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## ARTICLE 20

# Merit Staffing

### Section 1 - General

#### A. Policies/Procedures

1. It is the policy of the Department and the NCFLL to fill all positions in the bargaining unit in the Competitive Service with the best qualified candidates for the positions to be filled and to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities. The Department will administer this Article in accordance with DPR 335, dated October 01, 2005, unless modified or supplemented in this Article. The Department will notify the NCFLL of its intent to modify DPR 335 during the life of the Agreement. The Union may exercise its right to bargain to the fullest extent of the law.
2. The parties agree that all positions in the bargaining unit shall be filled in accordance with procedures outlined in this negotiated Agreement and subject to court order, law, or regulation.
3. The parties agree that electronic filing is the required method for NCFLL bargaining unit employees to apply for Department of Labor positions. Employees may use the alternative paper filing method when they can demonstrate to the Human Resources Officer, or the HR Officer declares significant difficulties to their being able to electronically file in a timely manner. All timely applications will be processed by the Department. The parties agree to monitor the effectiveness of the Department's electronic filing process as specified in Section 11.

#### B. The Department and the NCFLL agree to the following practices and principles applicable to all merit staffing actions filling competitive positions in the bargaining unit.

1. Based on the criteria and standards of the Merit Staffing Plan, selection will be made from a properly prepared Certificate. Selection will be based on the judgment of the selecting official as to who will best perform in the job to be filled in accordance with the announced requirements.

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2. Bargaining unit employees may not file grievances based solely on non-selection.
  3. Employee appeals will be handled in accordance with Statute, regulation and/or applicable guidance.
  4. Employees detailed to, or assigned to perform the full range of duties of, higher graded positions for longer than 30 days will have these details converted to temporary promotions after serving 30 days, or their detail will be terminated. Normally, when it is known in advance that a detail to a higher graded position for any employee will substantially exceed 30 days, a temporary promotion is a preferred alternative. Employees will be rotated, to the extent possible, to ensure fairness and equal promotional opportunities.
  5. As an exception to merit staffing, an employee may be repromoted to a grade previously held on a permanent basis in the competitive service (or similar OPM- approved system) from which the employee was separated or demoted for other than performance or conduct reasons as provided at 5 CFR 335.103. Special consideration for repromotion is consideration prior to the use of competitive merit staffing procedures for vacancies at the employee's former grade or at any intervening grades for positions for which he/she meets minimum qualification requirements. The area of consideration for repromotion for these employees is the same as the merit staffing minimum area of consideration. If the merit staffing area of consideration is extended, the area of special consideration must be extended as well. The employing agency will provide special consideration for repromotion for employees whose positions are downgraded and/or entitled to grade and/or pay retention for a period of two (2) years.
  6. Selection certificates are valid for 90 calendar days beginning with the date the Certificate is issued. If no selection has been made within this 90 day period, the certificate is canceled unless an extension is approved by the Director of Human Resources. Such extensions should only be requested in rare and unusual circumstances when a selection official cannot make a decision within the required time period. The designated NCFLL official within each OASAM Region will be notified when an extension is approved.

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7. Details to positions at the same or lower grade levels with no “known promotional potential” are excepted from competitive merit staffing procedures. Employees will be rotated to the extent possible. Volunteers will be solicited and considered for details of 60 calendar days or longer.
  8. Application procedures:
    - a. Employees may register through USA JOBS to be electronically notified of specific future job opportunities so that they can apply on line.
    - b. The Department and the NCFLL recognize that there may be unusual circumstances in which an employee should be allowed to submit an advance application for possible future vacancies. An employee who will be unable to receive or respond to vacancy announcements for 15 days or more due to military service, service during a national emergency, or other similar situation may provide a written or electronic application to the OASAM Regional Human Resources Officer. The employee’s request for advance application consideration must specify the title(s), grade level(s), and location(s) of positions for which the employee wants to be considered. The advance application expires upon the employee’s return to normal duty status.
  9. A Career Enhancement Program trainee who does not satisfactorily complete the training period will be assigned to a different position or back to a former or similar position and grade level.
  10. Vacancy announcements will be opened for a minimum of 14 calendar days.
  11. The conditions for submission of supplemental materials will be stated on the vacancy announcement.

## **Section 2 - General Requirements**

### **A. Equal Opportunity**

Actions under a promotion plan, whether in identification, qualification, evaluation, or selection of candidates or any other phase of the promotion process shall be made without regard to political, religious, or labor organization affiliation or non-affiliation; marital status, race, color, sex,

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national origin, disability, or age, and shall not be based on any criteria that are not job related, including favoritism based on personal relationship, patronage, or nepotism.

#### B. Procedural Practices and Preferential Management Action

The Department will avoid preferential management practices which may lead employees to believe that a person was preselected for a vacancy or that selection was based on favoritism. These practices include actions taken by Management designed to give preference in promotion to a predetermined individual or group of individuals such as assigning an employee to serve as an understudy, without competition, singling out one or a group of employees for special training or assigning certain employees to more difficult duties with the intent of training them for higher grade work. These practices tend to undermine employee confidence in the system and give rise to complaints even though the selection was proper.

#### C. Special Assignments - Mine Inspection Work

Special assignments for mine inspection work such as but not limited to roof control, ventilation, special investigator, accident investigator, electrical investigator, health specialist, etc., will be posted within each Mine Safety and Health District so that those interested may apply. The Agency reserves the right to make the final selection.

### **Section 3 - Candidates to be Considered**

In accordance with the provisions of this Agreement, all candidates considered under this article who are to be evaluated must be evaluated and certified by the same criteria using the same methods and forms. All evaluation criteria must be job related.

### **Section 4 - Merit Staffing Reevaluations**

Electronic notification will be sent to bargaining unit applicants who were not referred at the same time the electronic certificate is issued. A written request for reevaluation will be granted within five workdays after the Certificate is issued and before the selection is made if a question regarding qualifications and/or certification has been raised by an employee who applied for the position and did not make the Certificate.

### **Section 5 - Selection**

#### A. Action by the Selecting Official

The selecting official may make a selection no sooner than the sixth workday after the issue date of the Certificate unless a request for

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reevaluation has been received at which point the selection must be delayed until the reevaluation is completed and the Certificate revalidated.

## B. Interviewing Candidates

The selecting official must interview each DOL bargaining unit candidate on the Certificate. The interview may be done face-to-face, by telephone, or by other state of the art technology as available. When the selecting official and the candidate are in the same commuting area, the interview will be face to face. Supervisors must release DOL employees for such interviews for the necessary length of time.

## Section 6 - Keeping Employees and the NCFLI Informed

### A. General Information on the Department of Labor Merit Staffing Plan

#### 1. Copies of the Plan

Copies of this negotiated Merit Staffing Plan shall be maintained by each personnel office for consultation by employees upon request.

#### 2. Periodic Issuances

Periodically, information on the Plan will be issued in the form of Spotlights, articles in internal publications, and booklets, including information on how employees may file for vacancies.

#### 3. Information on Qualification Requirements

Summaries of the qualification requirements for vacancies are included in vacancy announcements. Complete qualification standards shall be available for employee review in personnel offices.

#### 4. Merit Staffing Tests

Merit Staffing tests (electronic, paper, etc.) developed for use in the evaluation of candidates will be shared with the NCFLI in accordance with Article 3.

#### 5. Career Planning and Counseling

Agencies are responsible for providing career planning and counseling for their employees. An employee should be informed of what jobs are in his/her career ladder; what he/she can do if he/she is in a job with limited promotion opportunities; what additional experience and education he/she needs to meet qualification requirements for higher-level positions; what education and training would be useful to him/her; and what he/she should do to improve his/her chances for promotion.

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## 6. Information on Certificates

A copy of each Certificate from which selections may be made will be sent to the designated NCFLL Representative at the same time it is sent to the selecting official for positions in the bargaining unit.

### B. Information on Selection – Informing the NCFLL Representatives

The designated NCFLL Representatives will be notified of the names of candidates for positions within the unit. Such notification will be made by the personnel office processing the personnel action as soon as a selection has been made, and it is determined that the selection meets requirements (with respect to procedural compliance and adherence to this Agreement as well as law and regulation) and the candidate is available.

### C. Information on Specific Actions

#### 1. Information Available to Employees

The following additional information about specific actions is available to employees, or their NCFLL Representative from the personnel office upon written request:

- a. sources used to consider candidates for a specific position;
- b. in what areas, if any, the employees should improve to increase their chances for future promotion or entrance into the occupation;
- c. if the vacancy was not filled, the reason it was not filled; and
- d. who was selected for promotion.

#### 2. NCFLL Request for Specific Information

Where it is alleged that a specific violation, or concern, of the Merit Staffing Article has occurred, the designated NCFLL Representative shall notify the RA-OASAM in writing that a preliminary examination of record is being requested and cite the alleged violation. Such a request must specify the name of the individual or individuals directly involved. The representative designated by the NCFLL in writing, in the presence of a personnel office representative, shall be given access to the merit staffing records of the particular action, sanitized as appropriate.

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## Section 7 – Merit Staffing Reviews

The NCFL Representative will be notified in advance of any scheduled reviews of Regional Human Resources Office operations. A sanitized copy of the Merit Staffing Review conducted at Regional Human Resources Offices will be provided to the affected NCFL Representatives within 30 days after the review is finalized. In the event that a review is not performed within two years the following structure for the review will apply:

### A. Merit Staffing Review Schedule

A Merit Staffing Review will be conducted within one year to appraise the effectiveness and degree of compliance with the provisions, intent, and purposes of the negotiated Merit Staffing Plan. The NCFL Representative will be advised 30 days in advance of the review.

### B. Coverage

The review will cover completed personnel actions effected in accordance with the merit staffing provisions of the DOL-NCFL Agreement. Actions effected under the exception provisions of the Merit Staffing Plan which were negotiated with the NCFL may be examined for proper application of the exception.

### C. NCFL Input

The review will be conducted by Management. The NCFL may provide input to Management on significant issues they want reviewed. Management must receive the significant issues no later than two weeks prior to the review.

### D. Review Sample

A representative sample selected at random from completed actions which were effected between review periods will be reviewed. A reasonable sample should consist of a minimum of 20 actions where 100 or fewer merit staffing actions are effected during the period reviewed. When fewer than 20 actions were effected, a total review should be made. Where more than 100 actions were effected, the review should include a minimum of 20 actions or a maximum of ten percent of the total number of actions effected, which ever is greater.

### E. Effecting the Review

1. The reviewers will examine Merit Staffing files to include; announcements, Lists of Eligibles, Certificates, evaluation

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sheets, performance requirements, evaluation applications, or relevant material from personnel files and any other related documents to determine the degree of compliance with the provisions of this Contract.

2. Statistical data of value to both Union and Management will be collected.

#### F. Confidentiality of Review

It is understood that all actions and records reviewed are confidential and are not to be discussed outside of official channels within the Union and Management areas.

### **Section 8 - Corrective Actions**

Violations of this Article shall be corrected in a manner appropriate to the nature of the violation and the circumstances surrounding it. Such corrective actions may include but are not necessarily limited to: program or procedural changes in the organization; removal of an erroneously promoted employee from the position; priority consideration of employees who were not given proper consideration because of the violation; and other remedies as stated in 5 CFR 335 or awarded by third party process and not in violation of the law, higher regulations, or the provisions of this Agreement. Corrective action will be taken as soon as possible but no later than two pay periods after a decision has been made.

### **Section 9 - Cancellation of Vacancy Announcements**

- A. A cancellation notice will be issued to all applicants and the NCFLL Representative.
- B. Upon request the NCFLL Representative will be advised in writing of the reason for the cancellation.

### **Section 10 - Career Ladder Promotions**

- A. A career ladder is a series of positions of increasing difficulty in the same line of work through which an employee may progress from the entrance levels to the journey level of full performance. Employees are all given grade-building experience and are promoted as they demonstrate ability to perform at the next higher level, and meet all eligibility requirements.
- B. Career ladder positions are developmental in nature. To be promoted, an employee in a career ladder must meet the following criteria, in the supervisor's judgment:

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1. Meet all performance requirements for the duties and responsibilities of the current position, and also carry out specific assignments or projects typical of the next higher grade position in the career ladder.
  2. Regularly demonstrate, through assigned work, performance in the current position that clearly indicates the probability of satisfactory performance in the next higher graded career ladder position.
  3. Perform in the position for a sufficient length of time to allow adequate observation of the work performed.
- C. If an employee is not to be promoted upon initial eligibility for a career ladder promotion, the supervisor will have a discussion with the employee within 2 pay periods of the eligibility date. At this discussion, the supervisor will explain what is necessary for that employee to be promoted.
- D. If an employee is not promoted upon initial eligibility for a career ladder promotion, the supervisor will meet and discuss with the employee what is necessary for the employee to be promoted at every subsequent annual rating of record and at every mid-year performance discussion. Upon written request from the employee, the supervisor will provide this guidance in writing.

### **Section 11 - Electronic Filing Procedures**

Employees shall be provided specific e-mail notification of actions taken on applications to include notice of receipt, certification status, and final outcome.

The parties agree to use both the national LMR meetings (Article 3) and the Information Technology Committee (Article 50) as the primary means to monitor the effectiveness of the Department's electronic filing system.

### **Section 12 - Appropriate Use of Equipment**

Employees will be allowed use of Department equipment in accordance with appropriate use policy to prepare and file job applications.