valid written objections from the contractor on grounds of confidentiality or because of the proprietary nature of the information requested. Where NMSU, after reviewing the Union's contentions and conducting further analysis on its own, determines that the work can be more economically, efficiently and qualitatively performed by BUEs, the Parties will jointly develop a plan to return such work to NMSU service.

## Article 18 - Wages

### Section 1. Wage Increases.

- A. Budget. Wages for BUEs in the Bargaining Unit are determined by NMSU in the annual budget. The implementation of any wage increases budgeted by NMSU is contingent upon the specific appropriations of funds by the Legislature for such purpose. If the Legislature fails to make specific appropriations of funds necessary to implement a wage increase budgeted by NMSU, either Party may open negotiations to renegotiate the increase consistent with the Legislative appropriation. NMSU agrees to cooperate with the Union in efforts to obtain appropriations from the Legislature to fund the wage increases.
- B. BUEs Ineligible for Annual Wage Increase or Performance Adjustment.
1. BUEs hired on or after January 1 of the calendar year are not eligible for either the annual wage increase or performance-based adjustment unless an alternate date is mutually established by the Union and NMSU.
  2. The following BUEs will not be eligible for a performance-based wage adjustment:
    - a. BUEs on Long Term Disability (LTD) or Leave Without Pay (LWOP) status for six (6) months or more during the preceding review period;
    - b. BUEs with an "Unsuccessful/Unacceptable Performance" (previously, "Fails to Meet Expectations") or "Partially Successful Performance/Needs Improvement" (previously, "Needs Improvement") overall performance rating on the preceding performance evaluation.

### Section 2. Compensation Administration.

- A. Entry Level Pay. New BUEs are normally hired at the entry level of the appropriate pay grade. With justification and prior approval of the relevant dean, director or vice president, and the executive vice president and provost or relevant campus president, and HRS, certain applicants may be hired at five (5%) percent with 5 years above the posted minimum qualifications, ten (10%) percent, 10 years above the posted minimum qualifications or fifteen (15%) percent, 15 years above the posted minimum qualifications, above the entry level pay grade, dependent upon experience.
- B. Wage Schedule. The wages of all BUEs are based on the pay grade as set by the current wage schedule and NMSU job classification descriptions. Classification descriptions are standardized descriptions of the characteristics, duties, and minimum qualifications for a group of positions. No BUE will be paid less than the minimum for his or her pay grade in the wage schedule. The qualifications statement in each classification description

establishes minimum requirements that are to be met by an individual before being considered for appointment or promotion. Combinations of education and experience are specified in the classification description. Other combinations, if deemed equivalent by HRS, may qualify an individual for appointment or promotion. BUEs may be required by their Supervisor to perform duties outside the general skill level of their classification specification on a temporary basis. A Supervisor who determines that the standard classification description does not accurately describe a position should initiate reclassification action, consistent with the provisions of this Agreement.

C. Temporary Assignments.

1. Duration. Temporary assignments will not normally exceed one (1) calendar year.
2. Higher Position Differential. A BUE who is temporarily assigned to a higher position due to a vacancy, an extended absence, or NMSU critical project/effort for a period in excess of one (1) calendar month, will receive a pay differential in the amount of 10% from the first day of the month following the effective date of assignment. To receive the pay differential, the BUE must meet minimum qualifications for the position and be provided with written notification of the duration of the assignment and associated pay differential. If NMSU determines there are no qualified BUEs, the duties will be reassigned to other employees by the Manager.
3. The pay of a BUE who is temporarily assigned to a lower or lateral position will not be adjusted.

D. Demotion (Voluntary or Involuntary) to Lower Pay Grade. When a BUE is demoted or accepts a lower level position, the pay rate for the lower position will be the *greater* of either: (1) five (5) percent above the entry level for the lower level position; or (2) the following applicable percentage decrease in pay from the prior position:

- 5 percent decrease if the demotion is one pay grade lower;
- 8 percent decrease if the demotion is two or three pay grades lower;
- 15 percent decrease if the demotion is four or more pay grades lower;
- 5 percent decrease per pay grade thereafter.

E. Voluntary Lateral Transfer to the Same Pay Grade. A lateral transfer is not a justification for a change in pay rate.

F. Reclassification or Recruitment/Selection to Higher Pay Grade. When a BUE is reclassified or selected for a higher level position as part of a recruitment process, the pay

rate for the higher position will be the *greater* of either: (1) five (5) percent above the entry level pay grade for the new higher level position; or (2) the following applicable percentage increase in the pay grade from the prior position:

- 5 percent if new position is one pay grade higher;
- 8 percent if the new position is two or three pay grades higher;
- 15 percent if the new position is four or more pay grades higher.

- G. Reclassification. Reclassification to a position with the same pay grade will not justify a pay rate adjustment. An adjustment in classification by HRS which results in change of pay grade or elimination of title may or may not result in a pay rate change. Decisions regarding such changes will be made on a case-by-case basis.
- H. Retroactive Pay Adjustment. Pay adjustments may be applied retroactively back to the day of the calendar month in which any general pay adjustment was approved, provided that the adjustment cannot be applied to a period in a prior fiscal year without specific approval of HRS. (Example: a BUE was granted a pay adjustment effective April 26 but, due to an error, the proper amount was not paid. The error was discovered on June 15. The retroactive adjustment may be made back to April 26, the date the adjustment was approved.)
- I. Overpayment. If a BUE is overpaid due to an administrative error, the BUE will be responsible for reimbursing NMSU for the total overpayment. The overpayment may be repaid in the same increments and frequency in which the overpayment occurred, provided, however, that the entire overpayment balance outstanding upon BUE termination may be deducted from the BUE's final paycheck.
- J. Three-Year Longevity Increase. BUEs who complete their initial three (3) consecutive years of service with a performance rating of Fully Successful (previously "Meets Expectations") or better on their most recent evaluation will be awarded a five (5%) percent pay increase effective on the BUE's anniversary date. Prior service with a break in employment in excess of five (5) Business Days is not credited toward the three (3) years of longevity. Leave without pay is not included as service time.
- K. Service Increase. Effective on the first day of the month after the employment anniversary date, BUEs may be awarded a service increase upon satisfactory completion of the specified number of years in accordance with this schedule: \$750 after 10 years; \$850 after 15 years; \$1,000 after 20 years; \$1300 after 25 years; and \$1500 after 30 years (prorated for less than full time BUEs). The increase will not be retroactive and will be subject to fully successful performance as documented on the performance evaluation form.
- L. Daily Maximum Hours of Employment. No BUEs, other than fire fighters, dispatchers, or supervisor farm/ranch, whose duties require them to work longer hours, or BUEs working primarily in a standby position, will normally be required to work more than sixteen (16) hours in any 24-hour period, except in emergency or special situations.

### **Section 3. Overtime Compensation.**

NMSU will compensate BUEs for Overtime at the rate of one and one-half times the BUE's regular hourly rate of pay, including any pay differential. BUEs may elect to receive Comp Time in lieu of Overtime pay as provided in Article 28, Section 8.

### **Section 4. Shift Differential Pay.**

Shift differential pay refers to the extra compensation a BUE receives for hours worked that are outside the hours of 7:00 a.m. to 5:00 p.m., Monday through Sunday.

- A. Work Schedules. Units which need staffing outside NMSU's regular business hours will establish work schedules divided into three, 8-hour shifts, in any 24-hour workday. Shift hours that begin between 7 a.m. and 3 p.m. are designated as the daytime shift. Shift hours begin between 3 p.m. and 10 p.m. are designated as the swing shift, and shift hours begin between 10 p.m. and 7 a.m. are designated as the graveyard shift.
- B. Shift Differential Pay Rate. Daytime shift work is paid at the BUE's normal base hourly rate of pay; work on the second (swing) shift receives an additional ten cents (\$.10) per hour pay differential; work on the third shift (graveyard) receives an additional forty cents (\$.40) per hour pay differential. Any differential other than as specified here must have advance written approval from HRS.
- C. Shift Differential Pay Qualification. BUEs will receive shift differential pay only when their regular work schedule includes at least three or more hours of the swing or graveyard shift, in which case the BUE will receive shift differential pay only for the hours actually worked that extend into the swing or graveyard shift (and not during any leave time). [See ARP 7.10, Part 1].
- D. Shift Duty Form. Assignment to shift duty must be evidenced by an appropriate form, executed by the BUE's department manager or Supervisor, including the applicable shift code.

### **Section 5. Geographic Pay Differential.**

NMSU may provide pay differentials for BUEs working in geographical locations that require a higher pay rate to be competitive with the appropriate market, or where the cost of living is substantially higher than in Las Cruces, New Mexico. A BUE who temporarily receives the geographic pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

### **Section 6. Area Differential Pay.**

When BUEs are sent on temporary duty to locations outside their normal work area and the cost of temporary lodging and food exceeds the normal per diem rate, NMSU may provide a temporary pay differential to the BUE's base pay rate during the assignment to compensate for this expense. The Supervisor must submit requests for such pay differential to HRS. [See ARP 7.10, Part 2]. A BUE who temporarily receives the area pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

#### **Section 7. Hardship Differential Pay.**

- A. Rule Statement. Hardship differential pay is extra compensation (a minimum \$1.25 per hour pay differential) above the BUE's regular pay rate that is occasionally paid to BUEs assigned to work for a fixed period of time on a specific project to meet an objective, and under extraordinary working conditions. [See ARP 7.12]. Hardship differential pay will be included in the calculation of Overtime pay. [See ARP 7.12]. A BUE who temporarily receives the hardship pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.
  
- B. Procedural Guidance. Management will attempt to schedule BUEs such that excessive Overtime and hardship to the BUE is avoided; the hardship differential pay addresses those situations where this cannot be avoided. [See ARP 7.12, Part 2(A)].
  - 1. Extraordinary working conditions outside the scope of the essential functions of the position include situations when the BUE will work an inordinate number of hours beyond the normal forty (40) hour workweek; work under unusually risky or hazardous conditions, including permit-entry confined space work assignments; or work at a remote location (non-standard location away from home) through a holiday. Such working conditions should not be the norm, and payment of extra compensation is justified due to the significant hardship placed on the BUE during the period of time necessary to meet the work objective. [See ARP 7.12, Part 2(B)].
  - 2. Hardship differential pay is awarded only upon written approval of both the appropriate dean or vice president and HRS.

#### **Section 8. Physical Science Laboratory Differential.**

Based upon the unique demands of working within the Physical Science Laboratory (PSL), including security measures and regulations relating to the federal contracts under which work is performed, NMSU may provide a temporary pay differential to some or all BUEs working in PSL. A BUE who is temporarily receives the PSL differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

#### **Section 9. Multi-Lingual Pay Differential.**



In facilities or offices where NMSU deems it necessary to have multi-lingual BUEs on staff to facilitate work-related communications with members of the public, and BUEs on staff assigned to the facility are available and capable of fulfilling such need, NMSU may designate a sufficient number of BUEs in the assigned workforce to perform such duties. Such BUEs will be entitled to a pay differential in the amount of \$.10 per hour, effective only upon receipt by HRS of a Personnel Action Form (PAF) approved in writing by the Supervisor or Department Head which specifies the multi-lingual pay differential. [See ARP 7.11]. A BUE who temporarily receives the geographic pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

#### **Section 10. Degree Attainment Wage Adjustment.**

BUEs with "Superior" (previously, "Exceeds Expectations") or better job performance, who earn degrees from an accredited institution of higher education during their employment, will be rewarded according to the following guidelines.

- A. Higher Degree. A BUE will receive recognition only once for each type of degree awarded (i.e., associate's, bachelor's, master's, and doctorate). A BUE will not receive an increase for earning a lower degree than already held. A BUE may only receive an increase for earning the same level degree as already held if the degree is directly related to the position and no increase was previously awarded. [See ARP 7.15 (A)].
- B. Effective Date. The applicable wage increase will be effective on the first day of the month following award of the degree, or on the first day of the month in which a degree increment request is received by HRS, whichever is later. [See ARP 7.15 (B)]. Degree increments will not be paid on a retroactive basis. [See ARP 7.15 (C)].
- C. Pay Increase Amounts. BUEs who meet the above criteria are eligible for a wage increase of:
  - 1. 5 percent of their current wage, not to exceed \$1,000, for an associate degree;
  - 2. 5 percent of their current wage, not to exceed \$1,200, for a bachelor's degree;
  - 3. 5 percent of their current wage, not to exceed \$1,400, for a master's degree;
  - 4. 5 percent of their current wage, not to exceed \$1,600, for a doctorate. [See ARP 7.15 (D)].
- D. Qualification Form. BUEs who are eligible for a degree increment must submit a written request to their Supervisor, with a copy of their credit transcripts indicating a degree has been awarded. Upon verification of a "Superior/Highly Effective" (previously, "Exceeds Expectations") performance evaluation, the Supervisor will submit the proposed degree attainment pay adjustment request on an NMSU personnel action form, with the transcript

and a copy of the performance evaluation attached, for approval by HRS. When approved, the pay adjustment will be effective at the time the personnel action form was received by HRS.

**Section 11. Journeyman License Attainment Wage Adjustment.**

A BUE in Facilities and Services (FS), who: (1) works in the plumbing or electric trades; (2) earns the minimum number of hours required working as an apprentice under the supervision of a licensed journeyman; and (3) passes the journeyman test, will be reclassified and paid at the appropriate pay grade for the classification. Supervisors are responsible for submitting a request for reclassification. BUEs who obtain a journeyman's license and are reclassified must remain employed with NMSU in a position utilizing the journeyman's license (e.g. HVAC Mechanic, HVAC Mechanic Lead, Plumber, Plumber Lead, Electrician, Master Electrician, Steam Fitter, or Plant Operator) for three (3) years after obtaining the license. Failure to complete three (3) years of employment following licensure will result in the employee reimbursing NMSU, pro-rata, for the cost of the license and the class to obtain the license.

**Article 19 - Deductions**

**Section 1. Union Dues Payroll Deduction.**

NMSU will honor voluntary uniform Union membership dues deduction authorizations. The Union, acting through a duly authorized officer, will certify to NMSU, in writing, the amount per pay period to be deducted for Union dues under deduction authorizations. The certified dues amount will not include special assessments, penalties, political contributions, or fines of any type.

NMSU will begin all voluntary deductions promptly after the authorization is received in a timeframe consistent with other Employee payroll deductions. If a BUE has insufficient earnings for the pay period, no dues or other deduction will be made for that BUE for that pay period.

**Section 2. Transfer of Deducted Funds to Union.**

NMSU will remit to the Union all money deducted from BUE wages under this Article promptly after the payday covering the pay period of deduction. NMSU will provide the Union with a list of the names of the BUEs from whom NMSU made deductions under this Article, indicating the amount deducted for dues. This listing may be made available in an electronic format.

**Section 3. Termination of Dues.**

BUEs may instruct NMSU and the Union, in writing, to terminate Union dues deductions, only between July 1 and July 14 of any year that this Agreement is in effect. NMSU will honor the dues deduction authorization only until the BUE provides proper instructions to terminate the deductions as provided in this Section.

**Section 4. Indemnification.**

NMSU assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union will indemnify and hold NMSU harmless from and against any claims, actions, or proceedings arising from deductions made by NMSU pursuant to this Article. Once the funds are remitted to the Union, their disposition is the sole and exclusive obligation and responsibility of the Union.

**EMPLOYEE BENEFITS**

**Article 20 - Insurance Benefits**

**Section 1. Insurance Plans.**

- A. Maintenance of Insurance Benefits. Subject to changes in eligibility criteria, enrollment requirements and coverage which are applicable to all Employees, NMSU will maintain its Insurance Benefits that are in effect and delineated in the Administrative Rules and Procedures as of the effective date of this Agreement, as they relate to BUEs. These benefits include: group medical, prescription drug, group vision, group term life, AD&D, group long-term disability, group dental plan, and voluntary life insurance programs. [See generally ARP 8.21-8.27].
- B. Part-Time BUE Participation. No insurance benefit is provided for part-time BUEs working less than 0.75 FTE, except that those part-time BUEs who enrolled in benefits prior to 7/1/16 are allowed to continue the benefit. [See generally ARP 8.21, Part I(A)].
- C. NMSU's Contributions. Subject to approval by the NMSU Board the Regents, NMSU will contribute the following amounts to the cost of Employee insurance benefits:

Pay rate	Percent of premium paid by NMSU	Percent of premium paid by employee
Under \$36,000	80%	20%
\$36,000-\$44,000	70%	30%
Over \$44,000	60%	40%

**Section 2. Modification of Insurance Benefits.**

The State of New Mexico provides the health insurance benefits and options to NMSU Employees. NMSU will provide the Union with advance notification of planned changes to insurance benefits (e.g., deductibles, out-of-pocket and lifetime maximums, co-pays) and permit the Union a reasonable opportunity to meet with NMSU to review the changes prior to implementing such changes.

**Section 3. Health Care Flexible Spending Accounts.**

All eligible BUEs may elect to participate in the NMSU Health Care Flexible Spending Account benefit under the same terms and conditions as other NMSU Employees, as it may be amended from time to time. [See ARP 8.14].

**Section 4. Pre-Tax Premium Plan.**

All eligible BUEs may participate in the NMSU Pre-Tax Premium Plan under the same terms and conditions as other NMSU Employees, as it may be amended from time to time. [See ARP 8.15].

**Article 21 - Holiday Leave Benefit**

**Section 1. Holiday Leave Benefit.**

Eligible Employees (as defined in ARP 6.03) are provided with fourteen days of paid holiday leave on designated dates each year. Only BUEs determined to be essential to operations will be required to work on designated holidays, and those BUEs will receive an alternative benefit as provided in this Article. [See ARP 8.56, Part 1].

**Section 2. Holiday Observance.**

NMSU is closed for business in observance of the following designated holidays:

1. Martin Luther King, Jr. Day;
2. Spring Holiday (1 day);
3. Memorial Day;
4. Independence Day (observed on July 4th; except when July 4th falls on Saturday, the holiday will be observed on Friday, and when it falls on a Sunday, it will be observed on Monday);
5. Labor Day;
6. Thanksgiving Day;

7. Friday following Thanksgiving Day; and
8. Winter Break (seven week days including those in the period from December 24 through January 1; when December 24 falls on a Saturday or Sunday, the preceding Friday is also included and when January 1 falls on a Saturday or Sunday, the subsequent Monday is also included). [See ARP 8.56, Part 2].

### **Section 3. Eligibility for Holiday Leave Pay.**

- A. Eligibility. Except as otherwise provided in this rule, BUEs are eligible for holiday leave pay for designated holidays. Holiday leave pay is prorated for eligible part time BUEs. [See ARP 8.56, Part 3].
- B. Ineligibility for Holiday Leave Pay. BUEs are ineligible for holiday leave pay under these circumstances:
  1. **Unexcused Absence:** The BUE has an unexcused absence on their last scheduled Work Day preceding the holiday, or on their first scheduled workday following a holiday.
  2. **LWOP Status:** The BUE is on leave without pay (LWOP) on the day preceding the designated holiday. [See ARP 8.56, Part 3].
- C. Coordination of Holiday Leave with Employment End Dates. Eligible BUEs separating from NMSU will receive the holiday leave pay benefit through their date of separation from NMSU service. [See ARP 8.56, Part 5].

### **Section 4. Alternative Benefits for Holiday Work [See ARP 8.56, Part 4].**

- A. Holiday not in Work Schedule. When an eligible BUE's regular work schedule does not include the holiday, the Supervisor will designate an alternative day of paid holiday leave within the same workweek.
- B. Comp Time in lieu of Holiday Premium Pay. If a BUE is required to work on one of NMSU's official holidays and has elected, in their semi-annual FLSA election, to receive Comp Time in lieu of Overtime pay, then the Comp Time hours credited for the holiday worked will be calculated in the same manner as for holiday premium pay below.
- C. Holiday Premium Pay. BUEs required to work on a holiday, and who do not receive an alternative day off in lieu of the holiday, will be paid holiday premium pay equal to their regular rate of pay, plus an additional 1½ times their regular rate of pay, regardless of the number of hours actually worked during the normal workweek.

- D. Calculation of Overtime in Holiday Week. Overtime pay calculations for those weeks with paid holidays will be determined in accordance with ARP 7.20, Part 3., as it exists or is amended.

## Article 22 - Other Leaves

### Section 1. Annual Leave.

- A. Accrual Rate. Regular BUEs will accrue twenty-one (21) workdays (168 hours) of paid annual leave each year, to be prorated for half-time or more BUEs. For each hour of annual leave taken, BUEs are compensated at their regular hourly rate. Leave is earned from the first day of employment and may be used as it is earned. Hours worked over forty (40) hours per week do not accrue either annual or sick leave. [See ARP 8.4I].
- B. Carry-Over Leave. Up to 240 hours accumulated annual leave may be carried forward each July 1 and may be paid upon termination of employment. In the case of death, the maximum payment for unused leave will be 400 work hours. The end of the fiscal year (June 30) is the date for determining accumulated leave. [See ARP 8.4I(E),(F)].
- C. Programming Leave. It is the responsibility of the BUE and Supervisor to ensure that the use of annual leave is programmed in advance and used so the BUE will not lose any leave. Leave accrued in excess of 240 hours at the close of business on June 30 of each year will be forfeited. A BUE's pay can be docked for a voluntary day off if they do not have a leave balance to cover. [See ARP 8.4I(H),(I)].
- D. Transfer of Annual Leave. Annual leave will be transferred with the BUE from one department to another. BUEs who are converting to temporary status may be paid for unused annual leave as stated above. BUEs who are terminating may request terminal leave (with administrative approval) in lieu of lump sum payment and will not accrue leave during terminal leave unless they return to regular work status. BUEs who are retiring may accrue leave during terminal leave. [See ARP 8.4I(J), (L), (M)].

### Section 2. Sick Leave.

- A. Sick Leave Available. Regular, full-time BUEs will be granted twelve (12) workdays of paid sick leave each year. This is prorated for half-time or more BUEs. Leave will be earned from the first day of employment and may be used as it is earned. Hours worked over forty (40) hours per week do not accrue either annual or sick leave. BUEs may accrue and bank one hundred (100) Work Days (800 hours) of accumulated sick leave (prorated for less than full-time BUEs and for any partial months by 9-month BUEs). [See ARP 8.43 Part I(A); (C)-(E)].
- B. 100 Day Maximum. On July 1 of each year, a BUE who has accumulated more than one-hundred (100) workdays of sick leave will have the sick leave balance reduced to one-

hundred (100) days. A department may require supporting documentation for any usage of sick leave any time abuse of sick leave is suspected. Any grant of sick leave in excess of three (3) consecutive Work Days should be supported by a medical certificate or other evidence administratively acceptable. Abuse of sick leave may be grounds for immediate dismissal. Annual leave may be applied (if available) against leave in excess of the allotted sick leave days, but sick leave will not be applied against annual leave in any case. [See ARP 8.43 Part I(E)-(G)]

- C. Cash Value. Sick leave accrued after July 1, 2016, will have no cash value and will not result in a payout benefit. [ARP 8.43, Part H]. Those BUEs who accrued more than 600 hours of sick leave prior to July 1, 2016 will retain the sick leave payout benefit that was in place on June 30, 2016, but only with respect to those hours accrued prior to July 1, 2016. This sick leave payout benefit will be referred to as a "grandfathered" benefit. Any BUE with a grandfathered sick leave payout benefit who terminates, retires or converts from a 12-month pay base to an academic faculty pay base will be paid, in accordance with the formula in effect on June 30, 2016, for any then remaining grandfathered sick leave benefit (calculation based on the lesser of the leave balance on July 1, 2016 or the leave balance on the date of separation). The formula in effect on June 30, 2016 stated: payment will be made at a rate of 50 percent of the BUE's straight-time hourly wage, multiplied by the number of sick leave hours accrued over 600, to a maximum of 200. The payment may not exceed 50 percent x hourly rate x 200. (According to Educational Retirement Board rules, this payment will not be included in the 5-year average wage used for the retirement benefits calculation.) [See ARP 8.43, Part I(H)-(1)].
- D. Use of Sick Leave. Sick leave may be used when the BUE's, absence is reasonably required for the treatment of or recovery from illness or injury. Sick leave may also be used when the BUE's absence qualifies as protected leave under the Family Medical Leave Act. Consistent with applicable law, a physician's statement may be required to support the usage of sick leave for the BUE or qualified dependents. BUEs on Family and Medical Act (FMLA) leave must use any available sick leave concurrently with FMLA, pursuant to ARP 8.45. A BUE will not be compensated for a missed day from work if the BUE does not have accrued paid leave available. [See ARP 8.43, Part I(K)].
- E. Supporting Documentation. A department may require supporting documentation for usage of sick leave any time a BUE has an insufficient leave balance and is absent from work, or if abuse of sick leave is suspected. Any BUE required to provide documentation to support an absence may be placed on unpaid administrative leave pending NMSU's receipt and approval of such supporting documentation. In addition, any grant of sick leave in excess of three (3) consecutive Work Days should be supported by a medical certificate or other evidence administratively acceptable. Abuse of sick leave may be grounds for immediate dismissal.
- F. Nine-Month BUEs. Regular, nine-month BUEs may earn 9 days of sick leave a year (8.00 hours per month worked, prorated based on job FTE). Annual leave or sick leave for nine-month BUEs may be used only during the regular employment time period they are

scheduled to work each fiscal year. Leave is prorated for BUEs who work less than full-time. [See ARP 8.43, Part 2].

**G. Sick Leave Bank.**

1. Eligibility. BUEs will be allowed to participate in the Sick Leave Bank ("Bank"). Participating BUEs affected by a "personal medical emergency," and who have insufficient leave to cover required work absences, will be entitled to use the Sick Leave Bank. A "Personal Medical Emergency" is defined as an "unusual and catastrophic medical or immediate family medical emergency that is likely to require a BUE's absence from duty for a prolonged period of time and to result in a substantial loss of income because of the unavailability of paid leave." Only those items allowable under NMSU sick leave rules stated above are covered by the Sick Leave Bank; maternity leave in connection with a pregnancy without medical complications is not a "personal emergency." [See ARP 8.28(A)-(C)].
2. Donation Rules. The Bank allows BUEs to share the risk of severe circumstances by donating to a common pool of leave. Members of the pool are required to enroll in the long-term disability insurance program, offered by NMSU, as a protection against income loss while recovering from a severe medical condition. The long-term disability policy covers total disability after a waiting period of one-hundred and thirty-five (135) consecutive calendar days or one-hundred (100) workdays. The maximum a recipient can receive from the Sick Leave Bank is seventy (70) days per "personal emergency" with no more than one withdrawal from the bank per fiscal year or per personal emergency. No more than seventy (70) days can be withdrawn for a particular medical condition. The Bank does not provide for the first thirty (30) days of the "personal medical emergency"; these are the responsibility of the BUE and are covered by the BUE's sick and annual leave or leave without pay. Program requirements and application procedures are maintained on the web pages for HRS. [See ARP 8.28(D)-(H)].

**Section 3. Compassionate Leave.**

In the event of the death of a member of the immediate family, a BUE is allowed a leave with pay, not to be charged against sick or annual leave, of up to three (3) regular Work Days following the death of the family member without loss of pay to attend the funeral or to handle affairs immediately associated with the death. Immediate family member includes spouse, a domestic partner as defined in ARP 8.03 [Domestic Partner Eligibility for Benefits], a child, parent, or legal guardian, a sister or brother, a grandparent, or a grandchild. Such familial relationships created by law are also included (i.e. mother/father in law; half or step siblings). [See ARP 8.47].

**Section 4. Family and Medical Leave.**

NMSU Employees, including BUEs, are entitled to job-protected leave under the Family and Medical Leave Act (FMLA Leave) to the extent provided by federal law and NMSU policy, rules, and procedures. BUEs holding accrued sick leave must take sick leave concurrently with FMLA



Leave until accrued sick leave is exhausted. BUEs who do not have accrued sick leave may elect to take accrued annual leave concurrently with FMLA Leave or may choose to be placed on leave without pay. BUEs should notify HRS-Benefit Services once aware of an FMLA qualifying event. [See ARP 8.45].

#### **Section 5. Jury Duty Leave.**

- A. Jury Duty Leave. Jury duty is that service and time spent away from a NMSU job as a result of a subpoena or notice issued by court. In order for BUEs to fulfill their civic responsibility as jurors, BUEs may be granted leave for this purpose. BUEs are not required to report for work after serving eight (8) hours of jury duty during the day. If service is less than eight (8) hours in a day, BUEs will return to work for the remainder of their 8-hour shift (or may request annual leave). Department heads are authorized to grant jury duty leave upon the presentation of a subpoena or notice issued by the appropriate court. NMSU will pay BUEs who serve such duty their normal wages for each regular workday of service, not to exceed eight (8) hours per day. A copy of a written statement furnished to the BUE by the court indicating the time spent serving jury duty must be furnished to the Supervisor. It is the responsibility of the BUE to keep the Supervisor informed of the anticipated time to be spent away from the job. BUEs must use annual leave or leave without pay for jury duty/witness service in a jurisdiction other than that of their primary work locale, with the exception of BUEs residing in El Paso and working in Las Cruces. BUEs may not receive any form of compensation from state courts other than mileage. BUEs may receive compensation while serving on federal juries. [See ARP 8.50, Part 1(A)-(I)].
- B. Witness Leave. BUEs have the same right as all citizens, and on occasion the obligation, to serve as witnesses in a court of law. As such, they are not representatives of NMSU, but are private citizens. Their conduct in the case of court appearances as private citizens should, however, reflect well on NMSU. Eligible BUEs will be granted annual leave, or placed on leave without pay if ineligible for leave, for time spent testifying as a witness. The BUE should provide their immediate Supervisor with a copy of the subpoena in order to receive approval for time off. BUEs who are plaintiffs in any legal action against NMSU must use annual leave or leave without pay for all time spent in activities related to such action. BUEs appearing on behalf of NMSU or as a representative of NMSU in any legal action, to include depositions or witness testimony, will not be required to use annual leave or leave without pay. The BUE may accept a witness fee as provided by law. [See ARP 8.50, Part 2(A)-(E)].

#### **Section 6. Military Leave.**

NMSU will comply with all federal and state laws, as amended from time to time, governing military leave. In accordance with state law, NMSU provides paid training leave for its BUEs who are members of organized units of the Army or Air National Guard or Army, Air Force, Navy, or Marine Reserves, in an amount not to exceed 15 days annually when they are ordered to active duty training with such organized units. Such leave will be in addition to other leave or vacation

time with pay to which such BUEs are otherwise entitled. (See NMSA 1978, §20-4-7) [See ARP 8.46, Part 1].

**Section 7. Leave Without Pay (LWOP).**

LWOP for a period up to ninety (90) calendar days may be requested by a BUE and either approved or disapproved by the director/department head. Requests for LWOP in excess of ninety (90) days should be submitted to the department head or director. If the department head recommends approval, the request is forwarded through the dean or vice president to HRS for consideration. Circumstances in individual cases will determine if such leave will be granted. If leave is granted, it should be reported as a change of status. A BUE who requests and is granted a leave of absence without pay for a full pay period resulting in insufficient pay to cover the BUE's cost of the benefit premiums must make arrangements through HRS to pay the full cost (NMSU and BUE) of insurance premiums and make timely payments to NMSU Accounts Receivable. BUEs who do not make premium payments by the last day of the month are subject to having their coverage cancelled. Annual and sick leave do not accrue during LWOP. All days, including legal holidays, in the interim period between the date LWOP commences and the date the BUE actually returns to work, are taken without pay. Any partial days, taken immediately before or after the official leave without pay period, will be deducted from leave accrued upon return. An appointing authority may involuntarily place a BUE on leave without pay if approved by HRS and executive vice president and provost. LWOP will not be granted to a BUE who has annual leave unless specifically approved by the executive vice president and provost, except under the Family and Medical Leave Act. [See ARP 8.55(A)-(G)].

**Section 8. Administrative Leave.**

NMSU may, in its discretion, provide paid administrative leave to BUEs for purposes it deems appropriate. Since each case requiring administrative leave is unique, such circumstances will not provide a precedent for treatment of other BUEs.

**Section 9. Domestic Abuse Leave**

NMSU will comply with all federal and state laws, as amended from time to time, governing domestic abuse leave. [See generally ARP 8.44].

**Section 10. Absence for Purpose of On-Campus Interview.**

NMSU will provide paid release time to a BUE who is requested to interview for another NMSU position. Annual leave will not be charged against a BUE who is requested to interview for another NMSU position. [See ARP 8.51].

**Section 11. Absence for Purpose of Voting.**

On Election Day, BUEs who are registered voters will be entitled to two (2) hours of paid release time to be absent from employment for the purpose of voting between the time of opening and the time of closing the polls. The appropriate Supervisor may specify the hours during this period in

which the voter may be absent. This does not apply to BUEs whose workday begins more than 2 hours subsequent to the time of opening the polls or ends more than 3 hours prior to the time of closing the polls. This policy applies to city, county, state, and national elections. [See ARP 8.49].

#### **Section 12. Leave Requests.**

FMLA Leave requests are administered by HRS-Benefits. Other requests for leave will be considered by a Supervisor with primary consideration given to the requirements of the job. Requests should be made in writing in advance whenever possible. [See ARP 8.40(A)].

Subject to the foregoing, annual leave should generally be granted on a first come, first served basis. Requests should be made in writing in advance whenever possible. Such requests will not be unreasonably denied.

#### **Section 13. Leave Records.**

NMSU will establish and maintain accurate leave records updated on a pay-period basis. Supervisors are responsible for establishing and maintaining appropriate leave records. [See ARP 8.40(D)].

#### **Section 14. Contract Administration Leave.**

- A. Union Representatives. NMSU will provide Contract Administration Leave for Union Representatives, including stewards who are BUEs, consistent with the following provisions. This leave will be designated as contract administration leave for pay purposes.
- B. Amount of Leave. The total amount of Contract Administration Leave granted by NMSU during a fiscal year may not exceed thirty (30) days.
- C. Requests for Leave. All requests for leave under this section will be submitted to HRS administrator designated for such purposes in writing, signed by the Union and the Union Representative, at least fifteen (15) Business Days in advance of the day on which the leave is to begin and will include:
  - 1. A general description of the activity and its purpose;
  - 2. The date and location of the activity; and
  - 3. The name(s) of the BUE(s) for whom contract administration leave is being requested.
  - 4. Where the leave request is for eight (8) hours or less, the minimum notice required is seven (7) Business Days.
- D. Approval. Approval of leave under this section will not be unreasonably withheld, consistent with Section 12 of this Article.

- E. Substituting Union Representatives. If the Union needs to substitute a Union Representative for those previously granted Contract Administration Leave, or substitute new dates, such requests will be submitted for approval as soon as possible to the HRS administrator designated for such purposes. Approval of substitutions or dates will not be unreasonably withheld, consistent with Section 12 of this Article.

#### **Section 15. Other Leave Taken**

In the event of a campus closure or facility closure under which BUEs are directed not to report to work or are released from work during otherwise regularly scheduled work hours, for reasons that are not in the BUE's control, BUEs will be paid for the regularly scheduled work hours and should report the time away from work as Other Leave Taken (OLT).

#### **Section 16. Release Time for Campus-Sponsored Activities**

BUEs who are members of committees that are established and sanctioned by NMSU, or who are permitted by such committees to be in attendance, will be entitled to attend committee meetings that are held during regular business hours on paid time, provided they have received prior approval from their Supervisor.

### **Article 23 - Tuition Remission**

NMSU encourages all regular BUEs to engage in life-long learning to enhance their careers by taking advantage of tuition remission programs. BUEs are entitled to the same Tuition Remission Program benefits as other Employees, in accordance with ARP 8.61.

### **Article 24 - Domestic Partners**

NMSU is committed to providing equal employment and educational opportunities to all individuals. All BUEs who have a "Qualified Domestic Partner," as defined in the ARP, will be provided services and benefits on the same basis provided to legal spouses and dependents, except where expressly prohibited by law. [See ARP 8.03, Part 1]. All NMSU policies that affect BUEs, legal spouses and their families also apply to Qualified Domestic Partners and their families. [See ARP 8.03].

### **Article 25 - Parking**

NMSU will continue to maintain parking areas designated for free use. Outer Lot Parking permit fees will not increase more than 10% annually.

## PERFORMANCE

### Article 26 - Probation

After a BUE successfully completes an original probationary period, which is the trial period of time following hiring as a new BUE at NMSU in which the individual's potential as an NMSU Employee is assessed, there will be no other probationary periods during the BUE's continuous employment. [See ARP 9.01, Parts (1)-(4)].

### Article 27 - Performance Evaluations

#### Section 1. Purpose.

Performance evaluations are intended to establish a communication tool to ensure that BUEs are performing their duties and exhibiting conduct at acceptable levels, to provide a means by which to document performance and conduct, to allocate merit increases, and to establish a procedure for correcting performance and conduct problems, should they occur. Performance evaluations do not affect NMSU's ability to take disciplinary action. Written evaluations conducted by a BUE's supervisor will be provided to the employee for review and signature acknowledging receipt. No BUE will be denied a merit pay increase based upon NMSU not providing a timely annual performance evaluation. [See generally ARP 9.05, Part 1].

#### Section 2. Performance Ratings.

- A. Performance Evaluation should be completed for BUEs after completion of a probationary period annually, and any time a Supervisor considers an evaluation necessary. [See ARP 9.05, Part 1].

For each of the elements evaluated and for the overall rating, a BUE will receive one of the following ratings:

**5-Distinguished Performance and Role Model Status.** Clearly and consistently demonstrates extraordinary and exceptional accomplishment in all major areas of responsibility. Performs above and beyond expectations under exceptional circumstances during the review period. Others in similar roles rarely equal performance of this caliber.

**4-Superior/Highly Effective Performance.** Performance is continually and consistently superior, and regularly goes beyond what is expected. An exceptional contributor whose performance exceeds expectations on a consistent and sustainable basis.

**3-Fully Successful/Effective Performance.** Performance consistently meets the critical requirements of the position, continually achieves preset goals, and performs with distinction. Incumbent performance is reliable and consistent in adding value to the work unit.

**2-Partially Successful Performance/Needs Improvement.** Performance does not consistently meet or occasionally falls below what is required of the position; improvement in specific areas is required.

**1-Unsuccessful/Unacceptable Performance.** Performance fails to meet minimum expectations for this role, and immediate and sustained improvement is required.

### **Section 3. Performance Elements.**

Performance elements will be based on the regular and recurring duties assigned to the BUE and previously agreed-upon goals and objectives. At a minimum, the following core competencies for NMSU system success will be rated on a performance evaluation:

- Achievement toward NMSU Strategic Goals;
- Collaboration and Teamwork;
- Critical Thinking and Problem Solving;
- Interpersonal Effectiveness;
- Job Mastery;
- Organizational Awareness;
- Resource Management;
- Results Orientation and Execution;
- Self-Awareness and Accountability;
- Service and Quality Focus; and
- Valuing Diversity and Inclusion.

Elements will be rated fairly and equitably. The Supervisor will take into account equipment and resource problems, lack of available training, and other such matters outside a BUE's control. Pre approved time away from the job, including sick leave, annual leave, Comp Time off, and authorized duty time for Union representational purposes and other authorized activities, will not be considered negatively in the application of performance elements, but evaluations will fully take into account such pre-approved absences in a measure of timeliness and quantity of work. If a BUE does not have an opportunity to perform work encompassed within an element for reasons outside of the BUE's control, that element will not be considered in the performance evaluation process.

#### **Section 4. Supervisor Completion.**

Normally, the BUE's immediate Supervisor will prepare all performance evaluations. A BUE who is transferred will be given an exit evaluation to be used in conjunction with the new Supervisor's year-end evaluation. Where a BUE works under a new Supervisor for at least six (6) months of the evaluation period, that Supervisor may elect not to use the former Supervisor's evaluation. When both evaluations are used, the overall ratings may be averaged in accordance with the number of months evaluated by each Supervisor. [*See generally* ARP 9.05, Part 2(B), (G)].

#### **Section 5. Deficient Performance or Violation of Standards of Conduct.**

- A. Meeting with Supervisor. In the event during the current rating period, a Supervisor considers an evaluation necessary or useful, based on the Supervisor's assessment of a BUE's performance or conduct, the Supervisor will meet with the BUE to discuss the deficiencies. If a performance evaluation is conducted, the Supervisor will include in the written performance evaluation an explicit description of:
1. any violation of applicable standards of conduct; and
  2. the specific tasks and standards that will assist the BUE in accomplishing his/her overall objectives for the next evaluation period; and
  3. any training requirements.
- B. Time to Correct. The BUE will be given a reasonable defined amount of time to correct the performance and conduct deficiencies before the next performance evaluation is conducted, unless the deficient performance occurs late in the annual evaluation period.

#### **Section 6. Miscellaneous.**

- A. Other Provisions. Performance evaluations will also include the following:
1. an overall performance rating for the period;
  2. job mastery and conduct goals and objectives for the forthcoming period (which may include recommendations for development or training to enhance the BUE's skills); and
  3. a statement identifying area(s) for improvement and a description of improvement or development activities, and follow-up review date to review progress for an overall rating of either "Partially Successful Performance/Needs Improvement" or "Unsuccessful/Unacceptable Performance."
- B. No Forced Distribution. NMSU will not prescribe a forced distribution of levels for ratings for BUEs covered by this Agreement. Pay will be based on the overall performance evaluation rating, which will be based on the criteria set forth herein.

- C. Changes to Evaluations. NMSU may change a BUE's annual evaluation only with written justification to HRS. The BUE will have access to his/her annual evaluation and will be considered a part of the BUE's official personnel file. A statement of a BUE's objection to an evaluation or comment may be included on the evaluation or attached and placed in his/her personnel file.
- D. Disagreements on Evaluation. Disagreement with overall performance ratings of "Partially Successful Performance/Needs Improvement" (previously, "Needs Improvement") or "Unsuccessful/Unacceptable Performance" (previously "Fails to Meet Expectations") may be grieved or appealed through the Union Grievance Procedure or NMSU appeals process.

## **WORK RULES AND CONDITIONS**

### **Article 28 - Hours of Work**

#### **Section 1. Workweek.**

- A. Workweek. For payroll purposes, the workweek will be the calendar week, from 12:00 a.m. Sunday through 11:59 p.m. Saturday. NMSU's official HRS payroll system (e.g., currently the Banner system) will be used for the entry of all time worked and leave taken.
- B. Work Schedules. Unless otherwise specified herein, the normal work schedule for full-time BUEs will consist of five (5) consecutive days, with eight (8) hours per day, Monday thru Friday. The Parties agree that due to the operational needs of NMSU, some BUEs will have work schedules other than the normal work schedule, but these alternative schedules should be kept to minimum, wherever possible. Except in extenuating circumstances, the scheduled starting and ending times will remain consistent throughout the workweek. Changes in the regularly scheduled starting and ending times will be communicated to each affected BUE, in writing, two (2) weeks prior to the scheduled changes becoming effective, unless the operational needs of NMSU demand otherwise, in which case, reasonable notice will be provided as soon as practicable. [See ARP 6.85(A)]. BUEs will be at their assigned work station or check-in station and ready to begin work at the start of their assigned shift.
- C. Alternate Work Schedule for DACC Security Officers. Security Officers at all DACC (Dona Ana Community College) locations work a 45-hour workweek, which includes a paid lunch period of 60 minutes, during which they remain on site and respond to calls. Officers are provided a consistent, alternative work schedule with Overtime compensation, along with any shift differentials in accordance with this Agreement. Any additional Overtime needed will be assigned on a rotating schedule, based on Classification seniority. When applicable, Holiday Pay will be paid in addition to Overtime compensation, as provided in ARP 7.20, Part 3 (C), as it exists or is amended. [See ARP 8.56, Part 4].



- D. Flexible Schedules. To meet the business needs of NMSU, specified positions will have a flexible work schedule. The schedule for such positions will be established no less than weekly and communicated to the BUE in writing no later than 12:00 a.m. on the Friday prior to the workweek. Additionally, the hours worked each week will remain consistent with the assigned FTE. Positions that have a flexible work schedule will be posted with the following language, "*flexible work schedule to be established each week based on needs of the hiring department.*"

## **Section 2. Work Breaks**

A fifteen (15) minute work break is allowed for each consecutive 4-hour work period. Break times cannot be accumulated. Break times not used when allotted will be forfeited. General guidelines regarding break times are as follows:

- A. No Added Break Times. Break times cannot be added to the meal break and generally should not be taken within one (1) hour before or after the meal break or beginning or end of the shift/work day.
- B. No Deducted Break Times. Break times cannot be deducted from the beginning or end of the work period to reduce overall length of total work period.

## **Section 3. Meal Break.**

A normal workday will consist of 6-8 hours of work with a minimum of one-half hour and a maximum of 1 hour of non-work time granted for a meal period. Periods of less than 1 hour meal time and specific eating on the job arrangements must be approved by the Supervisor.

Meal breaks should normally be scheduled at the mid-point of the BUE's regular work shift. Bargaining Unit positions currently receiving a paid meal break on the effective date of this Agreement will continue to receive this benefit under this Agreement.

## **Section 4. Workload Standards.**

NMSU will assign workloads to treat BUEs as equitably as possible. NMSU will consider re distribution of staff or positions among a department's programs, shifts, or work sites or other means to alleviate excess workload and will specifically consider hiring additional staff where there are chronic workload problems. In addition, the Parties will utilize the Labor Management Committee, Article 36, to address workload issues for BUEs that are assigned caseloads.

**Section 5. Overtime Management.**

Subject to an exception for designated positions agreed upon by the Parties, BUEs will not normally work Overtime. NMSU has no contractual obligation to offer Overtime work. [See ARP 7.20, Part 3 (Preamble)]. A BUE's daily or weekly schedule will not be changed to avoid the Overtime payment or accrual of Comp Time, without the BUE's consent. [See ARP 7.20, Part 3]. Overtime will be paid in accordance with Section 7 of this Article or the BUE will earn Comp Time in accordance with Section 8 of this Article.

**Section 6. Distribution of Overtime Opportunities.**

If Overtime is required that is not within the specific job assignment of an individual BUE, then the Supervisor will first offer Overtime to the BUEs under his/her supervision who are qualified to perform the necessary work. If more than one qualified BUE volunteers to work Overtime, the Supervisor will assign Overtime based on classification seniority within the work group that he/she supervises and rotate Overtime assignments as equitably as possible. If no volunteers are available, then the Supervisor will designate BUEs capable and qualified to perform the work based on reverse classification seniority and mandated Overtime will be rotated as equitably as possible. NMSU has the right to require BUEs to work Overtime consistent with this section.

**Section 7. Payment of Overtime.**

All Overtime worked and reported by the payroll deadline will be paid to the BUE at the next regularly scheduled payday. [See ARP 7.20, Part 4].

**Section 8. Compensatory (Comp) Time.**

- A. Election of Comp Time. Upon election by the BUE, Overtime may be compensated with Comp Time in lieu of the increased hourly pay rate. When Comp Time is elected, the BUE is paid for all Overtime at the BUE's regular hourly rate of pay and the BUE accrues Comp Time at an additional 0.5 times the Overtime worked. Each year NMSU designates two opportunities for BUEs to change their election to receive either Comp Time or additional pay for Overtime, with elections effective on January 1 or July 1. [See ARP 7.20, Part 5(A)].
- B. Scheduling Comp Time Usage. The date(s) to be taken off from work as Comp Time will be scheduled by agreement between the Supervisor and the BUE. Supervisory approval for the use of Comp Time will not be unreasonably withheld. A Supervisor may direct a BUE to use accrued Comp Time. [See ARP 7.20, Part 5(B)].
- C. Maximum Comp Time Available. A maximum of one hundred and twenty (120) hours of Comp Time may be accrued in a fiscal year. Comp Time earned for Overtime and reported by the payroll deadline will be accrued at the next regularly scheduled payday. A BUE may request payment of accrued Comp Time at any time, which will then be paid at the next regularly scheduled payday. Accrued Comp Time which is not taken as time off or paid

prior to the end of each fiscal year, or prior to transfer or termination, will be paid to the BUE. [See ARP 7.20, Part 5(C)].

**Section 9. Standby Pay.**

NMSU may assign a BUE to Standby status in accordance with ARP. 7.13, Part 1. BUEs placed on Standby status are paid \$1.25 per hour for each hour of assigned Standby status.

**Section 10. Unrestricted On-Call.**

Voluntary, unrestricted on-call lists may be maintained for the purposes of offering available Overtime. BUEs who are not on Standby status may decline to return to work if contacted, without penalty, discipline or other reprisal, if they acknowledge they are not fit to report to duty. [See ARP 7.13, Part 2].

**Section 11. Call-Back Pay.**

On-Call BUEs who are required to return to work on a scheduled Work Day after going off-duty, or who are called to work on a non-Work Day, are guaranteed a minimum of two (2) hours of pay for the actual time worked at the BUE's regular hourly rate or Overtime rate (whichever is applicable). For BUEs called back to work, paid time will commence at the time the BUE begins travel to report for work and ends at the completion of the call-back assignment. NMSU will not use these call-back pay provisions to undermine or circumvent the distribution of Overtime. [See ARP 7.14].

**Section 12. Vehicle Call-Back Allowance.**

Departments may elect to offer a vehicle call-back allowance (VCB) of \$15.00 for each occasion in which a BUE is required to return to the NMSU work location on call back. In such units, the BUE will indicate a VCB event on the timecard.

**Article 29 - Non-Discrimination and Compliance with Laws**

**Section 1. Non-Discrimination.**

NMSU will comply with all applicable laws relating to equal employment opportunity in the workplace and will not discriminate against any BUE based on a legally protected characteristic. Written policies and procedures will be applied as consistently as possible in substantially similar circumstances to the BUEs to whom the policies and procedures apply, except as otherwise required or allowed by law.

## **Section 2. Compliance with Laws.**

Alleged violations of this Article may be grieved in accordance with the Grievance Procedure, outlined in Article 35, except alleged violations of personnel policies and procedures dealing with compliance with the: (1) Fair Labor Standards Act (FLSA); (2) the Americans With Disabilities Act Amendments Act (ADAAA); (3) the Age Discrimination and Employment Act (ADEA); (4) the Family and Medical Leave Act (FMLA); (5) the Equal Pay Act (EPA); and (6) all other applicable federal and state equal employment opportunity laws and regulations, all as amended. If any of these laws apply, complaints may be raised through the appropriate NMSU department, as follows: for alleged FMLA or FLSA violations, complaints should be submitted to HRS; alleged ADA, ADEA and EPA complaints should be submitted to the Office of Institutional Equity (OIE). Nothing in this section will prevent a BUE from reporting alleged violations of law through the appropriate governmental agency.

## **Article 30 - Health and Safety**

### **Section 1. General Duty.**

NMSU agrees to maintain at all times a safe and healthy work place consistent with applicable laws and regulations. BUEs agree to report any unsafe or unhealthy working conditions immediately to Supervisors. [See ARP 16.30].

### **Section 2. Duties of the Labor-Management Committee.**

As a way to promote and maintain safe and healthful working conditions in the workplace, NMSU and the Union agree that the Labor Management Committee will address health and safety issues as needed. Safety-related issues will have agenda priority at each meeting of the Labor Management Committee. Refer to Article 36 herein.

### **Section 3. Personal Protective Clothing and Equipment.**

NMSU will select and provide protective clothing and equipment where such is required by applicable laws and regulations. NMSU will also select and provide safety glasses for BUEs working in job classifications where safety glasses are required. NMSU will provide reimbursement for BUEs' prescription safety glasses damaged in the course of the BUE's regular duties through no fault of the BUE. Where a BUE's duties require the wearing of safety shoes by law NMSU will select and provide safety shoes, at no cost to the BUE. As shoes become damaged through normal wear and tear, the BUE will be eligible for replacement shoes once annually.

### **Section 4. Health and Safety Training.**

NMSU will be responsible for ensuring that BUEs receive training in order to safely carry out the day-to-day functions of their job requirements, including the following:

- A. Cardiopulmonary Resuscitation (CPR) Training. NMSU will offer CPR training provided by a certified trainer at no cost to BUEs. BUEs will be entitled to attend training on paid work time provided they have received supervisory approval.
- B. Asbestos Training. Any BUE required to work with or around asbestos will be provided the proper training and personal protective equipment.

**Section 5. Hepatitis B Vaccination.**

BUEs who have potential exposure to blood and other body fluids as part of their required job duties will be offered Hepatitis B vaccination(s) at NMSU's expense.

**Section 6. Asbestos Precautions.**

When an asbestos hazard is discovered, all affected BUEs will be immediately notified of the existence and location of the hazard and NMSU will take precautionary measures to protect the BUEs from exposure. NMSU will conduct ongoing inspections to detect the presence of an asbestos hazard or any other health hazard and will provide updates to the Union.

**Section 7. Indoor Air Quality.**

NMSU will ensure non-hazardous air quality in all buildings, offices and spaces where BUEs work in compliance with law. When conditions in any office, building, or work area reach a hazardous level as determined by the appropriate responsible authority, NMSU will immediately take action to ensure that BUEs are provided with non-hazardous air quality at no lost compensation to BUEs.

**Section 8. Physical Exams.**

When the health of a BUE is adversely affected by exposure to potentially harmful physical agents, toxic materials, or infectious agents in the course of their employment, NMSU agrees to pay for any physical examinations and other necessary tests, as determined by a medical provider designated or approved by NMSU, that are administered for diagnostic purposes. NMSU will, at a BUE's request, provide an annual hearing test at no cost to those BUEs who are regularly exposed to working conditions that include noise levels in excess of OSHA toleration levels as prescribed in the regulations of the New Mexico Occupational Safety and Health Bureau (NMOSHB). Upon request, animal handlers will be given an annual screening for job-related exposures by a medical provider designated or approved by NMSU, at no cost to the BUE.

**Section 9. Reports by Governmental Agencies.**

A BUE who is a member of the Labor Management Committee will be entitled to accompany officials of any government agency conducting a safety-related investigation on the premises of NMSU, provided that the presence of the committee member does not interfere with the investigation. NMSU will provide the Union with notification of unscheduled investigations. A

copy of any investigation report that NMSU receives from any government agency regarding a safety issue will be furnished to the Union upon request.

**Section 10. No Retaliation.**

No retaliation or disciplinary action will be taken against a BUE 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 11. Drug-Free Workplace and Academic Environment**

Federal Drug and Alcohol Regulations. NMSU is subject to the provisions of the Drug-Free Workplace Act of 1988, the special Drug-Free Workforce rules promulgated by the Department of Defense, the Drug-Free Schools and Communities Act, and other state and federal laws and regulations. NMSU has directed the Chancellor to institute and maintain programs that meet the requirements of federal drug and alcohol laws and regulations. These programs are administered through HRS. [See ARP 16.65]. Applicants and BUEs, along with all other NMSU employees, are subject to drug and alcohol testing as required by law and by NMSU policy, as may be amended from time to time.

**Article 31 - Training**

**Section 1. NMSU Responsibility.**

- A. Job Training. NMSU recognizes its responsibility to provide relevant job training for BUEs to improve their proficiency in carrying out job duties. NMSU regularly offers training sessions for the development of skills, knowledge, abilities, and individual growth, in conformance with the institution's mission, vision and strategic plan. NMSU BUEs may request to attend such trainings. Supervisors also may require BUEs to attend these trainings, or other relevant training, to enhance work performance.
- B. Union Recommendations. The Union may submit written recommendations concerning training needs, and the same will be a topic of discussion between NMSU and the Union.
- C. Time of Training. Training will normally be conducted during regular business hours. If a Supervisor must choose between multiple BUEs within the same classification for job training, classification seniority will be the determining factor used if all other relevant circumstances are relatively equal as determined by NMSU. NMSU, at no cost to the BUE, will provide all training materials. All time spent in training sessions will be considered work time.
- D. CEUs. In the event a BUE's duties require completion of periodic Continuing Educational Units (CEUs), all time spent in required CEU courses will be considered work time. The costs of required CEU courses will be borne by NMSU.

- E. Cost of Licensing or Certification. The cost of licensing or certification, or renewals of licensing or certification, required to perform job duties will be borne by NMSU.
- F. Consequence for Failure to Attend. A BUE who fails or refuses to attend mandatory training will be subject to discipline, up to and including termination.

**Section 2. New Technology.**

- A. Training. NMSU will provide training so that BUEs may learn to use new technology where NMSU requires the use of such new technology.
- B. Conditions for Promotion or Appointment. NMSU will not require that promotions or appointment of BUEs be conditioned upon satisfactory completion of a technology-training program unless the training and competency standards are requirements of the position.

**Article 32 - Uniforms and Equipment**

**Section 1. Uniformed Job Classifications.**

For each uniformed job classification, NMSU will provide uniforms consistent with the practice in effect upon the effective date of this Agreement, provided no such BUE will be offered fewer than five (5) sets. Uniforms are laundered for BUEs working as vehicle mechanics and painters.

**Section 2. Replacement of Uniforms.**

As uniforms become damaged through normal wear and tear and no fault of the BUE, NMSU will provide replacement uniforms. BUEs will turn in their damaged uniforms and personal protective equipment prior to the Supervisor (or designee) ordering replacements. Replacement uniforms will be in new condition and fit properly. All issued uniforms will be returned to the appropriate Supervisor (or designee) by the BUE upon separation from NMSU or during leave without pay for periods of two weeks or more.

**Section 3. Tools.**

NMSU will provide, at no cost to BUEs, the proper tools for BUEs to safely complete their required tasks.

## Article 33 - Physical Examinations

### Section 1. Fitness for Duty

- A. Fitness for Duty. NMSU endeavors to provide a safe and productive work environment for the benefit of all members of the NMSU community. BUEs are expected to manage their health in such a way that they can safely and effectively perform their essential job functions and to discuss with their Supervisor any circumstances that may negatively affect their ability to do so. The Fitness for Duty examination process is not intended to be a substitute for sick or medical leave requests, workers' compensation claims, reporting of alleged violence in the workplace, or emergency response to situations where there is an immediate threat of harm, performance management, or disciplinary processes. Supervisors will continue to address performance problems and conduct through the performance appraisal process and corrective or disciplinary action, as appropriate.
- B. Evaluation by Supervisor. A Supervisor who receives reliable information from the affected BUE or others that the BUE may be unfit for duty, or through personal observation believes a BUE to be unfit for duty, will validate and document the information or observations as soon as is practicable and provide a report to HRS ELR to initiate a fitness for duty examination. Actions that may trigger the need to evaluate fitness for duty include, but are not limited to, medical restrictions, or issues such as problems with dexterity, coordination, concentration, memory, alertness, vision, speech, inappropriate interactions with coworkers or Supervisors, inappropriate reactions to criticism, or suicidal or threatening statements.
- C. HRS Review and Determination. HRS-ELR will: (1) review the circumstances that led to the referral for an evaluation; (2) determine whether a fitness-for-duty evaluation is necessary; (3) notify the BUE in writing if an evaluation is deemed necessary; (4) select the health care professional who will perform the evaluation; and (5) review results and determine what, if any, action is appropriate.
- D. Independent Medical Examination. NMSU may require an independent medical evaluation (IME) of the BUE's physical or mental capabilities to determine his or her ability to perform essential job functions, with or without reasonable accommodations. Such evaluations are conducted by an independent, third party, licensed health care professional and are undertaken only after approval by HRS ELR. To the extent possible, NMSU will protect the confidentiality of the valuation and results. Whenever NMSU requires a medical examination from a physician selected or approved by NMSU, NMSU will pay the cost of such examination.
- E. Action following IME. NMSU will take appropriate administrative action based upon the results of the IME. Where an IME reveals a physical or mental "disability," as defined by the Americans with Disabilities Act Amendments Act, the matter will be referred to the NMSU Office of Institutional Equity for a determination regarding reasonable accommodation as set forth in Section 2 below.



- F. Involvement of Third Parties. In any situation where there is a reasonable basis to think that a crime may have been committed or the BUE is making threats to harm the BUE or others, or is acting in a manner that is immediately dangerous to the BUE or others, the Supervisor will immediately notify the NMSU Police Department and, as soon as possible, HRS-ELR. In such cases, HRS-ELR or the Supervisor will notify the Employee Assistance Program (EAP) immediately, or if after business hours, then as soon as possible the next Business Day.

## **Section 2. ADAAA Interactive Process and Reasonable Accommodation.**

If a health care professional determines that a BUE has a physical or mental disability that substantially impairs the BUE's ability to perform the essential functions of his or her position, OIE will work with the BUE and the Supervisor to determine if there is a reasonable accommodation(s) that will allow the BUE to continue working. Reasonable accommodation(s) are provided to any BUE determined by NMSU to be a "qualified individual with a disability," as that term is defined the Americans with Disabilities Act Amendments Act (ADAAA). NMSU will determine on a case-by-case basis, what reasonable accommodation(s) will be provided, if any, after the Supervisor, the BUE, and the BUE's medical provider(s), as necessary, engage in the ADAAA Interactive Process, coordinated by OIE. NMSU will assess the effectiveness of each proposed accommodation and determine whether the accommodation(s) will pose an undue hardship on NMSU or an undue risk of harm to the health or safety to the BUE or others. If an appropriate and reasonable accommodation cannot be made, other options (for example, placing the BUE on medical leave or terminating employment) may be considered and will be communicated to the BUE.

## **Section 3. Commercial Driver's License**

NMSU will pay any costs to BUEs required to undergo physical examinations in connection with commercial drivers licensing required by the BUE's position. Whenever possible, examinations will be scheduled during the BUE's workday and the time spent to complete the examination will be considered work time.

# **CORRECTIVE ACTION AND REMEDIATION**

## **Article 34 - Disciplinary Actions**

The primary purpose of disciplinary action is to address performance, attendance, and conduct problems by continuing to identify problems, causes, and solutions. When possible, this will be accomplished in a positive and constructive way to help the BUE become a fully productive member of NMSU. In instances where a BUE commits a serious violation of policy, or shows insufficient improvement after initial remedial actions, or engages in repeat occurrences of improper conduct, or when performance deficiencies follow corrective action measures, a Supervisor may take appropriate further disciplinary action.

**Section 1. Just Cause.**

- A. Grounds for Discipline. A BUE will be disciplined only for Just Cause in accordance with this Agreement. Discipline will, in no case, be effective until the BUE has received written notice of the discipline. NMSU has the burden of proof in any proceeding under this Article.
- B. Just Cause Defined. "Just Cause" is generally described as any conduct, action, or inaction, arising from, connected with, or impacting the BUE's work, whether on or off duty, that is inconsistent with the BUE's obligation to NMSU, or violates NMSU's interests, policies, or procedures, including performance deficiencies. Although impossible to cite an all-inclusive list of actions that constitute Just Cause, examples include, but are not limited to:
1. Falsification of documents;
  2. Threatening, assaulting, or abusive behavior;
  3. Sexual or other illegal harassment, on or off campus, which may explicitly or implicitly affect an Employee's performance, or unreasonably interfere with a person's employment or academic endeavors;
  4. Jeopardizing the safety or health of an Employee, including oneself, or a student, guest, or customer of NMSU;
  5. Dishonesty, misrepresentation, omission, or intentional fabrication of facts or events;
  6. Negligent, incompetent, inefficient, or unacceptable performance of duties;
  7. Insubordination, which is willful disregard of reasonable directives or policies, or a defiant attitude of noncompliance toward applicable regulations, directives, or policies;
  8. Failure or refusal to complete mandatory training;
  9. Conduct that interferes with the efficient and ethical operation of NMSU;
  10. Inability or unwillingness to perform the duties required of a position;
  11. The use, possession, or presence in the bodily system of alcohol while at work, or reporting to work under the influence or being under the influence of alcohol while on the job;
  12. The manufacture, sale, distribution, or dispensing of illegal drugs at any location; the purchase, use, possession or storage of illegal drugs while present on NMSU property or during work hours for NMSU; reporting to work with illegal drugs

present in the BUE's bodily system; or being under the influence of illegal drugs while on the job;

13. Possession on NMSU property of drug paraphernalia or stolen property;
14. Conviction or admission of a felony or a misdemeanor involving moral turpitude to the extent permitted under NMSA Section 28-2-4;
15. Theft of, or careless, negligent, improper, unauthorized, or malicious use of NMSU Property, including equipment and funds;
16. Failure to report for work or to promptly report a justifiable reason for absence to the department head or immediate Supervisor;
17. Repeated tardiness, poor attendance, or abuse of leave;
18. Misconduct which adversely affects the interest or reputation of NMSU or its Employees;
19. Any repetition of offenses that previously resulted in a reprimand, warning, demotion, or notification of unacceptable performance or suspension;
20. Job abandonment. [*See* ARP 10.10, Part 7].

**Section 2. Limitations on Imposition of Discipline.**

- A. Fair and Impartial Discipline. NMSU agrees to administer discipline consistent with this Article. Similarly situated BUEs will be treated similarly regarding the application of disciplinary actions, but mitigating and aggravating circumstances will be considered.
- B. Procedural Steps. Before taking any disciplinary action related to a BUE's performance or behavior, the Supervisor, in consultation with HRS will:
  1. Investigate the alleged performance deficiencies, or improper conduct or behavior;
  2. Provide written notice to the BUE that the investigation could result in disciplinary action, allow union representation when requested by the BUE, and make an effort to hold meetings in private;
  3. At the conclusion of an investigation, consider all facts, including any mitigating circumstances;
  4. Consult with HRS to determine the appropriate disciplinary action, if any, to be imposed; and

5. Provide the BUE with written notice of the disciplinary action imposed in the case of Documented Verbal Warning or Written Reprimand (as defined below), or proposed, in the case of a more serious disciplinary action. The written notice of disciplinary action or proposed disciplinary action will contain the following:
  - a. The type of action being proposed;
  - b. The specific acts resulting in the proposed action;
  - c. The effective date of the proposed action;
  - d. A summary of the information used to support the proposed action;
  - e. A statement that the BUE may respond to the proposed action and allegations in writing or request a review hearing in writing, within two (2) Business Days of receipt of the notice;
  - f. A statement that if the BUE does not respond in writing to the notice or make a written request for a review hearing, the disciplinary action will become final and effective two Business Days after the notification is provided; and
  - g. A statement that the Union may appeal final action involving suspension, demotion, or termination through arbitration on the BUE's behalf, and that if the Union declines to appeal the final action through arbitration, the BUE may file a post-action appeal with HRS-ELR within fifteen (15) Business Days of receipt of the notification of discipline or proposed discipline or, if a Review Hearing was requested, within fifteen (15) Business Days of receipt of the notice of final determination following the review hearing process. [See ARP 10.10, Part 6].
- C. Administrative Leave. With HRS approval, a BUE may be placed on administrative leave with pay or subjected to other interim protective measures during any notification period or investigation of conduct or performance deficiencies. The placement on administrative leave is not a disciplinary action.
- D. Timing of Discipline. NMSU will impose disciplinary action no later than thirty (30) calendar days after it acquires knowledge of the BUE's alleged misconduct, unless facts and circumstances exist which require a longer period of time. If additional time is required, NMSU will notify the BUE prior to the expiration of the thirty (30) calendar days. Ongoing performance deficiencies may be the subject of disciplinary action at any time.
- E. Double Jeopardy. After taking disciplinary action against a BUE, NMSU may not impose any additional disciplinary action against that BUE for the same specific incident of misconduct.

### **Section 3. Options for Discipline.**

The Supervisor may request a disciplinary action from the listing below as appropriate to the nature and severity of the offense or unacceptable performance or conduct. Progressive discipline will be used when deemed appropriate by NMSU. There are instances when a disciplinary action, including termination, is appropriate without first imposing a less severe form of discipline. Any discipline beyond a documented verbal warning requires prior approval from HRS.

- A. Documented Verbal Warning. The Supervisor gives the BUE an explicit verbal notification of unacceptable performance or policy violation, and prepares a memorandum of record for the departmental file. A copy of the memorandum is provided to the BUE. [See ARP 10.10, Part 3(A)].
- B. Written Reprimand. The Supervisor prepares a reprimand memorandum addressed to the BUE, obtains approval from HRS, and forwards a copy to HRS for inclusion in the BUE's file. A copy is provided to the BUE. [See ARP 10.10, Part 3(B)].
- C. Suspension. The BUE is placed on leave without pay for a specified period of time no less than (1) Work Day. The Supervisor obtains approval from HRS and the appropriate dean or vice president, then provides the BUE with at least (5) Business Days advance notification before imposition of Suspension. [See ARP 10.10, Part 3(C)].
- D. Demotion. The BUE is reassigned or reclassified to a different work assignment or lower pay grade.
- E. Involuntary Termination. The BUE is permanently separated from employment at NMSU and is ineligible for rehire. Termination of employment is appropriate in cases of egregious misconduct or performance issues, or failure to rectify performance or conduct issues after other disciplinary options have been exercised. A Supervisor obtains approval from HRS and the appropriate dean or vice president prior to delivering a termination (pre-termination) notice to the BUE. [See ARP 10.10, Part 3(D)].

### **Section 4. Review Hearing.**

- A. Hearing Process. When a BUE makes a written request for a review of any imposition of discipline or any preliminary notification of proposed discipline of suspension, demotion, or termination, the Supervisor will immediately notify HRS. HRS will arrange an informal review hearing at least two (2) Business Days after the BUE's request. These steps will be followed: (1) the AVP HRS (or designee) will appoint an impartial hearing officer and set the hearing date and location; (2) the hearing officer will meet with the BUE, the BUE's immediate Supervisor (or designee), and a representative of HRS ELR; and (3) at the hearing, the BUE and other participants will have the opportunity to give testimony and present documents or other evidence relevant to the imposition of the discipline. Following the hearing, the hearing officer will issue a final determination.

- B. No Review Hearing Request. Should a BUE fail to respond in writing to a notice of proposed discipline, or respond but not request a review hearing, the Supervisor will consider the written response, if any, and issue a final determination, after consultation with the HRS administrator designated for such purposes.
- C. Other Hearing Guidelines.
1. The BUE may be represented by a Union Representative or another advisor at the hearing, but neither will be allowed to answer questions posed to the BUE or to otherwise speak for the BUE. If the representative is an attorney, the BUE must inform the HRS representative at least ten (10) business days in advance to allow NMSU time to arrange for its counsel to be present at the hearing.
  2. NMSU reserves the right to have its counsel present at any and all disciplinary hearings.
  3. Time limits specified may be changed if requested or if circumstances warrant a revision. [*See generally* ARP 10.10, Part 6].

**Section 5. Right to Union Representation.**

A BUE has the right to Union representation, if requested by the BUE, in any of the following events: (1) during any investigatory interview or discussion with a BUE who is the subject of an investigation when the BUE reasonably believes the interview could lead to discipline; (2) at a disciplinary hearing regarding the BUE; and (3) at each step of a Grievance, in accordance with this Agreement. The Union Representative may consult with and advise the BUE at any time during the course of the relevant meeting or outside the meeting. The Union Representative may raise legitimate objections to questions during an investigatory interview or hearing, but may not unreasonably delay or interfere with the proceeding or answer questions on behalf of the BUE.

**Section 6. Other Procedures.**

- A. Mutual Agreement. This Article does not preclude NMSU, a BUE, and the Union from mutually agreeing to: (1) hold in abeyance a disciplinary action for a period not to exceed six (6) months in order to permit the BUE to improve conduct or performance; or (2) impose a lesser disciplinary action as a final and binding action not subject to appeal.
- B. Failure to Grieve or Appeal. If a BUE fails to grieve or appeal in accordance with the procedures provided in this Agreement, the BUE is considered to have accepted the decision.
- C. Time limits. Time limits specified may be changed when requests are made or circumstances warrant. The Parties may also agree to waive or extend any time limits as stated in this Article. [*See* ARP 10.10, Part 6].

- D. Exclusive Remedy. The Union's invocation of grievance arbitration of a suspension, demotion, or termination under this Agreement precludes the use of any other NMSU appeals processes that might otherwise apply.
- E. Resolution Encouraged. Each Party will make a reasonable effort to resolve a Grievance or appeal at the lowest level possible.
- F. Polygraph. A BUE will not be required to submit to a polygraph test.
- G. Self-Representation. A BUE may elect self-representation in any disciplinary matter consistent with Articles 34 and 35 of this Agreement.

## **Article 35 - Grievance and Arbitration Procedure**

### **Section 1. Grievance Definition.**

"Grievance", as used in this Article, means a Union-initiated resolution procedure, based upon an alleged violation, misapplication, or misinterpretation of this Agreement. However, the Preamble and Articles 1 through 3 of this Agreement are not subject to this procedure. The term Grievance does not include a non-union grievance process provided in ARP 10.20.

### **Section 2. Informal Resolution.**

Informal resolution of issues is encouraged before the Parties resort to a formal Grievance procedure. Informal resolution of Grievances prior to Step 1, as indicated below, will not establish a precedent or otherwise become binding as past practice or interpretation of this Agreement.

### **Section 3. Alternative Grievance Procedures.**

- A. Non-Union Grievance. An individual BUE may bring an individual, non-Union grievance in accordance with ARP 10.20 without the consent of the Union.
- B. Union-Sponsored Grievance. Only the Union may bring a grievance or invoke arbitration under this Article.
- C. Exclusive Remedy. Utilizing this Union-Sponsored Grievance and arbitration procedure on an issue, in part or in whole, precludes the use of procedures set forth in ARP 10.20, or any other NMSU appeals process that may apply to the same issue. Use of any other non-union grievance or appeals process provided by NMSU precludes the use of this Union-Sponsored Grievance and arbitration procedure on the same issue.

### **Section 4. Steps in the Grievance Procedure.**

A Grievance will follow these steps:

A. Grievance Step 1 - Initiation

Grievances are filed by the Union, or with consent of the Union, on behalf of an aggrieved BUE, or group of BUEs, covered by this Agreement. Suspensions, demotions, and terminations are not eligible for the Grievance process, but will proceed directly to arbitration, as provided below, if requested by the Union within ten (10) Business Days from the date of the final determination to suspend, demote, or terminate.

Grievances must be initiated at Step 1 and continue to Step 2, by presenting a written Grievance (on the Union approved form) to the grievant's immediate Supervisor promptly and no later than ten (10) Business Days after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged Grievance. The Union or grievant will submit the written Grievance to the immediate Supervisor, containing:

1. The BUE's name, job title, and department;
2. The name, address, and telephone of the Union Representative, if any;
3. The Article(s) of this Agreement alleged to have been violated;
4. A description of the alleged violation;
5. The relief requested; and
6. The signature of the grievant or of the Union Representative.

B. Grievance Step 2 - Immediate Supervisor Level

The immediate Supervisor will respond to the Grievance in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. If the Grievance is not satisfactorily resolved at Step 2, the Union may move to Step 3 by filing the written Grievance with the Department Head/Director Grievance Representative [hereinafter referred to as "DGR"] in each Department within ten (10) Business Days of receiving the Step 2 response.

C. Grievance Step 3 - Department Head/Director Level

The DGR is a person designated by NMSU in each Department to be the recipient of Step 3 Grievances on behalf of NMSU. If no DGR has been designated, then the Supervisor of the grievant's immediate Supervisor will be considered the DGR. The DGR will respond in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. The Union may then move to Step 4 by filing the Grievance with the Dean Vice President Grievance Representative [hereinafter referred to as "VPGR"] within ten (10) Business Days of receiving the Step 3 response.



D. Grievance Step 4 - Dean/Vice President Level

The Union or grievant will submit the written Grievance to the VPGR in the major organizational unit. The VPGR is a person designated by NMSU in each major organizational unit to be the recipient of Step 4 Grievances on behalf of NMSU. If no VPGR has been designated, then the top administrative official of the major organizational unit will be considered the VPGR. The VPGR may designate a senior administrator within his/her unit as designee to respond on his/her behalf. The VPGR or designee will respond in writing within ten (10) Business Days of receiving the written Grievance. Failure to respond will constitute a denial of the Grievance. The Union may then move the Grievance to Step 5 by filing with the Human Resource Services Grievance Representative ("HRSGR") within ten (10) Business Days of receiving the Step 4 response.

E. Grievance Step 5 - Human Resources Level

The Union or the grievant will submit the written Grievance to the HRSGR in writing. The HRSGR is a person within HRS designated and authorized by NMSU to receive and respond to Step 5 Grievances on behalf of NMSU. The HRSGR will respond in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. Except where the Union invokes arbitration as provided below, the determination by the HRSGR will be final.

**Section 5. Final and Binding Arbitration.**

If the Grievance is not satisfactorily resolved at the conclusion of the Grievance Procedure, the Union may elect to submit the Grievance to arbitration as provided below. Arbitration may only be invoked by the Union, not by the individual grievant.

- A. Written Demand. The Union may invoke arbitration by serving a written demand for arbitration to the HRSGR within thirty (30) calendar days after the time for HRSGR response has elapsed.
- B. Request for Panel. Within ten (10) Business Days of the written demand for arbitration, the Union will make a request for a panel of seven arbitrators from either the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA), at its discretion, unless the Parties by such time can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. Within ten (10) Business Days of the receipt of a list of arbitrators or agreement to an alternative panel, the Parties will meet to select the arbitrator. The selection will be made by the Union and NMSU alternately eliminating names. The last name remaining will be the arbitrator. The Parties will flip a coin to determine who will strike the first name. NMSU will reimburse the Union for one-half of the cost of obtaining a panel of arbitrators from FMCS or AAA, unless the matter is resolved prior to an arbitration hearing being held.

- C. Arbitrator's Decision. The decision of the arbitrator will be based upon the facts established by the testimony and documents presented in the case. The arbitrator will have no power to add to, subtract from, alter, or modify any of the terms of the Agreement, but may give appropriate interpretation or application to such terms and provide appropriate relief. The arbitrator will not have authority to make an award that includes a fine or other punitive damages or award of attorney's fees. The arbitrator's decision will be final and binding on the Parties, subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.
- D. Arbitrator's Fees and Expenses. Each Party will pay one-half of the arbitrator's fees and expenses.

**Section 6. Miscellaneous Provisions.**

- A. Recording. Tape recorders or other electronic recording devices will not be used by any Party participating in the Grievance, except by mutual agreement of the Parties. This provision will not apply to arbitration hearings.
- B. Modifying Time Limits or Steps by Agreement. Any of the time limits or steps set out in this procedure may be extended, waived, or otherwise modified by written agreement of the Parties.
- C. Skipping Steps. Those steps in the Grievance procedure that result in duplication of a step for a particular grievant may be skipped by the grievant (e.g., a grievant whose immediate Supervisor is a department head or dean).
- D. Failure to Respond. If NMSU fails to respond within the designated time limits, the Grievance is deemed denied and the Union may advance the Grievance to the next step in accordance with the procedures set forth in this Article.
- E. Grievable Actions. The issue of whether the action is grievable may be properly raised at any step of the Grievance procedure. The arbitrator will decide all issues regarding whether the action is grievable.
- F. Withdrawal of Grievance. A Grievance may be withdrawn by the Union at any step of the Grievance procedure without prejudice, except as to objections to timeliness.
- G. Legal Counsel. The Union and NMSU may be represented by legal counsel in arbitration.
- H. Waiver. The right to invoke arbitration is waived by any failure to strictly comply with the time limits set forth in all Grievance steps. Time limits may be extended only by mutual agreement in writing, signed by both the Union and NMSU. It is the intention of the Parties that the Grievance procedure set forth herein will be the preferred remedy of the Parties for any alleged breach of this Agreement.

## **LABOR MANAGEMENT ISSUES**

### **Article 36 - Labor Management Committee**

#### **Section 1. Purpose.**

To help promote a mutually constructive and cooperative relationship, the Parties agree to establish a joint Labor Management Committee [hereinafter referred to as the "Committee"] which will be a standing committee for the duration of this Agreement. The Committee will have the following specific objectives:

1. Foster communication between the Parties;
2. Serve as a forum to discuss issues of mutual concern;
3. Work to build consensus for joint problem-solving and planning where the Parties recognize it is best to have a shared position;
4. Inform and educate the NMSU community about the concept and benefits of a Labor Management partnership;
5. Communicate and share the activities of the Committee with the NMSU community; and
6. Make recommendations to the appropriate NMSU bodies and monitor the progress of such actions.

#### **Section 2. Authority.**

- A. The Committee will have no authority to modify the terms of this Agreement. Disputes over alleged violations of this Agreement must be pursued through the Grievance and Arbitration provision of this Agreement.
- B. The Committee will forward its recommendations to appropriate administrative designee(s) for consideration. No such recommendation will be considered or treated as constituting a binding agreement between the Parties.

#### **Section 3. Composition of the Committee.**

The Union and NMSU will each be permitted four (4) representatives on the Committee. Additionally, the Union and NMSU will each be permitted two (2) alternate representatives to attend when representatives from the Committee are unable to attend. The Union and NMSU will each designate one (1) member to serve as co-chair. The co-chairs, along with other Committee Members, will carry out all functions of the Committee, plan the agenda and arrange meeting dates and times.

**Section 4. Meetings.**

The Committee will meet at least once per quarter, or as the Committee members mutually agree. Members may attend meetings that are held during regular business hours on paid time provided they have received supervisory approval. Such supervisory approval will not be unreasonably withheld. Committee meetings will usually be held on NMSU Property unless the Committee agrees to other accommodations at no expense to NMSU.

**Section 5. Activities.**

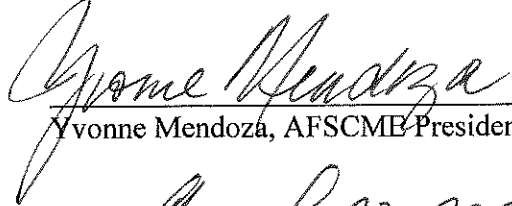
Among other activities that Committee members may mutually agree to pursue, Committee members will pursue the following:

1. A recommended plan for training Supervisors and Union Representatives on this Agreement.
2. A recommended plan for the Union's consultation in the planning and budgeting process of NMSU comparable to opportunities for consultation available to other Employee groups.
3. Any other activity the Committee deems warranted.

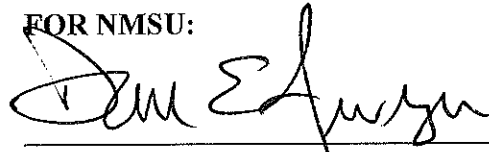
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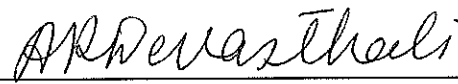
By signing below, the individuals represent that they are duly authorized to sign this Collective Bargaining Agreement made by and between the Regents of New Mexico State University (NMSU) and the American Federation of State, County and Municipal Employees, Council 18, Local 2393 (the Union), on behalf of their respective Party, and indicate their full and complete agreement to the terms set forth in this document.

**FOR THE UNION:**

  
\_\_\_\_\_  
Yvonne Mendoza, AFSCME President  
Date: August 22, 2022

**FOR NMSU:**

  
\_\_\_\_\_  
Dan E. Arvizu, Chancellor  
Date: 8/23/22

  
\_\_\_\_\_  
Ammu Devasthali, Chair  
NMSU Board of Regents  
Date: 8/24/2022