



# **AFSCME Local 1833**

**Memorandum of Understanding between the  
American Federation of State County and Municipal Employees  
& University of Maryland Eastern Shore**

**Effective July 1, 2016 through June 30, 2019**

**Exempt**



# **MEMORANDUM OF UNDERSTANDING**

**-between-**

**AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES**

**-and-**

**UNIVERSITY OF MARYLAND  
EASTERN SHORE**

**EXEMPT BARGAINING UNIT**

**07/01/16 THRU 06/30/19**

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## **PREAMBLE**

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

## **ARTICLE 1 - RECOGNITION**

### **Section 1. Exclusive Representative.**

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

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

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

### **Section 3. New or Changed Positions.**

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

## **ARTICLE 2 – NON-DISCRIMINATION**

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

## **ARTICLE 3 – MANAGEMENT RIGHTS**

### **Section 1. Scope of Rights.**

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

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

## **ARTICLE 4 - UNION RIGHTS**

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

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



**Section 2. Representation Rights.**

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

**Section 3. Means of Communication.**

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

**Section 4. Bulletin Boards.**

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

**Section 5. Right to Information**

The University shall provide the Union with the following information three (3) times yearly on January 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup>, a listing of all bargaining unit employees. The report shall include the name, job title, assigned salary, department, office/work location, work email, if available, and work phone number. The report shall be submitted both electronically, preferably in Excel format, and paper format. The University shall also provide to the Union a list of all new hires in the preceding months, a list of all employees who retired, resigned or otherwise separated from the University in the preceding half year and a list of all contingent employees due for conversion within 6 months. The University shall assign a unique identification number for all bargaining unit employees. All lists submitted to the Union shall include said unique identifier for each employee listed.

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

**Section 6. New Employee Orientation.**

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

**Section 7. Union Job Stewards.**

The Union may appoint or elect certain bargaining unit employees to serve as Union job stewards. There will be a total of three (3) job stewards representing employees covered by this MOU. Consistent with operational needs, the Employer will allow reasonable release time as defined in Article 14 -- Union Leave of the MOU, without loss of compensation, to job stewards for the purpose of presenting grievances to the Employer on behalf of an employee. Typically, a grievance will have no more than one Union representative (President or job steward) in attendance at a grievance hearing. Exceptions may be granted by mutual agreement of the parties. This limitation does not apply to non-university employee staff representatives. The Union will submit a list of job stewards to the Employer within ninety (90) days after the ratification of this MOU, and thereafter will notify the Employer in writing as to any changes to the job stewards' list. No employee may serve or act as a job steward until officially designated by the Union.

**Section 8. Meeting Space.**

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

**Section 9. Union Office on Campus**

The Employer agrees to provide the Union a designated office on campus for use for Union business. The designated office shall be secured and furnished with a telephone extension, and appropriately wired and activated for a desktop computer. The Union will be responsible for furnishing the office and providing the necessary equipment. The Employer and the Union shall consult as to the specific location of the Union office. The Office will be made available within 60 days following the date of ratification by the USM Board of Regents.

Since the union for all bargaining units is the same, there will be one office for all covered units – Exempt, Non-exempt, and Sworn Police Officers.

## **ARTICLE 5 – EMPLOYEE RIGHTS**

### **Section 1. In General.**

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

## **ARTICLE 6 – WORKING RELATIONS**

### **Section 1. Professional Working Relations**

The University and the Union agree that all employees, regardless of bargaining unit or union membership standing, shall treat each other with dignity and respect during the course of performing their professional duties for the University.

### **Section 2. No Verbal Abuse or Overzealous Supervision**

The University and the Union agree that supervisory employees must demonstrate exemplary conduct. Such conduct includes, but is not limited to restraining from verbal or physical attacks on employees, threatening employees, and humiliation or harassment in any form prohibited by law. We also expect employees to maintain the same rules of professionalism.

## **ARTICLE 7 -- SCOPE OF AGREEMENT**

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

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

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

The University must provide thirty (30) calendar days notice prior to the implementation of any such proposed change in wages, hours and other terms and conditions of employment, to the Union, provided however, that if the proposed change is to meet a legislative mandate or an emergency situation (including an emergency fiscal management issue) the University may provide the Union with less than thirty (30) days notice but such shorter notice must be as soon as reasonably possible prior to the implementation of the proposed change. In such circumstance the notification must indicate the legislative mandate or emergency situation as well as any known timeframes in conjunction with the mandate or emergency.

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

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

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

request so as not to delay the bargaining process. The University will provide its good faith response to the Union's information request as soon as reasonably possible.

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

Where bargaining is requested by the Union over changes necessary to meet a legislative mandate or emergency condition, the parties will negotiate in good faith, and the University may implement any changes necessary to meet the legislative mandate or emergency condition, including any applicable timeframes, regardless of whether an agreement has been reached. The parties understand and agree the University's implementation of the proposed change(s) within the time frame identified to meet the emergency condition or legislative mandate is paramount. Failure of the Union to submit a timely information request, or failure of the University despite good faith efforts to respond to any such request, or the failure of the parties to complete bargaining shall not be deemed as a failure to discharge any obligations under the law or this MOU, and the University may implement any proposed change within the identified time frame.

This Article is also subject to Article 27 Severability.

## **ARTICLE 8 – HOURS OF WORK**

### **Section 1. Work Schedules.**

The University determines and assigns work schedules as the University deems appropriate. Work schedule requirements for employees covered under this MOU shall be governed by the USM Policy on Work Schedules for Regular Exempt Employees (VII-6.10, Approved by the BOR on Dec. 3, 1999) and the UMES Procedures on Work Schedules and Timekeeping for Regular Exempt Employees. Exempt employees are permitted to take an unpaid lunch break and other reasonable breaks, which must be coordinated between the employee and the immediate supervisor.

## **ARTICLE 9 – PROBATIONARY PERIOD**

Probationary periods for employees covered by this MOU are governed by USM Policies VII –1.22 and VII-9.01. (Approved by the Board of Regents on December 3, 1999, effective January 2 and January 12, 2000)

## **ARTICLE 10 – WAGES**

### **Section 1 – COLA for FY2017, FY2018 and FY2019.**

In FY2017, FY2018 and FY2019, the University will distribute to eligible bargaining unit employees whatever cost of living adjustments, if any, are specifically authorized and funded by the General Assembly in the legislative appropriation.

### **Section 2 – Merit Pay Adjustment for FY2017, FY2018 and FY2019.**

#### **A. Request**

In FY2017, FY2018 and FY2019, the University will include in its asking budget the merit pay salary adjustment, if any, for eligible employees that the University is directed by the USM to include in the annual budget instructions.

#### **B. Allocation**

In FY2017, FY2018 and FY2019, the University will distribute to eligible bargaining unit employees a merit pay adjustment, if any, based on whatever merit pay adjustment, if any, is specifically authorized and funded by the General Assembly and authorized by the Board of Regents through its annual salary guidelines. The amount of the merit pay adjustment, if any, that will be distributed to eligible employees who “meet standards” is 30% of the general merit adjustment that is funded and authorized for exempt employees for FY2017, 35% for FY2018, and 40% for FY2019.

C. The University may in its discretion make other salary adjustments consistent with the applicable Board of Regents salary guidelines.

## **ARTICLE 11 – REQUIRED CONTINUING EDUCATION UNITS**

In the event that an employee’s job description conditions the employee’s continued employment on successful completion of Continuing Education Units (CEUs), the employee’s attendance at an appropriate and required CEU course or program during the employee’s normal work hours will be considered work time so long as attendance is approved by the employee’s supervisor.

## **ARTICLE 12 – HOLIDAYS**

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

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

#### **Holiday**

New Year’s Day  
Dr. Martin Luther King Jr.’s Birthday  
President’s Day  
Memorial Day

#### **Date Earned**

January 1  
3<sup>rd</sup> Monday in January  
3<sup>rd</sup> Monday in February  
Last Monday in May

|                                             |                                                              |
|---------------------------------------------|--------------------------------------------------------------|
| Independence Day                            | July 4                                                       |
| Labor Day                                   | 1 <sup>st</sup> Monday in September                          |
| Columbus Day                                | 2 <sup>nd</sup> Monday in October                            |
| Election Day (General and/or Congressional) | 1 <sup>st</sup> Tuesday in November<br>(even-numbered years) |
| Veterans' Day                               | November 11                                                  |
| Thanksgiving Day                            | 4 <sup>th</sup> Thursday in November                         |
| Friday after Thanksgiving Day               | 4 <sup>th</sup> Friday in November                           |
| Christmas Day                               | December 25                                                  |

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

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

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

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

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

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

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

All employees must be in a paid employment status on the calendar date that the holiday is earned, in order to be eligible for holiday pay when the holiday is observed. Exempt employees who are required to work on a scheduled day of paid holiday observance will be entitled to a substitute holiday. The substitute holiday must be observed on a date approved by management. Approval will not be unreasonably withheld. A substitute holiday must be used by January 31 of the following calendar year or it is lost.

## **Section 4. Termination Payment.**

Employees, who leave their employment at the University for any reason, are entitled to be paid for any unused holiday leave that has been earned as of the date of separation.

## **Section 5. Use of Holidays.**

Except as provided in Section 3, above, Holiday and University Holiday leave may not be carried on the books for use at other times.

**Section 6. Scheduling of Holidays for Continuous Operations.**

Holiday scheduling for continuous operations is covered by USM Policy VII-7.30. (Approved by the BOR on December 3, 1999)

## **ARTICLE 13 – LEAVES**

**Section 1. Annual Leave. (USM Policy VII – 7.01)**

Annual Leave for employees covered by this MOU is governed by USM Policy on Annual Leave for Exempt Employees (VII-7.01 approved by the Board of Regents December 3, 1999) and is subject to all the terms and conditions set forth herein.

A maximum of fifty-five (55) workdays of annual leave may be carried into a new calendar year by all full-time exempt employees in the bargaining unit.

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

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

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

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

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

Leave Reserve Fund for employees covered by this MOU is governed by USM Policy on Leave Reserve Fund (VII - 7.11 approved by the Board of Regents, April 25, 1991; Amended December 6, 2002; Amended January 1, 2003; Amended June 22, 2012) and is subject to all the terms and conditions set forth therein with the following clarification:

Section III C. should read as follows

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

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



An employee wishing to receive leave under this policy shall submit a request directly to the Office of Human Resources at the Institution where the employee works. The request may be submitted by using the "USM Leave Reserve Fund Request," attached to this MOU, or by a written request containing the following information:

- Employee's name;
- Name of Institution;
- Employing department;
- Employee's position title, USM service date and number of months of creditable service;
- Amount of leave and specific dates requested; and

Physician's certification of temporary disability which includes the physician's judgment as to when the employee may reasonably be expected to return to work – a prognosis, not diagnosis, or appropriate documentation of the birth or adoption of a child, if the employee is requesting parental leave. (This information should be kept confidentially at the Institution and not forwarded to the USMO-HR.)

If the Institution's Department of HR determines that the employee is eligible to apply for leave from the LRF, it will forward the request for leave to the USMO-HR within five (5) working days following receipt of the request from an employee. The USMO-HR office will issue a response within five (5) working days after its receipt of a request for leave.

An employee who is determined to be ineligible for leave from the LRF by his/her Institution's Department of HR, or whose request for leave is denied by the USMO-HR, shall have the right to file a grievance concerning that determination in accordance with Section 13-201 et seq., of the Annotated Code of Maryland Education Article. Such a grievance shall be initiated at Step Two of that grievance procedure within five (5) days after receipt of the written determination of the Institution's Department of HR or the USMO-HR which is the subject of the grievance. In the case a grievance concerning the denial of a request for leave by the USMO-HR, the written decision by the President or President's designated representative shall be rendered after consultation with the Chancellor or the Chancellor's designated representative.

Beginning in March, 2013, upon written request from AFSCME MD, the USM (USMO-HR) on behalf of the USM Coalition will furnish the Union annually a report containing the following information for the preceding Calendar Year:

1. For each Coalition Institution, the number of FLSA classified Non-Exempt employees whose requests for LRF usage were approved and the total number of hours and minutes approved.
2. For each Coalition Institution, the number of FLSA classified Non-Exempt employees whose requests for LRF usage were denied.

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

Family and Medical Leave for employees covered by this MOU is governed by USM Policy on Family and Medical Leave (VII - 7.50 approved by the Board of Regents, August 27, 1993;

Amended April 16, 2004; Amended October 22, 2004; Amended June 18, 2010) and is subject to all terms and conditions set forth therein with the following modification:

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

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

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

To qualify for FMLA Leave:

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

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

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

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

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

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

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

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

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

Administrative Leave may be granted when emergency conditions exist.

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

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

Military Leave for employees covered by this MOU is governed by USM Policy on Military Leave (VII-7.23 approved by the Board of Regents, February 28, 1992; Amended December 6, 2002; Amended January 1, 2003; Amended October 17, 2003; Amended September 10, 2004; Amended June 18, 2010) and is subject to all the terms and conditions set forth therein.

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

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

Military leave for call up to Active Duty during a national or international crisis or conflict for employees covered by this MOU is governed by USM Policy VII – 7.24 (Approved by the Board of Regents, October 5, 2001; Amended December 6, 2002; Amended October 17, 2003; Amended September 10, 2004; Amended June 18, 2010) and is subject to all the terms and conditions set forth therein.

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

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

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

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

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

Accident Leave for employees covered by this MOU is governed by USM Policy on Accident Leave (VII-7.40 approved by the Board of Regents, May 1, 1992; Amended November 12, 1993;

Amended December 13, 1996; April 16, 2004) and is subject to all the terms and conditions set forth therein.

## **ARTICLE 14 – SICK LEAVE**

### **Section 1. Purpose and Applicability.**

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

### **Section 2. General.**

- A. Sick leave is paid leave granted to employees in an effort to provide some protection against the loss of earnings due to absences for health reasons.
- B. A full-time employee shall earn sick leave at the rate of fifteen (15) workdays per year. Employees who are appointed at least 50% time shall earn sick leave on a pro rata basis. Sick leave is accumulated and carried forward from year to year without limit.
- C. An employee may request that his/her illness, injury, or disability occurring during a period of annual or personal leave be charged to sick leave. Verification of such illness, injury, or disability may be required by the Office of Human Resources as provided in Section 4 of this Article.
- D. An employee may use on a continuous basis, subject to the terms and conditions of this MOU dealing with such leaves, earned leave (sick, annual and personal leave), advanced sick leave, extended sick leave, leave granted through the leave reserve fund, or unpaid family medical leave, as needed for personal illness and for parental leave, consistent with Article 14 Parental Leave.
- E. Earned sick leave is granted by the Department Head or designee (normally the immediate supervisor) pursuant to the terms and conditions of this Article when an employee is absent because of:
  - 1. Illness, injury, or disability of the employee.
  - 2. A pre-scheduled medical appointment, examination, or treatment for the employee with an accredited, licensed or certified medical provider listed in Section 4 F. of this Article that cannot be scheduled during non-work hours. Employees will provide three (3) working days' advance notice if possible, but in no event less than one day's advance notice. Employees shall make every effort to schedule the appointment either at the beginning or the end of the scheduled workday in order to reduce time away from work. However,

the University shall not unreasonably deny medical appointments when the time available overlaps with the employee's regular work hours.

3. Illness or injury in the employee's immediate family and medical appointments, examinations or treatments for the immediate family member with an accredited, licensed or certified medical provider listed in Section 4.F. of this Article that cannot be scheduled during non-work hours and are not taken pursuant to the Family and Medical Leave provisions of Article 12 Leaves of this MOU.

- a) Immediate family as used in this section means a spouse, child, step-child, foster child, grandchild, mother, father, mother-in-law, father-in-law, brother, sister, grandparent, or legal dependent of the employee irrespective of residence. Use of sick leave may also be granted to care for any other relative who permanently resides in the employee's household for whom the employee has an obligation to provide care. The Office of Human Resources may require an employee to provide certification by a medical provider listed in Section 4.F. of this Article to demonstrate this obligation or to authenticate the need for the employee to care for the ill family member. Certification from a medical provider does not need to include information about the specific illness or health condition of the family member or relative.

- b) Sick leave, to the extent it is accrued and available, shall be granted by the Office of Human Resources pursuant to the terms and conditions of this Article.

4. Death of a relative.

- a) For the death of a close relative, the Department Head or designee (normally the immediate supervisor) may grant the use of up to five (5) days of accrued leave. If the death of a close relative requires an employee to travel requiring staying away from home overnight, upon request the Department Head or designee (normally the immediate supervisor) may grant the use of up to a maximum of seven (7) days of accrued leave for this purpose.

- b) Close relative as used in this section means a spouse, child, step-child, foster child, mother, father (or someone who took the place of a parent), mother-in-law, father-in-law, grandparent of the employee or spouse, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, or other relative who permanently resided in the employee's household.

- c) The Department Head or designee (normally the immediate supervisor) or designee may grant the use of up to a maximum of one

(1) day of sick leave for reasons related to the death of the employee's or his/her spouse's aunt, uncle, niece, or nephew.

5. Integration of Sick Leave and Family and Medical Leave

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

6. Pregnancy, childbirth and adoption.

Pregnancy, childbirth and adoption are considered "qualifying events" under the FMLA and as such are governed by Section 5 above. Accrued sick leave may be used to care for a child following childbirth or adoption, subject to the provisions of Article 14 Parental Leave.

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

- A. The Office of Human Resources, in accordance with the provisions of this MOU dealing with Family and Medical Leave, may direct an employee to use accrued sick leave if it believes that an employee is unable to perform the essential responsibilities of his/her position due to illness, injury or disability.
- B. While either in active work status or on any type of employee-related sick leave, an employee may be required to undergo a medical examination(s) and evaluation(s), and may be required to provide verification of fitness for duty, as directed by the Office of Human Resources to ascertain whether the employee is able to regularly and routinely perform the responsibilities of his/her position. Such determination will be made in writing by a certified medical provider as defined in Section 4. F. of this Article, with copies provided to the Office of Human Resources and to the employee.
  - 1. If the examination is conducted by a certified medical provider selected by the USM institution, the institution shall bear the costs of such medical examination. The employee may, however, see his/her own physician at the employee's own cost.
  - 2. If the examination(s) reveal(s) that an employee is unable to regularly and routinely perform the responsibilities of his/her position, action may be taken by the Office of Human Resources in accordance with policies on voluntary separation, termination, reasonable accommodation, modified duty or disability retirement, if applicable.

3. In cases where there is a conflict between the evaluation, prognosis, diagnosis or recommendation of the employee's personal health care provider and the certified medical provider selected by the USM Institution, the President or designee may choose which health care provider's report to follow or may require subsequent medical examinations and evaluations in deciding what steps should be taken regarding the employee's sick leave status or continued employment. If subsequent medical examinations and evaluations are required, the employee's medical provider and the University's medical provider shall by agreement select the third medical provider who will render an opinion. In the event they are unable to reach agreement on a third medical provider, the third provider will be selected by the University. In selecting the third provider, the University shall not select a provider that has been under contract, or that at the present time is under contract with the University. The decision of the President or designee regarding the employee's fitness for duty will take into account the medical opinions rendered. The decision of the President or designee is final. The expense of obtaining the third medical provider's opinion will be borne by the University.

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

- A. In order to verify that the employee's use of sick leave is in accordance with this section, to assure medical attention for an employee or to prevent the abuse of sick leave usage, the University may require an employee to submit verification of the reason for the use of accrued sick leave, advanced or extended sick leave.

- B. Verification of Illness for Absences of Five (5) or More Consecutive Days

The University may require an employee to provide an original certificate of illness or disability in cases where an absence is for five (5) or more consecutive workdays. The certificate required by this section shall be signed by a certified medical provider as defined in Section 4.F. below.

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

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

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

D. Procedures for Certification Requirement

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

E. Verification may include but may not be limited to:

1. A written statement from the medical provider (as listed in Section 4.F. of this Article) indicating that the employee is required to be absent from work due to illness;
2. The duration of absence from work;
3. Prognosis of employee's ability to return to work;
4. Title and original signature of an accredited, licensed or certified medical provider; and
5. Documentation of the birth or adoption of a child, if sick leave is requested under Article 14 Parental Leave, and
6. Any other information necessary to verify that the employee's use of sick leave is in accordance with this Article. Such information does not need to include information about the specific illness or health condition of the employee.

F. Medical verification as outlined in this Article may be obtained from an accredited Christian Sciences practitioner, or from the appropriate of any of the following licensed or certified medical providers:

1. Physician;
2. Physical Therapist;
3. Clinical Psychologist;
4. Dentist;
5. Oral Surgeon;
6. Chiropractor;
7. Podiatrist;
8. Certified Nurse Practitioner;
9. Certified Nurse-Midwife; or
10. Licensed Certified Social Worker-Clinical



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

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

The employee shall:

1. have exhausted all other types of accrued leave; and
  2. have performed at a "meets standards" or better level of performance and not have been placed on a sick leave certification requirement as provided in Section 4 or been disciplined for a sick leave related offense during the past 12 months.
- B. Advanced sick leave is not an entitlement. The granting of requests for advanced sick leave is at the discretion of the Office of Human Resources.
- C. Advanced sick leave shall not be granted in instances where the illness or injury or disability occurred on the job, and the employee has been granted accident leave or temporary total disability benefits by the Workers' Compensation Commission.
- D. Written requests for advanced sick leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed, or certified medical provider or appropriate documentation of the birth or adoption of a child, if the employee is requesting parental leave, as outlined in Sections 4.A. and 4.F. of this Article.
- E. Sick leave may be advanced at the rate of fifteen (15) working days per year of service to a maximum of sixty (60) working days in any one calendar year, provided, however, that during the first six (6) months of service, the amount of advanced sick leave that can be authorized will be prorated based upon the employee's length of service at the time it is requested.
- F. The use of advanced sick leave constitutes a debt for which payment shall be enforceable upon the employee's return to work or upon the employee's separation from employment, whichever is earlier. Upon return to work the minimum rate of payback for advanced sick leave shall be at one-half the rate that sick leave and annual leave is earned. An employee may elect to pay back advanced sick leave by applying any earned leave or by reimbursing the USM with cash.
- G. Annual, sick and holiday leave earned, and personal leave credited while on advanced sick leave shall be applied as earned/credited.
- H. Additional requests for advanced sick leave will not be granted until all previously granted advanced sick leave has been repaid. The only exception to this provision is in cases where the maximum amount of advanced sick leave had not been requested originally and additional advanced sick leave, consecutive to that already granted, is needed to cover the employee's continued absence arising from the original illness, injury or disability.

- I. The Office of Human Resources may refer an employee who is on advanced sick leave as follows:
  1. The employee may be referred to a USM institution-named certified medical provider paid for by the institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
  2. If there is a conflict between the employee's physician and the USM institution-named physician, the provisions of Section 3.B.3. shall apply.

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

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

The employee shall:

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

## ARTICLE 15 – PARENTAL LEAVE

To support employees in balancing professional and family demands during and after the birth or adoption of a child, each eligible employee is assured a period of up to eight (8) weeks (i.e., forty work days) of paid parental leave to care for a new child, as follows:

- A. Nature of Leave: The parental leave period will consist of any form of annual, sick, personal, holiday or leave reserve fund leave accrued or otherwise available to the employee under this Agreement and USM policies, to be supplemented as necessary by the Institution with additional paid leave days to attain an eight (8) week period of paid parental leave.
- B. Applicability: The eight (8) week paid leave assurance is available during a six (6) month period surrounding:
  - 1. The birth of a newborn;
  - 2. The recent adoption of a child under the age of six (6); and
  - 3. At the discretion of the Institution's President or designee and subject to any limitations established by the Institution, the assumption of other parenting responsibilities, such as foster parenting or legal guardianship of a child under the age of six (6).
- C. Eligibility: The paid leave assurance will apply as follows:
  - 1. Leave shall be pro-rated for eligible .50 or greater Full Time Equivalent staff.
  - 2. If a child's parents are employed by the same Institution, both may be eligible for paid parental leave up to the eight (8) week maximum as follows:
    - a. Both parents may use accrued annual, sick or personal leave concurrently with the birth of a child or adoption of the child under age six (6);
    - b. A parent may use additional guaranteed paid leave under this policy only during a period when that parent is the child's primary caregiver.
  - 3. An employee shall be eligible for assured minimum paid parental leave after one (1) year of employment with the Institution, except to the extent that Institution's policies permit a lesser eligibility period.
  - 4. An employee may be eligible for paid parental leave under this policy on one occasion in a given 12-month period, and on two separate occasions during the duration of the staff member's employment within the USM. Any additional periods of paid parental leave require the approval of the President, or the President's designee.

5. The employee must have a satisfactory record of sick leave usage and work performance.

## **ARTICLE 16 – UNION LEAVE**

- A. AFSCME MD may request that bargaining unit employees be released from their normal duties for the purpose of participating in approved union activities.
- B. The total amount of union leave granted at any Institution during a fiscal year may not exceed one day for every twenty-five (25) of its bargaining unit employees of that Institution as of July 1 of the current fiscal year, provided that a minimum of eight (8) days union leave will be granted by the University each fiscal year covered by this MOU. No employee outside of the bargaining unit will be counted in the leave calculation under this Article.
- C. All requests for union leave shall be submitted to the institution Director of Human Resources/Personnel in writing by Council 92 fifteen (15) working days in advance of the day on which the leave is to begin and shall include:
  1. A general description of the activity and its purpose;
  2. The date and location of the activity;
  3. The name(s) of the employee(s) for whom union leave is being requested.

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

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

AFSCME Maryland Convention: In years when the AFSCME Maryland local convention takes place, each Institution will provide paid leave for actual time used by one (1) bargaining unit employee to attend that convention on days which the attendee would otherwise be regularly scheduled to work their regular day. The total number of hours of

paid leave time which the bargaining unit employee shall be provided for actual attendance at the AFSCME Maryland local convention shall not exceed eight (8) hours per day at the straight time rate of pay.

## **ARTICLE 17 – PERFORMANCE EVALUATIONS**

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

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

- 1. Above Standards**
- 2. Meets Standards**
- 3. Below Standards**

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

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

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

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

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

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

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

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

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

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

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

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

Where an employee did not have an opportunity to perform work described by a performance standard or goal and objective, that standard or goal and objective will not be considered in the year-end performance evaluation. All applicable performance factors and goals and objectives will be applied fairly and objectively. The University should take into account any equipment and resource problems, lack of training, frequency of work interruptions, and other matters outside of an employee's control when applying performance factors and goals and objectives. Time off on approved leave (sick, personal, annual, etc.) and authorized time for Union representational purposes and other authorized activities will not be considered negatively in the application of performance factors and performance goals and objectives, provided that where an employee has been placed on notice regarding a sick leave usage problem, the employee's sick leave usage may be taken into account.

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 18 – DISCIPLINARY ACTIONS**

#### **Section 1. Progressive Discipline.**

The University subscribes to the tenets of progressive discipline, where appropriate. However, the University reserves the right to administer any discipline deemed appropriate by the University. No employee shall be disciplined without cause. Nothing contained in this Article limits or otherwise affects the University's right and authority to separate an employee pursuant to Article 19 - Separation, of this MOU.

#### **Section 2. Disciplinary Actions.**

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

### **Section 3. Right to Union Representation.**

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

### **Section 4. Disciplinary Actions Records**

After three (3) years without any further disciplinary action, the record of any prior disciplinary action, up to and including suspensions of five (5) days shall be expunged at the employee's request. After twelve (12) months, letters of reprimand and counseling memoranda shall not be used in assessing discipline if there has been no further disciplinary action.

### **Section 5. Personnel Files**

This policy establishes responsibility for the maintenance, access and control of employee files for all Nonexempt and Exempt Staff employees.

#### **A. Definition and Scope**

##### **1. Employee File**

A confidential business record and property of the institution that employs the employee. The file, in electronic or paper format, consists of personal demographics and information relating to the individual's employment.

##### **2. Contents of an Employee File**

a. Employee files include but are not limited to the following:

- 1). Employment application and/or resume
- 2). College Transcripts
- 3). Job descriptions
- 4). Records relating to hiring, promotion, demotion, transfer, reassignment, layoff, compensation, education, and training.
- 5). Letters of recognition
- 6). Disciplinary documents
- 7). Performance evaluations
- 8). Documents relating to separation from employment

3. Medical records shall be maintained in a separate file and are not part of an employee file.

#### **B. General**

##### **1. Confidentiality**

All employee files are confidential and are to be secured accordingly. Anyone handling files shall maintain confidentiality of the material at all times, including during the course of file transmission electronically or via FAX or MAIL.



## **2. Responsibilities of the Office of Human Resources**

a. Employee files are secured in the Human Resources Department at each institution, or location designated by the Chief Human Resources Officer (CHRO).

- 1). All records to be included in employee files are prepared by or delivered directly to the Human Resources Department.
- 2). All filing, removal, re-filing, and/ or processing of data electronically of employee records must be accomplished only by the Human Resources staff.
- 3). Records may not be removed from the Human Resources Department except by authorization from the Director of Human Resources or designee.

**3.) Retention of Files** - Institutions shall follow the record retention schedule prescribed by law.

## **C. Verification of Employment**

All requests for verification of employment for current or former employees are to be directed to the designee. Non-confidential information such as dates of employment, position(s) held, and current may be released on request. Confidential information shall not be released unless the Human Resources Department is in receipt of a written release signed by the employee, court order, or subpoena.

## **D. Access to Employee Files**

### **1. Persons with Authorized Access**

The following persons have authorized access to individual employee files:

- 1). The Director of Human Resources or designee
- 2). the Employee
- 3). the employee's current supervisor or any individual within the organizational unit who is chain of authority above the employee or legal counsel to such person in that capacity.
- 4). Auditors (USM, Institution, Legislative auditors)
- 5). an authorized agent for an employee who has written authorization signed by the employee for access to or disclosure of a confidential employee record.

### **B). Employee Access**

Employees shall have access to their own files and medical records during regular business hours upon such reasonable prior notice as the Human Resources Department may require.

- 1). All files shall be reviewed in the presence of the Director of Human Resources or designee.

- 2). At the time of such review, the Director of Human Resources or designee may require the employee to initial and date all records in her/his file(s).
- 3). Employees who request copies of material from their file(s) may be charged a scheduled fee.
- 4). An employee who objects to information in her/his file may place a statement to that effect in the file.

**C). Anonymous Material**

Other than routine personal forms, no anonymous materials shall be placed in an employee's official personnel file.

## **ARTICLE 19 – GRIEVANCE PROCEDURE**

### **GENERAL**

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

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

#### **§ 13-201. Definitions.**

- (a) *In general.*- In this subtitle, the following words have the meanings indicated.
- (b) *Day.*- "Day" means, except as otherwise provided, a working day, Monday through Friday, regardless of work schedule, weekend work, or midweek days off.
- (c) *Grievance.*- "Grievance" means any cause of complaint arising between a classified employee or associate staff employee and his Employer on a matter concerning discipline, alleged discrimination, promotion, assignment, or interpretation or application of University rules or departmental procedures over which the University management has control. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

#### **§ 13-202. (Omitted)**

#### **§ 13-203. Steps in grievance procedure.**

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

The arbitration award is advisory to the Chancellor or administrative law judge, as appropriate, and an additional appeal or hearing may not be considered. The Chancellor or administrative law judge, as appropriate, shall make the final decision that is binding on all parties.

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

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

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

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

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

#### **§ 13-204. Decisions.**

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

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

(a) *Suspensions pending removal.*- Within 5 days from the date on which the employee receives the charges for removal as evidenced by the return receipt or other evidence of delivery of the charges to the employee an employee who is suspended under charges for removal may request an opportunity to be heard in his own defense. Within 30 days if possible after receipt, the president or the president's designated representative shall investigate the charges and give the employee an opportunity to be heard. Testimony shall be taken under oath and both the department head or chairman or designee and the employee have the right of

representation by counsel and the right to present witnesses and give evidence. Within 15 days following the conclusion of the conference, the written decision shall be rendered to the employee. In the case of appeals from charges pending removal, the department head or chairman or designee may request through appropriate channels the Attorney General's representative to the University to serve as counsel. In case no hearing is timely requested, the Campus Director of Personnel shall act upon the charges or order such other actions as are indicated by the findings in the case. If a hearing is timely requested and the removal is upheld, step three of the grievance procedure shall be available to the removed individual. The appeal shall be submitted within 10 days after receipt of the written University decision.

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

(c) *Rejection on probation.*

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

(2) Rejection on Promotional, Transfer, or Horizontal Change Probation. Within 5 days of receipt of the recommendation of the department head or chairman to reject, an employee who is promoted and then rejected within the probationary period for the new class and for whom a vacancy in the former class is not available may file an answer with the president or the president's designated representative and request an investigation of the proposed rejection. Within 20 days, if possible, after receipt, the president or the president's designated representative shall investigate the proposed rejection. The same rule applies to an employee who has completed a probationary period in one classification and makes a horizontal change to a new classification, and is rejected in the new classification or who transfers to another department in the same classification and is rejected. Within 15 days following the conclusion of the investigation, the written decision shall be rendered to the employee. If the investigation is timely requested and the rejection is upheld, step three of the grievance procedure is available to the rejected employee. The appeal shall be submitted within 10 days after receipt of the written University decision.

(d) *Disciplinary suspension.*

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

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

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

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

(e) *Preliminary hearing.*

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

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

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

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

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

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

- (i) Rebut the reasons given for the suspension;
- (ii) Allege mitigating circumstances; and
- (iii) Offer alternatives to the suspension, including:

1. Return to the position with pay;
2. Transfer to another position with pay; or
3. Suspension with pay.

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

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

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

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

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

- (a) *Defense of sovereign immunity unavailable.* - The defense of sovereign immunity may not be available to the University, unless otherwise specifically provided by the laws of Maryland, in any administrative, arbitration, or judicial proceeding held pursuant to this section, or the personnel policies, rules, and regulations for classified employees of the University System of



Maryland involving any type of employee grievance or hearing, including, but not limited to charges for removal, disciplinary suspensions, involuntary demotions, or reclassifications.

- (b) *Funds provided for satisfaction of awards.*- The Governor shall provide in the annual State budget adequate funds for the satisfaction of any final monetary or benefit award or judgment that has been rendered in favor of the employee against the University in any administrative, arbitration, or judicial proceeding.
- (c) *Awards which have not been satisfied.*- Awards under this section that have not been satisfied pursuant to subsection (d) of this section, shall be reported to the Comptroller of the Treasury, who shall maintain and report annually to the Governor an accounting of existing awards. Upon appropriation of funds by the legislature, the Comptroller of the Treasury shall satisfy existing awards in order of date of award.
- (d) *Timeliness of satisfaction.*-If the University has sufficient funds available to satisfy any award under this section at the time the award is rendered, the award shall be satisfied as soon as practicable but not more than 20 days after the award becomes final.

## **ARTICLE 20 – MISCELLANEOUS**

### **Section 1. Access to Recreation Centers.**

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

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

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

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

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

### **Section 4. Attendance at Job Interviews.**

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

## ARTICLE 21 – SEPARATION

Separation procedures for employees covered under this MOU are governed by USM Policies VII-1.22 and VII-9.01. (Approved by the Board of Regents on December 3, 1999, effective January 2 and January 12, 2000)

The period of notice for employees governed under USM Policy VII-1.22 shall be modified as follows:

| <b>Years of Institutional Service</b>             | <b>Period of Notice</b> |
|---------------------------------------------------|-------------------------|
| Less than one (1) year                            | One (1) month           |
| One (1) full year but less than four (4) years    | Three (3) months        |
| Four (4) full years but less than eight (8) Years | Six (6) months          |
| Eight (8) or more full years of service           | Twelve (12) months      |

## ARTICLE 22 – INSURANCE BENEFITS

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

## ARTICLE 23 – RETIREMENT

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

## Article 24 -- Tuition Remission

### Section 1.

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

### Section 2.

In the event that during the duration of this MOU, the Board of Regents adopts a policy, which rescinds or modifies in whole or in part the afore-referenced tuition remission policies, the University may implement those changes after consultation or bargaining, if required, with the

Union. The parties further agree that the University's tuition remission program must at all times comply with applicable law and that the University may implement any modifications necessary to come into compliance with applicable law. Where the modifications or changes that the University intends to implement are subject to the obligation to bargain collectively under *SPP 3-101 et. seq.*, the process outlined in Article 6 - Scope of Agreement of this MOU applies.

## **ARTICLE 25 -- HEALTH AND SAFETY**

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

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

### **Section 2. Safety Concerns.**

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

### **Section 3. Joint Health and Safety Committee.**

As a way to promote and maintain safe and healthy working conditions in the workplace, the Employer and the Union agree to establish a campus-wide Health and Safety Committee comprised of representatives from all areas of the campus community. The Union shall select a total of two representatives to act as representatives to the Health & Safety Committee along with other employees. The Health and Safety Committee shall be the primary advisory group on matters pertaining to accident and injury prevention, reduction, and management. The committee shall be chaired by the University Safety Officer and shall meet every other month.

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

The Health and Safety Committee is responsible for:

- a) Recommending that adequate health and safety rules and regulations are implemented and monitored.
- b) Reviewing and monitoring potential risks and hazards that exist in the work environment, including unsafe work practices, and making recommendations for their elimination or reduction.
- c) Monitoring and evaluating the need for health and safety training for employees.
- d) Reviewing accident records and statistics in order to determine the need for corrective action.

- e) Promoting health and safety education.
- f) Reviewing the availability and adequacy of first aid supplies and equipment and recommending improvements as necessary.
- g) Maintaining and reviewing minutes of all committee meetings.

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

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

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

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

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

The Employer shall provide personal protective clothing and equipment (not including safety shoes or prescription safety glasses) that, as determined by the Employer, are required by applicable state laws and regulations. In the event the Employer requires an employee to wear safety shoes on the job, the Employer, upon proof of purchase will reimburse the employee once within a twelve (12) month period during the duration of this MOU \$100.00 (but not to exceed the cost of the shoe) towards the cost of one pair of safety shoes approved by the Employer and purchased by the employee during the duration of the agreement. The Employer will provide guidelines in conjunction with what constitutes an Employer approved safety shoe (type, specifications, etc.). The Employer will make available non-prescription safety glasses to employees who are required to wear them as part of their job.

An employee may be instructed by his/her supervisor to purchase new shoes if the shoes are worn to the point they are deemed unsafe for use. The employee may be required to assume the full cost of replacement if the designated reimbursement has already been awarded for the twelve month period.

#### **Section 8. Communicable Diseases.**

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

#### **Section 9. Hepatitis B.**

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

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

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

**Section 11. Asbestos.**

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

**Section 12. Medical Monitoring.**

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

**Section 13. Inspection by Governmental Agencies.**

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

## **ARTICLE 26 – LAYOFF AND RECALL**

**Section 1. Purpose and Applicability.**

This Article establishes the procedures for layoff and recall of regular exempt employees who are being laid off due to any of the reasons described herein.

**Section 2. Layoff and Notice.**

A. A layoff may occur when the Department Head or Chairperson determines that a position(s) are to be abolished or discontinued due to reduction or termination of funds, program change, change in departmental organization, or stoppage or lack of work.

B. The Department Head or Chairperson shall submit a written request and justification for the layoff to the University President or designee prior to informing the affected employee(s) of the layoff.

C. After appropriate authorization for the layoff by the University President or designee, the appropriate administrator shall provide at least ninety (90) calendar days advance written notice of layoff to the affected employee(s) and the Union. The written notice shall include the reason for the layoff (i.e., position abolished, discontinued due to reduction or termination of funds, program change, change in departmental organization, or stoppage or lack of work). Notice of layoff shall be delivered to the employee(s) in person or by certified mail to the employee's last known address. The University may place an employee who receives a notice of layoff on administrative leave for any portion of the ninety (90) calendar day notice period. Administrative leave will not be unreasonably withheld.

D. For layoffs that are due to reduction or termination of funds, the period of notice may be shorter than that stated in Section 2.C. above if the notice by the funding source of reduction or termination of funds provided to the USM Institution is less than the required ninety (90) calendar days notice. In such cases, the affected employee(s) shall be notified by the appropriate administrator as soon as possible, but no later than five (5) work days following the institution's notice of fund reduction or termination.

### **Section 3. Recall Status.**

A. An employee who is laid off from an exempt position shall be recalled for reappointment following a layoff if, within one (1) calendar year from the effective date of layoff, the specific position from which the layoff occurred is reestablished.

Laid off employees may access job announcements through the University's website. For a period of two (2) calendar years from the effective date of layoff, a laid off employee who properly applies for a job within this timeframe and meets the minimum qualifications of the job will be interviewed for the job.

B. A person who is appointed to any position in the USM with three (3) years of being laid off shall be considered in a reinstatement status as provided for in the USM BOR Policy on Reinstatement, Policy VII – 9.61.

C. The layoff of an employee in an exempt position shall not affect any faculty tenure rights, which that employee may hold in an academic department of the employing institution.

D. Recall Notice.

- (1) Notice of recall from a layoff shall be sent to the employee by certified mail, return receipt requested.
- (2) The recalled employee shall have up to ten (10) workdays following receipt of the recall notice to notify the University of their intention to return to work.
- (3) The recalled employee shall have up to twenty-one (21) workdays following receipt of the recall notice to actually return to work.
- (4) Laid off employees must keep the Human Resources Office apprised of their current address for receiving notices hereunder. Inability to deliver a notice to a laid off employee because the employee has not provided a correct current address shall act to forfeit the laid off employee's recall rights and relieves the University of any further recall obligation.

### **Section 4. Severance Package.**

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

1. Tuition Remission:
  - a) Employees who are laid off, who have completed less than ten (10) years service with the University and who are receiving tuition remission at the time of layoff may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for one additional full-time semester or two additional part-time semesters, not to exceed a total of 18 credit hours, at UMES only.
  - b) Employees who are laid off, who have completed more than ten (10) years service with the University and who are receiving tuition remission at the time of layoff, may complete the semester in which the lay-off occurs at whatever qualifying institution they are

attending at that time, and they may receive tuition remission for two additional full-time semester or four additional part-time semesters, not to exceed a total of 36 credit hours, at UMES only.

- c) For purposes of this Section, full-time shall be considered twelve (12) credit hours or more. Part-time shall be considered to be less than twelve (12) credit hours.
- d) The tuition remission benefit described in this Section is for the employee only, with the exception that any employee dependent enrolled in coursework in the semester in which the employee is laid-off and receiving tuition remission may continue to receive tuition remission for the balance of that semester.

## 2. Employment Assistance

- a) The Office of Human Resources will be available to assist employees laid off with the following:
  - Developing a resume
  - Composing a cover letter
  - Interviewing skills
  - Mock interviews
  - Conducting a job search
  - Employment agency contacts
  - Recommended readings
- b) The Office of Career Services will be available to assist the laid off employee with the following:
  - Career Counseling
  - Job/Internship Posting & Searches
  - Resource Library
  - On campus recruitment and interviews
  - Career Fairs
  - Resume and cover letter assistance

## **ARTICLE 27 – PARKING**

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

## **ARTICLE 28 – LABOR MANAGEMENT COMMITTEE**

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

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

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

The University and AFSCME shall appoint two (2) members each to the Labor Management committee. The committee shall meet at least once a month for the six months and every other month or as needed after that. Each of the parties shall alternate as chair. We will continue the current practice of allowing additional members to come to meetings to address special issues on the agenda.

## **ARTICLE 29 – SEVERABILITY**

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

## **ARTICLE 30 -- NO STRIKE AND NO LOCKOUTS**

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

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



## **ARTICLE 31 – DURATION AND RENEWAL**

### **Section 1 – Duration.**

This MOU shall become effective when all conditions precedent to its effectiveness have been met. No portion of this MOU shall be implemented until all of its provisions are effective. No provision of this MOU has retroactive application unless required by law. This MOU expires at 11:59 p.m. on the day before its third anniversary date. The parties shall ensure that their respective ratification processes are completed as promptly as possible after the conclusion of negotiations.

### **Section 2 – Renewal.**

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

### **Section 3. New Matters of Negotiations Reopener**

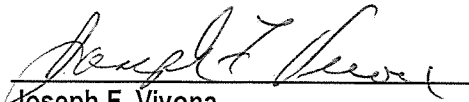
No provisions of this MOU shall operate as a waiver of either Parties' right to request bargaining during the term of this Agreement over subject matters that become permissible matters of bargaining after its effective date. All other terms and conditions of the MOA covering this period July 1, 2016 – June 30, 2019 shall remain in full force and effect, except as provided herein.

### **Section 4. Fair Share Reopener**

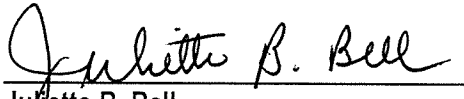
Either party may re-open negotiations on the exclusive subject of service fees "Fair Share" agreement. Negotiations shall be scheduled within 30 days of the presentation of the written request for reopener.

SIGNATURE PAGE

UNIVERSITY OF MARYLAND  
EASTERN SHORE



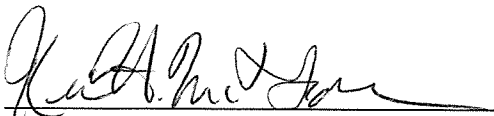
**Joseph F. Vivona**  
Vice President for Administration, USM  
USM Coalition



**Juliette B. Bell**  
President  
University of Maryland Eastern Shore

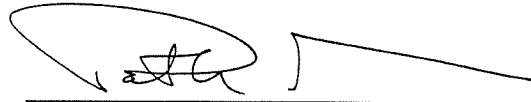


**Marie H. Billie**, Chief Negotiator  
Assistant Vice President  
University of Maryland Eastern Shore

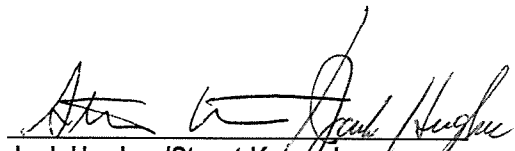


**Kristin McFarlane**, Assistant Attorney General  
Office of the Attorney General – Educational Affairs Division  
*for legal sufficiency*

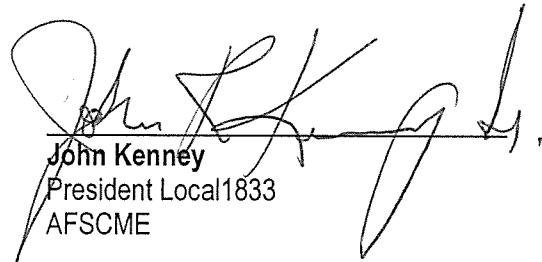
AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES



**Patrick Moran, President**  
American Federation of State, County &  
Municipal Employees (AFSCME)  
Maryland Council 3



**Jack Hughes/Stuart Katzenburg**  
Chief Negotiator  
AFSCME MD



**John Kenney**  
President Local 1833  
AFSCME