

**MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 5
AND THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 704
REGARDING BIPARTISAN INFRASTRUCTURE LAW REORGANIZATION**

I. PREAMBLE

WHEREAS the American Federation of Government Employees (AFGE) Local 704 (Union) and the United States Environmental Protection Agency Region 5 (EPA or Employer or Agency), also referred to collectively as “the Parties,” recognize that the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their Employers involving conditions of employment; and

WHEREAS Congress has determined that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their Employers involving conditions of employment; and

WHEREAS the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government; and

WHEREAS Congress has determined that labor organizations and collective bargaining in the civil service are in the public interest;¹ and

WHEREAS management has the right, among others, to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and to determine the personnel by which agency operations shall be conducted;² and

WHEREAS the Union has the right to negotiate procedures which management officials of the Agency will observe in exercising any authority under this section, as well as appropriate arrangements for employees adversely affected by the exercise of any authority by such management officials.³

¹ 5 U.S.C. §7101(a)(1) and (a)(2)

² 5 U.S.C. §7106(a)(2)

³ 5 U.S.C. §7106(a)(3)

NOW THEREFORE the Parties hereby further agree as follows:

II. PARTIES TO THIS AGREEMENT

This Memorandum of Agreement (MOA or Agreement) is entered into, by and between the EPA Region 5 and AFGE Local 704, who are considered the ‘parties’ to this MOA.

III. PURPOSE OF THIS AGREEMENT

- A. The purpose of this MOA is to establish procedures and appropriate arrangements for the implementation of the EPA Region 5 *Bipartisan Infrastructure Law* (BIL) reorganization proposed by management to the Union on August 11, 2022 (Region 5 BIL Reorganization). This MOA applies only to the Region 5 BIL Reorganization.
- B. In the event (present or future) that any provision of this MOA is found to be contrary to any requirement of the *Interim Collective Bargaining Agreement (ICBA) between the parties*, the *ICBA* (and any successor agreements) shall supersede this Agreement for that specific requirement(s) only.

IV. ELIGIBILITY AND COVERAGE

This MOA covers all bargaining unit employees represented by AFGE Local 704 who are impacted by the EPA Region 5 BIL Reorganization and only to the extent that it is not superseded by any national agreement. In the event (present or future) that any provision of this MOA is found to be contrary to any requirement of the *Interim Collective Bargaining Agreement (ICBA)* (and any successor agreements) applicable to the reorganization, the *ICBA* shall supersede this Agreement for that specific requirement(s) only.

V. GENERAL PROCEDURES AND APPROPRIATE ARRANGEMENTS

Region 5 BIL Reorganization will be governed by the provisions of this MOA, the *ICBA*, relevant U.S. Office of Personnel Management (OPM) regulations, and the Agency’s policies and procedures for reorganizations. EPA agrees to meet as soon as possible, but generally not later than five (5) working days to discuss any problems relating to the implementation of the R5 BIL Reorganization, or any alleged noncompliance with this MOA. Meetings under this section will not serve to delay implementation of reorganization. Problems or allegations of noncompliance not resolved by the meeting required above, may be addressed through the Negotiated Grievance Procedures.

MANAGEMENT AGREES:

A. PARS

1. To provide affected bargaining unit employees with interim and final end-of-year ratings and establish PARS performance plans consistent with the requirements of the *ICBA Article 17, Employee Performance Evaluation*.
2. An Interim Rating is a written rating prepared as input to the rating of record by the former supervisor when a change of supervisor occurs during the appraisal period. An employee must have completed the minimum period of performance to receive an interim rating. Supervisors and employees will follow *ICBA Article 17* requirements related to interim ratings.
3. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing supervisor occupied each position. If the appraisal period is less than the minimum period of performance, only performance highlights will be provided.
4. The supervisor must indicate all measurement sources and any individual's input that were considered in preparing the interim rating.
5. If interim ratings are required because of the BIL reorganization, then the interim rating will generally be completed within thirty (30) days.

B. Reassignment

To consider any request for reassignment from an affected bargaining unit employee who is realigned to a new or different section. Requests for reassignment to a different division/office should be submitted in writing to the Human Capital Officer. The appropriate management official will respond to the request in writing, generally within thirty (30) days of receipt.

C. Remote Work, Telework and Work Schedules

1. This reorganization is not intended to change position descriptions and/or duties of employees and it is not envisioned that Remote Work and Telework agreements of affected bargaining unit employees will need to be updated. However, if there is a change of duties in the future, the relevant provisions of the *ICBA Telework and Remote Work Article* will be applied.

2. Bargaining unit employees will not have their current approved work schedule (e.g.: Maxiflex, CWS 5/4-9, CWS 4-10, FWS, etc.) changed as a result of this reorganization. Any proposed changes to work schedules after the reorganization shall be subject to the provisions of the *ICBA Work Schedules Article* and applicable federal law and policies in effect at that time.

D. Leave

Leave approved by supervisors prior to the effective date of the reorganization for bargaining unit employees will remain in full-force and effect after the reorganization, except in the case of emergencies.

E. Position Descriptions / Other Duties

1. The duties and responsibilities contained in the position descriptions of affected bargaining unit employees shall not be changed for any employee because of this reorganization.
2. To provide bargaining unit employees affected by this reorganization with a copy of their position description, upon request. Employees are encouraged to first check their eOPF for a copy of their current position description prior to requesting a copy through their supervisor.
3. The goal of the Parties is for the major duties of bargaining unit positions covered by this Agreement to be accurately described in writing and classified to the proper occupational title, series, code, and grade in accordance with applicable OPM and Agency regulations. -Employees may discuss with supervisors any perceived substantial differences between the duties assigned or performed, and those contained in the position description.
4. Inclusion of the phrase “Other duties as assigned” in a bargaining unit employee’s performance plan shall be subject to the parties’ mutual understanding in the *ICBA, Article 17, Employee Performance Evaluation*.
5. Barring exigent circumstances, the phrase ‘other duties as assigned,’ or its equivalent, shall not be used to regularly assign work for a preponderance of duty hours. This does not preclude the employer from detailing employees to other assignments in accordance with applicable laws.
6. Management will assign ‘other duties’ in a manner consistent with safe and lawful work practices. It is further understood that any details will be consistent with *ICBA, Article 15, Details*.

F. Physical Relocations

No physical moves are anticipated as a result of this reorganization. The parties are separately negotiating any exceptions and addressing seating issues in the work units with insufficient seat space.

G. Training

1. In accordance with *ICBA Article 14 Reassignment, Section 2*, “An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of his/her new position in accordance with the Agency’s approved Performance Management System as incorporated into this Agreement.”
2. In accordance with *ICBA Article 25 Employee Rights, Section 4, Merit Systems Principles*, “(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.”

H. Miscellaneous

1. To make an electronic copy of the final signed version of this MOA available to Region 5 employees via the sharing of a link in an upcoming Regional Roundup.
2. Bargaining unit employees who have questions about their rights under this Agreement should consult with their local steward or designated union official.

VI. AMENDMENTS, MODIFICATIONS AND SEVERABILITY

A. Amendments and Modifications

This MOA may be amended only with the joint written agreement of the parties.

B. Severability

In the event that any provision (section, paragraph, sentence, etc.) of this MOA is held invalid by any arbitrator, court, regulation, rule or statute, the remaining provisions of this MOA shall not be held invalid and shall remain in full force and effect. The Parties shall meet as soon as possible, but not more than five (5) working days after such an event and attempt to renegotiate any provision found invalid.

VII. DURATION AND EFFECTIVE DATE

A. Duration

This Agreement shall remain in full force and effect for **one (1) year** from the implementation date of the reorganization. Management will provide the Union with the implementation date of the reorganization once provided by the SSC.

B. Effective Date/Agency Head Review

1. This MOA shall be effective on the date it is signed, subject to Agency Head Review. However, this Agreement shall take effect on the 31st day following execution if no action is taken by the Agency Head by that date.
2. If, as a result of Agency Head Review, a proposal or section of this MOA is disapproved, the parties shall exchange proposals and negotiate the affected proposal or section of this MOA within thirty (30) calendar days of the Agency's notification.
3. An item returned by Agency-head review shall permit the parties, at the request of either party, to renegotiate that item and all related items and provisions that are directly affected, to the extent negotiations of that item are permitted by law.

VIII. SIGNATURE/DATE

The parties agree to this MOA as written above.

FOR AFGE Local 704:

FOR MANAGEMENT:

//s// Nicole Cantello

11/2/22

Nicole Cantello
Chief Negotiator
AFGE Local 704

Date

Scott Sharon
Chief Negotiator
U.S. EPA Region 5

Date