

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
U. S. DEPARTMENT OF LABOR  
AND THE  
NATIONAL COUNCIL OF FIELD LABOR LOCALS**

**I. INTRODUCTION**

This is a Memorandum of Understanding (MOU) entered into between the U. S. Department of Labor (DOL) and the National Council of Field Labor Locals (NCFL), AFGE, AFL-CIO, in accordance with the applicable provisions of the master DOL-NCFL Agreement.

**II. SUBJECT**

This MOU concerns the Department's reorganization in the field of the Employment and Training Administration (ETA), Division of Foreign Labor Certification (*DFLC*.)

**III. BACKGROUND**

The ETA/DFLC description of its reorganization is attached to this MOU for information purposes only. By entering into this MOU the NCFL does not endorse the ETA/DFLC reorganization plan.

**IV. TERMS OF AGREEMENT**

1. The parties agree that this reorganization in the field Division of Foreign Labor Certification will be completed when the PERM Centers become operational.
2. The parties agree that the DFCL anticipates that the four new Foreign Labor Certification Processing Centers will become operational as follows:
  - The Backlog Centers (to be located in Philadelphia and Dallas) are scheduled to open approximately 60 days after the awarding of the contract with an anticipated operational date of July/August 2004; and
  - The Permanent Processing Centers (Atlanta and Chicago) are scheduled to be operational 120 days following the publication of its final implementing rule in the Federal Register with an anticipation of being operational by the end of 2004.

**3. Reassignment of Personnel:**

The parties agree that to accomplish this reorganization, DFCL field personnel will be reassigned to the new processing centers or other ETA duties as follows:

- a. Atlanta and Chicago FLC staff will be reassigned to their corresponding PERM Centers. Actual reassignment/relocation of personnel to the new centers will not occur until pre-occupancy safety and health inspections and office space requirements per Article 23 have been accomplished as specified below.
- b. Philadelphia and Dallas FLC staff will be reassigned to their corresponding Backlog Centers. Again the actual physical relocation of staff to the new centers will not be accomplished until the safety and health and the office space requirements are met for the areas of the new centers to be occupied and/or used by the Federal staff.
- c. FLC staff in the closing offices (New York City, Kansas City, Denver and Seattle) may request, within 60 days of the implementation of this MOU, an interstation transfer to either the Atlanta or Chicago PERM centers rather than to the regional office for which they originally received the directed reassignment letter issued in September 2003 as part of the overall ETA Reorganization MOU. Employees will report no later than July 1, 2005 and will continue to be eligible for PCS and relocation bonuses as defined in the September 2003 directed reassignment letters.
- d. As the workload dissipates Federal FLC staff in Boston, Philadelphia, Dallas and San Francisco will either be reassigned to duties other than FLC at an ETA office - (WS, JC, or ATELS) within their commuting area or reassigned to positions in the Permanent FLC Processing Centers in Atlanta and Chicago.
- e. As the parties mutually recognize the value of retaining experienced, professional FLC field staff and the DFLC has a need to attract as many such current employees as possible to its PERM center in Atlanta and Chicago, the following understandings are agreed upon:
  - The parties agree that, in light of the above considerations, interstation transfers of FLC field staff (except Atlanta and Chicago FLC staff) to either the Atlanta or Chicago Foreign Labor Certification Permanent Processing Center will be in the best interest of the government as specified in Article 33, Section 1 C. of the NCFLL/DOL Agreement if the employee reports no later than February 6, 2005.
  - Selections will be made in accordance with Article 33, Section 2.B of the DOL/NCFLL Collective Bargaining Agreement. To the maximum extent feasible, staff preferences to either Atlanta or Chicago will be honored.
  - Selected employees will be reassigned to a PERM center. Reimbursement for travel and transportation expenses incurred in an interstation transfer which is in the interest of the Government shall be provided in accordance with applicable laws and regulations (PCS). PCS will be by the customary DOL practice of allowing the employee the choice of a house hunting trip or temporary quarters.

- FLC employees who request interstation transfers and are selected will be given the option of requesting a relocation bonus up to 25% of base pay or \$10,000.00 whichever is less instead of receiving PCS.
- If for any reason an employee is determined to be ineligible for PCS reimbursement they will be so advised before undertaking a relocation to the new duty station.

#### **4. Placement Process:**

The parties agree that for employees not eventually placed in one of the PERM centers through interstation transfer the following placement processes will be followed.

- a. Management guarantees all Federal permanent FLC staff in Boston, San Francisco, Philadelphia and Dallas not eventually placed in one of the PERM centers will be offered a position in Workforce Systems, Job Corps or ATELS within their commuting area. Employees in closing offices (Seattle and New York) not eventually placed in one of the PERM centers will be placed as above in their new geographic location (since no vacant positions exist in the closing offices) per the current directed reassignment letter issued September 2003. ETA positions offered will not require any reduction in grade.
- b. The placement of the FLC staff will be staggered in nature as regional vacancies occur and staff expresses an interest in available positions. Merit staffing of DOL positions within the employee's commuting area or in some other geographic location will of course continue to be an option for all FLC employee.
- c. ETA will make every effort to place FLC employees into positions according to preferences expressed by each employee.
- d. Management will provide the necessary training to employees to enable them to perform the functions of their new jobs. When requested by the employee an IDP will be developed.
- e. Management will continue to comply with all provisions of Article 22 of the DOL-NCFLA Agreement regarding training including general career mobility.
- f. As an additional placement effort employees will have access to transitional services such as coaching support; on-site transitional support services; and career counseling services.

#### **5. Transition:**

- Current permanent Federal Foreign Labor staff assigned to the Philadelphia and Dallas Regional Offices will be reassigned to their respective processing center, which is within their normal commuting area, once the centers are available for occupancy. FLC staff

will take their current work assignments with them to continue processing. This includes both permanent and temporary program assignments.

- All Foreign Labor Certification Federal staff currently located in the Atlanta and Chicago Regional Offices will relocate to their respective processing center. These centers are within the normal commuting area. The anticipated date for occupancy of the centers is on or about September 1, 2004. The PERM program is scheduled to become operational 120 days following the publication of its final rule in the Federal Register. All foreign labor certification processing activities, except those specifically addressed through regulation and/or policy, will be processed in Atlanta and Chicago.
- FLC staff will be trained on any new FLC processing initiatives prior to implementation. ETA will provide training to employees prior to the processing of applications. Training workshops will also be provided for each work team, focusing on their specific application processing tasks. All employees will receive training on the mission and function of the Foreign Labor Processing Centers, Quality Control and Internal Security, Customer Satisfaction.

## 6. Space

- The parties agree that the issue of safe and adequate workspace during the reorganization period is of utmost mutual importance to them. Accordingly, the parties agree that the provisions of Article 23 and 34 of the NCFLL/DOL Agreement and Chapter 800 of DLMS 4 regarding the new processing centers will be rigorously followed.
- To the extent possible, for employees relocating to one of the new centers the quality of their current office working conditions will be maintained. This will include reasonable access to such general amenities as are currently available to FLC regional office employees in Philadelphia, Atlanta, Chicago and Dallas. These amenities include such features as snack areas, health centers, credit unions, day care, and fitness facilities.
- Management will continue to comply with Article 34 to the extent of its authority provide and maintain safe and healthy working conditions for all employees. The parties mutually recognize the need to ensure the security of the new processing centers in Philadelphia, Atlanta, Chicago and Dallas. Management will ensure that the ETA space in these sites will be in accordance with Article 34 of the DOL/NCFLL Agreement, which may include utilizing security measures such as cipher locks, peep holes, and door bells.

7. Flexiplace arrangements will be in accordance with Article 28 of the DOL-NCFLL Agreement. Management agrees to work with the NCFLL to provide information to employees advising them of their right to request consideration for flexiplace arrangements in accordance with Article 28. ETA supports the use of flexiplace and the implementation of this MOU will not reduce ETA's commitment to flexiplace agreements.

8. Management will continue to comply with the Flexitime provisions as outlined in Article 27 of the DOL-NCFLI Agreement.

9. The parties agree that the following provisions will apply to the working conditions at the backlog centers.

- In no instance will contract staff supervise Federal staff.
- NCFLI bargaining unit employees will not directly supervise contract employees.
- Federal employees will not be negatively impacted in their performance ratings due to any failure or deficiency attributable to the contractor or its employees

10. Labor Management Relations Issues:

- RCBC jurisdiction for FLC employees will continue to be by geographic location during and after the reorganization. For employees remaining in Boston, New York City, San Francisco and Seattle this will be by the RCBCs for those regions. For employees working in the Philadelphia, Atlanta, Chicago and Dallas processing centers it will be the RCBCs for those regions. The number of stewards will remain consistent with the provisions as outlined in Article 6, Section 1.C.1., which entitles the NCFLI to designate a steward for each of the new processing centers.
- Any unresolved LMR/Personnel issues may be raised in accordance with Article 3 of the DOL-NCFLI Agreement to the RCBC level.

11. Other Issues:

a. The DFLL anticipates hiring non-permanent Federal employees to assist with the work load at the backlog center. Recognizing that non-permanent Federal employees will be classified in the NCFLI bargaining unit if they are appointed to a term or serve combined terms of one year or more, the parties agree to the following:

- The NCFLI will be notified as non-permanent Federal employees are appointed at the backlog centers. This notification will include the name of the appointee, the period of his or her non-permanent Federal appointment, and his or her office location.
- The NCFLI will be notified if any non-permanent Federal employee originally appointed for less than one year has now served a year or more.

b. Beginning with the October 1, 2004 performance management cycle, FLC field employees will be included in one Pay Deciding Units (PDU) - the Office of National Programs (which is consistent with the PDUs for Job Corps and ATELS). Reduction in Force (RIF) retention areas will be determined in accordance with 5 CFR and DOL regulations.

- c. During the FLC reorganization, ETA/DFLC will continue to apply the current "E" code or its subsequent equivalent for FAIR Act Inventory purposes.

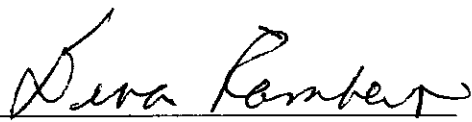
**V. COMMUNICATION AND DISTRIBUTION:**

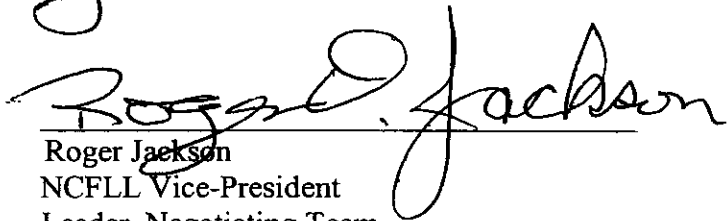
The parties agree that they will mutually develop procedures for communicating the terms of this agreement to all affected employees.

**VI. STATUS OF AGREEMENT:**

This MOU will go into effect upon signature by the designated representative of each party. It will remain in effect for the term of the NCFLL/DOL Master Agreement.

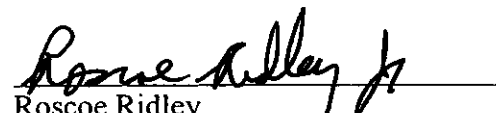
Signed this 13<sup>th</sup> day of May 2004.


  
Dina Rambert  
Human Resource Specialist, ETA  
Leader, Negotiating Team


  
Roger Jackson  
NCFLL Vice-President  
Leader, Negotiating Team

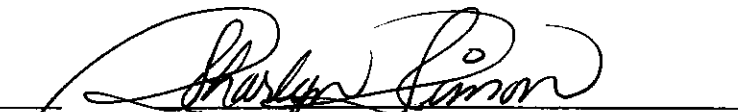
  
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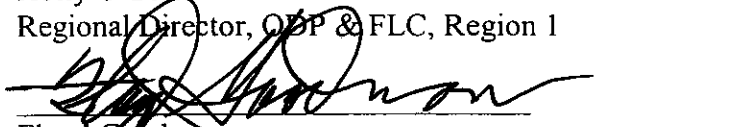
  
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## ATTACHMENT

The Division of Foreign Labor Certification (DFLC) has responsibility for varying aspects of six (6) different employment-based visa programs. These programs permit U. S. employers to hire foreign workers to fill jobs essential to the U. S. economy. Certifications may be obtained in cases where it can be demonstrated there are insufficient qualified U. S. workers available and willing to perform the work at wages that meet or exceed the prevailing wage paid for that occupation in the intended area of employment.

The mission of the Division of Foreign Labor Certification is to allow employers to hire foreign workers, temporarily or permanently, when there are not sufficient U. S. workers who are able, willing, qualified, and available to perform the job. In addition, the program ensures the employment of the foreign workers will not adversely affect the wages and working conditions of U. S. workers similarly employed.

These factual determinations are required to carry out the Secretary of Labor's responsibilities under the Immigration and Nationality Act (INA), which regulates the admission of aliens into the U. S. The role of the Department of Labor is to certify to the Secretary of State and to the Secretary of Homeland Security that these conditions have been met before a foreign worker is brought to the U. S. on an employment-based visa.

ETA is currently experiencing a backlog in the processing of permanent labor certification applications. Because of this large backlog and numerous associated criticisms', the program has been identified in the President's "Blueprint for a New Beginning" as being seriously in need of improvement. To begin to address these concerns, a major re-engineering of the Permanent Labor certification process was begun several years ago and will culminate with the planned implementation of the Program Electronic Review Management (PERM) System by the end of calendar year 2004.

The "new" PERM Program will streamline the application review process by removing State Workforce Agencies (SWAs) from the process, requiring employers to recruit for U. S. workers prior to submitting an application to the Department, and introducing the use of technology to assist in the filing and processing of applications. Specifically, the Division of Foreign Labor Certification intends to station all program processing functions, including associated Federal staff, currently stationed in ETA/Regional Offices in two (2) Foreign Labor Certification Processing Centers. The Centers will be located in Atlanta, Georgia and Chicago, Illinois.