Memorandum of Understanding

The following constitutes an agreement between the Department of Veterans Affairs (VA) and the American Federation of Government Employees (AFL-CIO) National Veterans Affairs Council #53 (NVAC) on the Lapse of Funds which cause an Emergency Shutdown Furlough in the Department.

1. The Department shall not in accordance with the law attempt to dissuade its employees from exercising their 1st amendment rights i.e., to exercise their feelings, perception and factual matters concerning the proposed or pending furlough.

2. The purpose of the agreement is to implement steps and action which will minimize the adverse effects on bargaining on bargaining unit employees in case funds are not appropriated or approved by Congress.

3. The national parties herein have agreed to cooperate to the maximum extent feasible in adopting the Department's actions and reducing the impact of the budget cuts or failure to provide funding by Congress.

4. All union proposals herein which are not mandatory subjects of bargaining by virtue of some interference with a "management rights" under 5 U.S.C. are intended as "appropriate arrangements" under 5 U.S.C. §7106 (b)(3) for bargaining unit employees adversely affected by the exercise of one or more of managements rights.

5. Bargaining unit employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated when appropriations are approved to the extent provided by law and regulation. The Department will grant bargaining unit employees who suffer a loss of pay because of furloughs administrative leave equal to lost time when an appropriation measure is enacted.

6. Nothing in this MOU necessarily reflects the agreement of NVAC to furloughs or other actions having a negative impact on bargaining unit employees, the performance of the Department mission, or public interest. Nothing in this agreement is intended to waive or limit any statutory rights of individual employees which may exist in absence of this MOU.

7. Cost cutting actions, such as forced sabbaticals, absences, freezes, etc., will be terminated at the point where funding is restored or provided, or needed budgetary savings have been reached.

8. No changes to conditions of employment will be implemented in the bargaining unit except as agreed to by the national parties to the collective bargaining agreement. The NVAC does not agree to reopen or waive any contractual provisions that may conflict with actions proposed by the Department.

9. The Department agrees not to object to employee(s) filing for unemployment benefits during the furlough.

10. Health Coverage. The employer will continue to provide the full employer contribution to heal benefits under the Federal Employees Health Benefit Program for bargaining unit employees affected by a furlough.

11. **Employee Assistance**. Prior to a furlough, upon request affected bargaining unit employees, will be provided assistance by the Department in locating outside employment so as to avoid or minimize income lost as the result of the Department's proposed action. Such assistance will include among other things.

    a. use of sufficient administrative leave to contract federal job placement officials and employment agencies;

    b. invitation of local human resources officials to interview bargaining unit employees at the work-site;

    c. use of Department's facilities for groups and individual meetings to pursue outside employment; and

    d. waivers of restrictions on outside employment to the extent permissible under applicable law and government –wide regulations. If approval of outside employment is required, the Department will --

        i. Decide cases on the basis of the employee's explanation of the outside employment, within 2 days of the employee's oral explanation; or

        ii. If documentation is required, decide the case on not later than 2 workdays after the documentation are provided.

12. **Flexible workplace.** Bargaining unit employees whose work may be performed off-site will be permitted to work at home under a signed telework agreement in order to save expenses associated with the job, up to the amount of income employees will lose as a result of the Department's action(s). Savings to the Department which may result from the flexible workplace arrangement will be applied toward the required budgetary savings at the source of the Department's action.

13. **Performance-related Actions.**

    a. Employees will not be held accountable for effects of a furlough occurring during or as a result of the absence of the employee from work. Allowances for the effects of the intermittent employment on assigned work will be made when applying the performance appraisal system.

    b. Employees will not be subject to adverse performance ratings actions solely as a result of a measure or performance standard not being met due to failure to approve or appropriate funds; such as, forfeiture of performance awards, lower ratings, performance related discipline, etc.

14. **Call-in.** Employees who are in a furlough status will not be subject to orders or other work-related instructions.

15. **Parking**.

a. Bargaining Unit employees who pay to park within a VA parking facility will be charged a pro-rata amount during any period that they are subject to an emergency furlough.

b. Space otherwise available to employees absented through furlough will be provided to bargaining unit members who request such spaces where parking space on government-controlled premises is allocated among employees.

16. **Child Care.** Where child care is available to employees by government-sponsored or subsidized child care operators through the employment relationship, child care charges will be reduced by the ratio of salary lost to normal salary by virtue of the furlough.

17. **Compresses Workweek and Flextime.** Employees performing work which is not schedule-dependent will be permitted to adjust their work-weeks to reduce the number of days they are required to be at work.

18. **Furlough Adjustment Arrangement.**

a. Beginning with the first pay period under a furlough, the Department will recomputed the employee's scheduled annual salary to arrive at the employee's anticipated earnings. The Department will then re-determine the employee's income tax bracket and adjust the amounts withheld from actual bi-weekly/monthly earnings according to the new anticipated earnings. Each employee will be provided notification of completion of this re-evaluation, including the days of furlough and pre- and post-furlough tax brackets.

b. The Department will survey unit employee to determine the number of dependents claimed for purpose of income tax withholding. Should an employee indicate a change in dependents, the withholding will be adjusted as of the first paycheck received for a pay period beginning in the FY.

c. Employee may make adjustments to previously designated contributions under the Combined Federal Campaign. Should an employee indicate a change in such designations, the withholding will be adjusted as of the first paycheck received in the next pay period.

d. Health insurance premium may be prorated, at the election of an employee, so that a larger amount is withheld during a period of greater pay. For example, if an employee is paying $100 in bi-weekly insurance premiums, but is furloughed for 2 days during the second pay period in a month, the employee can opt to have the $100 decreased in the pay period by 2/10 and the dollar amount allocated to pay periods during which no furlough is effective. The number of such pay periods will not be unreasonable low, and need not occur during the FY.

e. Employees may make allowable adjustments to their participation in the life insurance program. Should an employee indicate a change in such designations, the withholding will be adjusted as of the first paycheck received in the next pay period.

f. Prior to the effective date of the furlough, employees will be provided the opportunity for employer provided budget and credit counseling to help them adjust to the furlough.

i. The Department will arrange for such counseling during regular work hours as administrative absence at the permanent duty location; employees will be permitted to request confidential individual interviews for the purpose.

ii. Upon request of the employee, the Department's representatives will meet with the employees, creditors, and credit rating organizations to work out a revised bill payment plan based on the employee's anticipated salary reduction caused by the furlough.

iii. Upon request of the employee, the Department will provide notification of furlough and the resultant decline in income to parties designated by the employee. The wording of such notice may be provided by the employee, so long as the information contained is factually accurate.

19. **Official Time.**

a. Where AFGE representatives use of official time is based on a specified formula or period, it will not be reduced due to furlough of such representatives from what it would have been in absence of the Department's proposed action(s); and

b. Due to the increased need for representational activity resulting from the proposed Department actions, additional reasonable official time will be approved as necessary.

20. **Job-Sharing**. In accordance with Article 34 of the Master Agreement, unit employees possessing transferable skills and qualifications required for performing the work of a required position will be permitted to share jobs. Such unit employees will agree on how to divide the work required hours required and authorized by the Department will be covered.

21. **Furlough Notices.**

a. Furlough notices must provide unit employees with all information to which they are entitled by law.

b. Furlough notices will be delivered to individual unit employees in person if on station. If not on station, notices will be delivered by certified mail, return receipt requested, to the employee last known address. Employees will not be required to return to their worksite in order to receive in person delivery of a furlough notice.

c. Notices will indicate to unit employees that the action being considered will not be implemented until bargaining obligations have been fully met, including impasse procedures.

d. Notices will indicate the actions and steps which the Department has identified to lessen the impact of the furlough on unit employees, including a copy of this MOU agreement.

22. In the case of a budgetary shortfall and/or budget cuts (i.e., not in the case of an emergency shutdown furlough), once the Department determines how many furlough days an employee shall be off during any fiscal year the bargaining unit employee can elect to a continuous or discontinuous furlough. It shall be at the employee(s) discretion, when using the discontinuous furlough, how many days during a pay period or month they will be furloughed.

23. When determining which positions are exempt from furlough, it should be considered the Union officials have a statutory obligation to represent the bargaining unit.

24. When feasible and if local parties agree, furloughs will be spread out among employees in affected competitive levels to minimize the impact on each employee and the disruption of the Department activities. All employees shall be accorded fair and equitable treatment consistent with this agreement.

25. Except under the most unusual circumstances, when the furlough ceases, bargaining unit employees furloughed will return to their same tours of duty, duty locations and work schedules.

26. Once the Department determined furlough positions are identified, bargaining unit employees within those positions may volunteer to be furloughed and such volunteers will be considered.

27. If for some unforeseen reason or unusual circumstance, bargaining unit employees are in a travel status when the lapse of funding occurs, the Department will return said employees to their duty station and/or location at government expenses.

28. Within two (2) workdays, the Department will forward this signed MOU to local facilities and instruct them to provide a copy to the local union president upon their receipt. The Local Union may request to bargain further so long as there is no conflict with this MOU agreement.

Larry L. Bennett, Staff Director VA LMR
For the Department of Veterans Affairs

6/23/2016
Date

Oscar L. Williams, Jr., 2nd Exec Vice President
AFGE National VA Council #53 (NVAC)

6/23/2016
Date