

MEMORANDUM OF UNDERSTANDING BETWEEN
THE FOOD AND DRUG ADMINISTRATION AND THE NATIONAL TREASURY
EMPLOYEES UNION

This memorandum of understanding (MOU) contains the agreements of the parties concerning implementation of the consolidation of shared services functions within the Food and Drug Administration (FDA). Most of the agreements incorporated into this MOU involve one-time actions which will be taken at the time the consolidation is effected or shortly thereafter. Agreements which do not constitute one-time actions shall remain in effect until expiration of the FDA/NTEU Collective Bargaining Agreement, after which time they may be changed pursuant to the legal requirements of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et seq.* This agreement shall be effective upon execution by both parties.

A number of the provisions of this agreement pertain to matters the FDA believes to be already "covered by" the FDA/NTEU Collective Bargaining Agreement (CBA). The inclusion of these provisions in this agreement should not be construed as a waiver of the FDA's right to assert that it is not obligated to negotiate concerning such "covered" matters in the future.

1. Alternative Work Schedules and Flexible Workplace Arrangements.

Management will require changes to current Flexiplace and Alternative Work Schedule arrangements only when necessary to ensure effective and efficient mission accomplishment pursuant to the requirements of Articles 25 and 26 of the CBA. Absent a significant negative effect on the Shared Services organization's ability to provide effective and efficient service to its customers, current Flexiplace and Alternative Work Schedule arrangements will not be altered for a period of 6 months from the effective date of this agreement.

2. Leave Administration

The agency will administer leave consistent with the appropriate articles of the CBA. Pursuant to Article 15, previously approved annual leave may not be canceled unless the employee's absence would create a severe workload problem.

3. Training

- a. Training Required to Perform in the New Organization. Pursuant to Article 41, Section 2 of the CBA, the FDA will, consistent with budgetary limitations, provide training it deems necessary for employees to perform newly assigned duties and responsibilities.

- b. Cancellation of Training. The Employer has determined that the Shared Services realignment will not normally be a basis for canceling previously approved training provided the scheduled training continues to be reasonably related to the performance of the employee's job. As in the past, training may be canceled for bona fide management reasons, including budget shortfalls and workload considerations.

4. New Procedures

FDA management will communicate all standard operating procedures to employees in writing. For the purpose of this agreement, "in writing" includes electronic mail messages.

5. Performance Management

- a. General. Management will adhere to all the requirements of Article 30 of the CBA in evaluating employees assigned to new duties. Particularly, ratings will be provided in a fair, consistent, constructive and equitable manner. Also, employees shall not be evaluated using new elements and/or measures or measures and/or elements with major revisions until those measures and/or elements have been in effect for at least one hundred twenty (120) days. Also, employees shall not be evaluated using new elements and/or measures or elements and/or measures with major revisions until any negotiations required pursuant to Article 30 of the CBA have been completed.
- b. Closeout Ratings. Pursuant to Article 30, Section 9 of the CBA, present supervisors will complete final ratings of all employees reassigned to new positions in connection with the Shared Services realignment, provided those employees have served under existing Performance Evaluation Plans for at least one hundred twenty (120) days.
- c. New Performance Evaluation Plans. New Performance Evaluation Plans will be developed for employees migrating to OSS consistent with Article 30 of the FDA-NTEU collective bargaining agreement.

6. Communications

- a. Formal Meeting. Management will notify all impacted Chapters and employees of the changes reflected in this MOU and will hold a formal meeting governed by applicable collective bargaining procedures for each major Shared Services functional area. Meetings will be held during duty hours and employees will be given reasonable advance notice (at least two days). The Employer will provide parking for any employees attending these meetings who do not work in the buildings where the meetings are held and who must drive their cars to attend the meetings. Employees will be asked to notify the Employer a reasonable period of

time before the meetings (at least by the day prior to the applicable meeting) that they will require parking in connection with those meetings. A question and answer period will be included in the sessions. Responses will be provided as soon as possible after the meeting to any questions management cannot answer. Thirty minutes will be provided to the chapter leaders (or their designees) to meet with employees without management presence.

b. ERIC Information.

The Employer will publish procedures related to ERIC as well as answers to employee questions about ERIC operations on the FDA intranet.

c. Status Briefing. The Employer will provide NTEU with a status briefing regarding OSS six months after execution of this agreement.

7. Placement of Employees in the Shared Services Organization

The employer has determined that each employee affected by the Shared Services realignment will be placed in a position at his or her current grade and pay and that each employee will continue in his or her current career ladder, if any. Should circumstances change to the extent that it is no longer possible to place all affected employees in this manner, the Employer agrees that, prior to effecting personnel actions, it will notify the Union. In that event and upon request, the Employer will negotiate procedures and appropriate arrangements for the employees affected by its decision pursuant to Article 3 of the CBA.

8. Permanent Changes of Station.

No affected employee will undergo a forced permanent change of station (i.e., a move between commuting areas) until NTEU and the Employer negotiate concerning that change. Changes in office location that do not involve changes in duty station will be administered pursuant to Article 5, Section 18 of the CBA.

9. Pending Grievances.

Pending grievances will continue to be processed consistent with Article 45 of the FDA/NTEU Collective Bargaining Agreement.

10. Non-Migrating Employee Work Assignments.

The Employer has determined that non-migrating employees who remain in the Centers will continue to have adequate, appropriate work consistent with their positions and grades. Should circumstances change in such a way that this is no longer feasible, the Employer agrees to negotiate on request to the extent required by law and the CBA concerning procedures and arrangements for affected employees prior to effecting any resulting personnel actions. Pursuant to Article 33, Section 3 of the CBA, non-migrating

employees may request a meeting with management to discuss workload / work assignment concerns. Management will schedule such meetings within a reasonable period of time. If a non-migrating employee believes s/he is not receiving appropriate work, s/he may file a grievance.

11. Resolution of Employee Concerns.

Employees who migrate to OSS will be permitted to question their particular functional placements. Upon request, the Employer will provide the employee a written explanation for and rationale behind his or her functional placement. The Employer will work with the NTEU to address these concerns.

12. Buy-Outs.

Impacted employees will be permitted to exercise buy-out rights under the FDA's buy-out authority during the period October 1, 2003 through January 2, 2004.

13. Coverage Issues.

Employees and/or their Union representatives may raise coverage issues that arise in OSS as a result of nation-wide (across several time zones) customer service obligations. The Employer will promptly confer with the employees and/or Union representatives about such issues. Any issues not resolved through such discussions may be resolved as grievances pursuant to Article 45 of the CBA.

14. Timekeepers.

The Employer will take appropriate action to ensure that employees' time and attendance is properly recorded and reported. The Employer has determined that, initially, timekeepers in the employees' former organizations will continue to serve as their timekeepers until a smooth transition to timekeepers in the new organization can be made. Arrangements provided for in Article 5, Section 11 of the CBA will be available should transferring employees experience pay problems in connection with the Shared Services Consolidation.

15. Filling Vacancies in the Shared Services Organization.

Vacancies in OSS will be filled in accordance with Articles 35 and 36 of the FDA/NTEU Collective Bargaining Agreement.

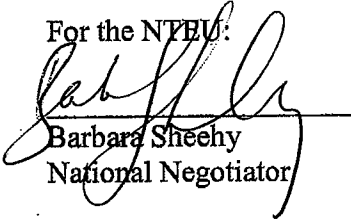
16. Resolving Problems.

If either party becomes aware of any significant problems, the parties will meet promptly on request to discuss those problems. Disputes over administration of the realignment and/or of this agreement will be resolved through Article 45 of the FDA/NTEU CBA, Grievance Procedure.

17. Employee Feedback.

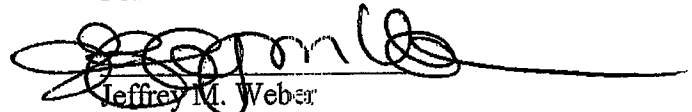
The Employer will obtain employee feedback concerning the realignment using questionnaires, focus groups, or other appropriate mechanisms. The Employer will provide the Union with advance copies of any questionnaires and will consider any NTEU recommendations prior to administering the questionnaires. The Employer will also afford NTEU the opportunity to provide recommendations related to focus group formats and questions if focus groups are used and will invite the Union to send a representative to any focus group meeting it holds. The Employer will share employee feedback with the Union.

For the NTEU:



Barbara Sheehy
National Negotiator

For the FDA:



Jeffrey M. Weber
Associate Commissioner
for Management

Executed: