



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Office of Human Resources Management
Washington, D.C. 20230

May 31, 2005

Mr. Charles Ford, Vice President
American Foreign Service Association
U.S. Department of Commerce
Suite 1204
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Vice President Ford:

Enclosed is the language as agreed by USF&CS and AFSA for mid-term 2004 bargaining and the language incentive proposal. These documents have received careful consideration and comment by USFCS senior management, and have received concurrence from the Office of the General Counsel.

The attached is presented to you for your concurrence and signature. They will then be forwarded to USF&CS for signature and finally through the process of Agency Head Review. This language will go into effect as soon once signed by AFSA and US& FCS and will become final after 30 days expire, subject to Agency Head review.

We look forward to your concurrence to bring the mid-term negotiations to a successful conclusion. Thank you for your attention to this matter.

Sincerely,

Michael Stein, Acting Chief
Employee & Labor Relations Group
OHRM/ITA

Enclosures [1]


cc: Tom Moore, Acting Assistant Secretary for Trade Promotion
& Director General
Barry Friedman, Deputy Assistant Secretary, OIO
Nancy Kripner, HR Manager, US&FCS



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Office of Human Resources Management
Washington, D.C. 20230

June 3, 2005

MEMORANDUM FOR: Felicia Purifoy, Director
Office of Compensation, Innovation and
Work-Life Policy
OHRM/DOC

FROM: 
Michael Stein, Acting Chief
Employee and Labor Relations Group
OHRM/ITA

SUBJECT: Agency Head Review of Collective Bargaining
Agreements Between AFSA and USFCS

Pursuant to DAO 202-771, we hereby request Agency Head Review of the attached Memoranda of Understanding between AFSC and US&FCS dated June 2, 2005. Responses to this request should be sent to Nancy Kripner, Human Resources Manager, OFSHR, and to myself.

Attached also is the copy of the memo to Nancy Kripner certifying concurrence by the Office of the General Counsel. The suggested modifications were incorporated during negotiations and the parties signed the documents on Thursday, June 2, 2005.

We look forward to your concurrence on the attached within the thirty-day period prescribed by the DAO.

Thank you for your attention to this matter.

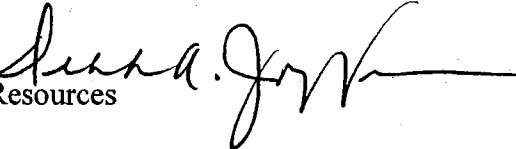
cc: Tom Moore, Director General, US&FCS ✓
Barry Friedman, DAS for International Operations, US&FCS ✓
Nancy Kripner, Director for Human Resources, US&FCS ✓
Doris Brown, Director for Human Resources, OHRM/ITA



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

JUN 29 2005

MEMORANDUM FOR Nancy Kripner
Human Resources Manager
Foreign Commercial Service

FROM: Deborah A. Jefferson 
Director for Human Resources
Management

SUBJECT: Agency Head Review of the Labor-Management
Agreement Between the U.S. Department of Commerce,
Foreign Commercial Service, and the American Foreign
Service Association

In accordance with Department Administrative Order 202-711, I have reviewed the provisions of the attached Agreement that was executed by the parties on June 2, 2005. The provisions are consistent with law, rule, and regulation.

For clarification purposes, we recommend the parties consider changes to the provisions entitled *Number of Promotions* on page 6 and *Language Maintenance Incentive* on page 10. Paragraph (a) of *Number of Promotions*, states that, "Decisions by the Director General or his/her designees on the number of individuals to be promoted and within the Foreign Service will be based upon the needs of the service and long term projections of personal needs...." Either the word "and" should be omitted between "promoted" and "within" or a word should be added after "and" for clarity, such as "retained." In addition, in the *Language Maintenance Incentive* provision, the second sentence in paragraph 3 states, "Officers will eligible...." This sentence should be revised to include the word "be" between "Officers" and "eligible."

If you should have any questions concerning this memorandum, please contact Octavia Richardson of my staff at (202) 482-3725.

Attachments

cc: ✓ Michael Stein
Acting Chief, Employee and Labor Relations Group
International Trade Administration

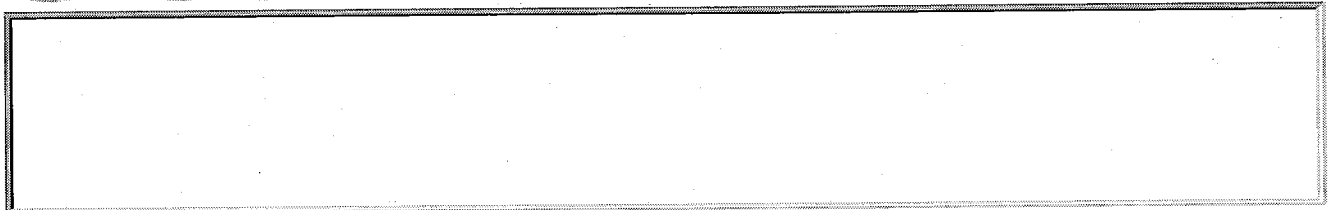
Brian D. DiGiacomo
Acting Chief, Employment and Labor Law Division
Office of the General Counsel

Alternative Dispute Resolution Pilot

This provision allows an employee to request mediation assistance when he/she believes there are grievable deficiencies in the performance evaluation. A pilot program has been established and is described in the attachment below. Please note since this information is just being forwarded, for this year **only**, if an employee would like to request a mediator for the purpose of resolving performance appraisal issues, the request must be made not later than **July 30, 2005**.

Copy of Memorandum of Understanding Between USDOC/USFCS and AFSA is attached at the bottom this page.

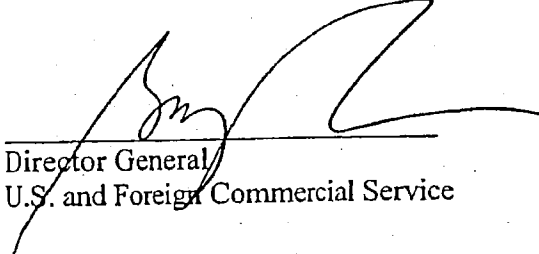
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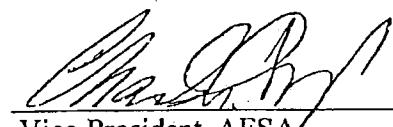
**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF COMMERCE,
UNITED STATES & FOREIGN COMMERCIAL SERVICE
[US&FCS] AND THE
AMERICAN FOREIGN SERVICE ASSOCIATION [AFSA]**

The parties to this memorandum, the American Foreign Service Association, herein after referred to as AFSA, and the U.S. Department of Commerce's Foreign Commercial Service, herein referred to as FCS, enter into this agreement for the purpose of establishing language on Review Panels and Alternative Dispute Resolution Pilot.

1. This memorandum is subject to and governed by Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980, as amended, and the Collective Bargaining Agreement (CBA) between AFSA and FCS, as amended. This agreement will be modified as necessary by any future amendments to the documents mentioned above, or to rules, regulations or laws impacting this agreement.
2. The attached provision will govern the procedures for mediation of performance appraisal disputes. It will be reviewed for continued use after two performance cycles.
3. This memorandum will be reviewed and open for renegotiation during the next Full Term CBA negotiations between the parties.



Director General
U.S. and Foreign Commercial Service



Vice President, AFSA

6/2/05
Date

Alternative Dispute Resolution Pilot:

An employee who believes that there are grievable deficiencies in the rating or reviewing official's comments in the employee's evaluation report may request mediation pursuant to the Alternative Dispute Resolution process jointly established by AFSA and FCS. Such request can be made within five [5] days of the formal appraisal meeting, but **no later than** five [5] days from the date the appraisal is due to OFSHR. Mid-term reviews may be included in this process. The mediator's role will be to facilitate the parties' [manager, employee and representatives, as appropriate] crafting of mutually acceptable solutions, if possible. The mediation will take place at a location mutually agreed upon by the parties, and parties and/or their representatives may participate in the mediation by telephone conference. If a mutually acceptable solution is reached, the employee will waive the right to grieve the performance rating.

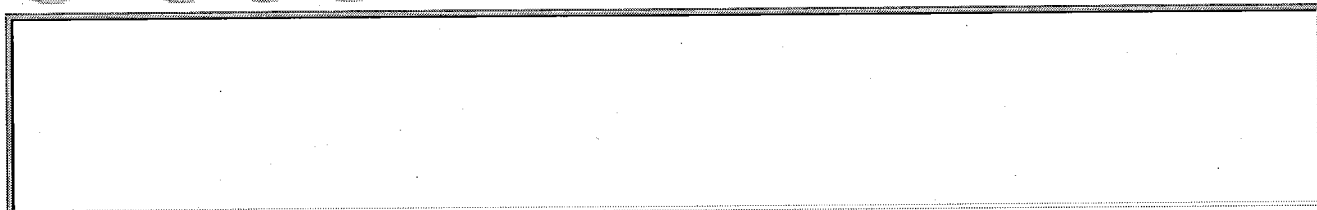
Process: This Pilot will be reviewed after use for two [2] rating cycles.

Number of Promotion Opportunities

The intention of this language is to enhance the transparency of the Selection Board process. Decisions made by the Director General concerning the number of promotion opportunities will be provided to the AFSA Vice President in a sealed envelope prior to the convening of the Boards. Once the Boards have completed their process, the AFSA Vice President will open the envelope in the Human Resources Manager's presence and review the number of promotions given against the number of opportunities approved.

Copy of Memorandum of Understanding Between USDOC/USFCS and AFSA is attached at the bottom this page.

You can download any of the files below by dragging them to your Windows desktop. To open a file for reading, double-click it.



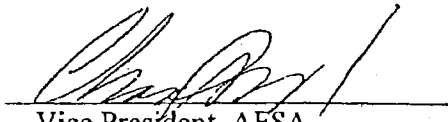
**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF COMMERCE,
UNITED STATES & FOREIGN COMMERCIAL SERVICE
[US&FCS] AND THE
AMERICAN FOREIGN SERVICE ASSOCIATION [AFSA]**

The parties to this memorandum, the American Foreign Service Association, herein after referred to as AFSA, and the U.S. Department of Commerce's Foreign Commercial Service, herein referred to as FCS, enter into this agreement for the purpose of establishing language on advice to AFSA on the number of promotions.

1. This memorandum is subject to and governed by Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980, as amended, and the Collective Bargaining Agreement (CBA) between AFSA and FCS, as amended. This agreement will be modified as necessary by any future amendments to the documents mentioned above, or to rules, regulations or laws impacting this agreement.
2. The attached provision will govern the procedures and process for informing AFSA of the Director General's annual decision on the number of promotion opportunities available, and will be attached to the Collective Bargaining Agreement (CBA).
3. This memorandum will be reviewed and open for renegotiation during the next Full Term CBA negotiations between the parties.



Director General
U.S. and Foreign Commercial Service



Vice President, AFSA

6/2/05
Date

Number of Promotions

The Director General of the US&FCS or his/her designee annually determines the number of promotions of members of the Foreign Service reviewed by the Selection Boards, taking into account such factors as vacancies, funds availability, the needs of the service; and the need for the retention of expertise.

- (a) Decisions by the Director General or his/her designee on the number of individuals to be promoted within the Foreign Service will be based upon the needs of the service and long term projections of personnel needs designed to provide:
- i. A regular, predictable flow of recruitment into the Foreign Service
 - ii. Effective Career development patterns to meet Service needs; and
 - iii. A regular, predictable flow of talent upward and through the ranks and into the Senior Foreign Service.

Process:

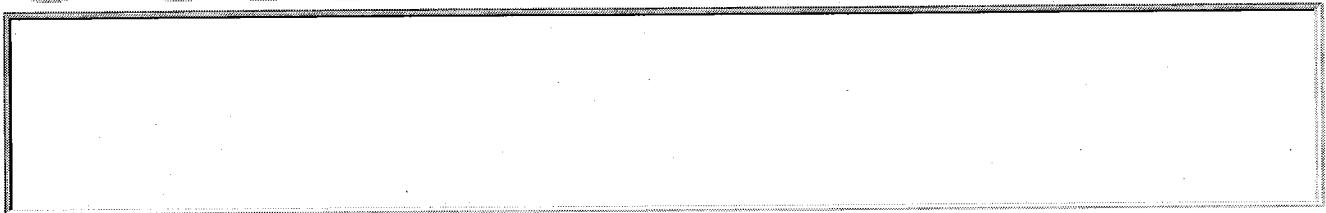
- a. Prior to convening the Selection Boards, the Director General or his/her designee will determine the number of promotion opportunities by class. The Human Resources Manager or his/her designee will provide the AFSA Vice President with a sealed envelope containing a copy of the approved document establishing these numbers. This envelope shall remain unopened until the Boards have completed their work, and will be opened in the Human Resources Manager's or his/her designee's presence. Board members will not be informed of the numbers.
- b. Management will announce the number of promotions by class and recommendations for promotion into the Senior Foreign Service as soon as possible thereafter.
- c. If the number of promotions is different from the previously established number, Management will provide AFSA with a confidential briefing during which the discrepancy will be explained.

Language Maintenance Incentive

The purpose of this incentive is to maintain a cadre of language proficient Foreign Service Officers (FSOs); to decrease the amount of time FSOs will need to be in language training prior to assignment; and to provide incentives to individual FSOs who independently retain their language proficiency level. Eligibility, qualifications and established dollar amounts are outlined below.

Copy of Memorandum of Understanding Between USDOC/USFCS and AFSA is attached at the bottom of this page.

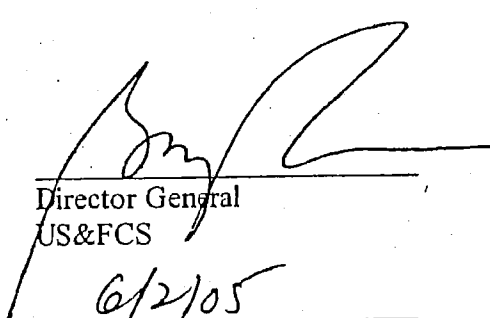
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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. DEPARTMENT OF COMMERCE,
UNITED STATES & FOREIGN COMMERCIAL SERVICE [US&FCS]
AND THE
AMERICAN FOREIGN SERVICE ASSOCIATION [AFSA]**

The parties to this Memorandum of Understanding, the American Foreign Service Association hereinafter referred to as AFSA, and the U.S. Department of Commerce's Foreign Commercial Service, hereinafter referred to as USFCS, enter into this agreement for the purpose of establishing criteria for a Language Maintenance Incentive for employees of the Foreign Service.

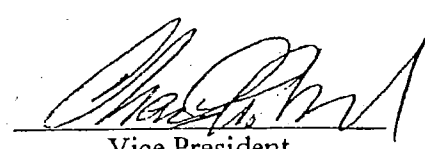
1. This language is subject to and governed by Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980, as amended, and the Collective Bargaining Agreement (CBA) between AFSA and FCS, as amended. This agreement will be modified as necessary by any future amendments to the documents mentioned above, or to rules, regulations or laws impacting this agreement.
2. The attached language on Maintenance of Language Incentives will be incorporated into subchapter 800-1, Language Incentive Program of the Foreign Service Personnel Manual.
3. This memorandum will be reviewed and open for renegotiation during the next Full Term CBA negotiations between the parties.



Director General
US&FCS

6/2/05

Date



Vice President
AFSA

Language Maintenance Incentive

1. The office responsible for the Language Maintenance Incentive is the Office of the Foreign Service Human Resources (OFSHR).
2. The purposes of the incentive are to maintain a cadre of language proficient Foreign Service Officers (FSOs) who have the desired LDP level or better; to decrease the amount of time FSOs will need to be in language training prior to assignment; and to provide incentives to individual FSOs who independently retain their language proficiency level.
3. Eligibility is for Foreign Service Officers who maintain LDP level scores or better in eligible Category A languages. Officers will be eligible for monetary recognition depending on the results of an FSI language proficiency test.
4. To qualify for monetary recognition under this incentive, an FSO must receive a language proficiency test score administered and certified by FSI no earlier than within one year of the five year anniversary date of the original certified proficiency score.
5. Eligible Category A languages are: Arabic, Chinese (Mandarin), Japanese, Korean, Malay, Polish, Russian, Turkish, and Vietnamese.

6. In addition to the language criteria category, the following criteria must also be met.

The FSO must be serving in an assignment where the eligible Category A language that the FSO wishes to test in is not spoken.

The FSO has not received funding for training in that language within the last four years.

The FSO must schedule the proficiency test at FSI through OFSHR.

The FSO is responsible for notifying OFSHR of the completion of the proficiency test and ensuring that OFSHR receives the written results.

7. An FSO is eligible to receive a language maintenance incentive once in a four-year cycle per language.
8. The established dollar amounts as of the date of this agreement for language maintenance Incentives for language proficiency are as follows. Should budgetary concerns arise which have the potential to adversely effect Incentive amounts, the CS will give AFSA notice and an opportunity to negotiate the impact and implementation of changes to Maintenance of Language Incentive.

2/2 and above - \$3,000

3/3 and above - \$4,000

4/4 and above - \$5,000 *

* Since 5/5 scores are valid indefinitely, once an individual has achieved a 5/5, he/she is no longer eligible for a language maintenance incentive.

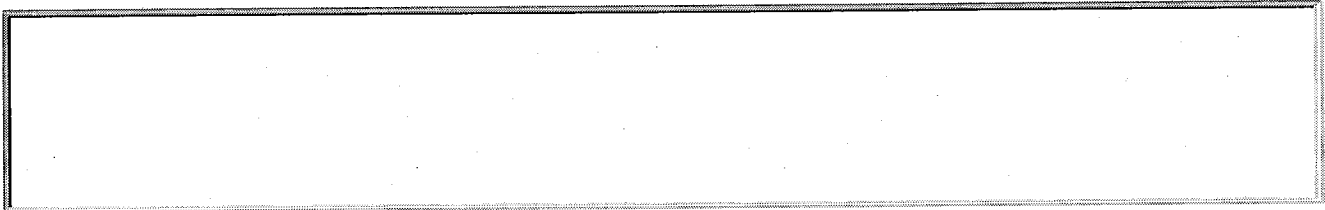
Two Issues:

The first concerns the work plan development and training of domestic rating and reviewing officials on the FS performance management system. If an FSO assigned to a domestic field assignment disagrees with his/her rating official concerning the proposed work plan, the Officer may request a review by the Deputy Assistant Secretary for Domestic Operations.

The second provision concerns availability of domestic assignments for bidding purposes. The language in the agreement will be added to the bidding procedures.

Copies of the Memorandum of Understanding Between USDOC/USFCS and AFSA are attached a the bottom of this page.

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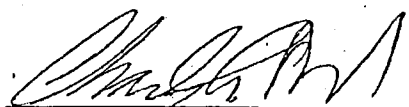
**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF COMMERCE,
UNITED STATES & FOREIGN COMMERCIAL SERVICE
[US&FCS] AND THE
AMERICAN FOREIGN SERVICE ASSOCIATION [AFSA]**

The parties to this memorandum, the American Foreign Service Association, herein after referred to as AFSA, and the U.S. Department of Commerce's Foreign Commercial Service, herein referred to as FCS, enter into this agreement for the purpose of establishing language on Domestic Assignments.

1. This memorandum is subject to and governed by Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980, as amended, and the Collective Bargaining Agreement (CBA) between AFSA and FCS, as amended. This agreement will be modified as necessary by any future amendments to the documents mentioned above, or to rules, regulations or laws impacting this agreement.
2. The attached language will be placed in Section 6.01B during the MPPAS revisions and will govern the procedures for FCS establishing procedures for review of Domestic Assignment Work Plans.
3. This memorandum will be reviewed and open for renegotiation during the next Full Term CBA negotiations between the parties.



Director General
U.S. and Foreign Commercial Service



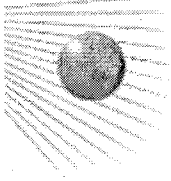
Vice President, AFSA

6/2/05
Date

Domestic Assignments

For those officers assigned to domestic field assignments, in the event of a disagreement with their work plan, the officer may request a review by the Office of the Deputy Assistant Secretary for Domestic Operations or his/her designee. The Office of the Deputy Assistant Secretary for Domestic Operations or his/her designee will ensure that rating and reviewing officers have been trained to carry out their responsibilities as indicated in the MPPAS.

[Process: To be placed in Section 6.01B during MPPAS revisions]



Thomas
Moore/HQ/USFCS/USDOC
07/22/2005 04:50 PM

To CS ALL CO
Nancy Kripner/HQ/USFCS/USDOC@USDOC, Israel
cc Hernandez/HQ/USFCS/USDOC@USDOC, Paul
Dickerson/HQ/USFCS/USDOC@USDOC, Neal
bcc
Subject CS-AFSA Mid Term Bargaining Results

History: This message has been forwarded.

We are pleased to announce that the U.S. and Foreign Commercial Service and the American Foreign Service Association have recently concluded negotiations on several enhancements to our collective bargaining agreement. The following is a synopsis of language agreed to in our mid-term negotiations. The signed MOUs will be placed on OFSHR's (<http://ourplace.ita.doc.gov/intranet3.nsf?Open>) and AFSA's (<http://www.afsa.org/cspage.cfm>) websites for review and reference.

These provisions have received Agency Head approval and are effective. If you have questions or concerns, feel free to contact Mike Stein, Chief, ITA Labor Relations, or Donald Businger, AFSA Vice President.

1) Domestic Assignments - We had two issues. The first concerns the work plan development and training of domestic rating and reviewing officials on the FS performance management system. If an FSO assigned to a domestic field assignment disagrees with his/her rating official concerning the proposed work plan, the Officer may request a review by the DAS/ODO.



MOU Domestic Assignments 7-05.doc

The second provision concerns availability of domestic assignments for bidding purposes. This language will be added to the bidding procedures.



MOU Assignments and Tours of Duty 7-05.doc

2. Alternative Dispute Resolution Pilot - This provision allows an employee to request mediation assistance when he/she believes there are grievable deficiencies in the performance evaluation. A pilot program has been established and is described in the attachment below. Please note since this information is just being forwarded, for this year **only**, if an employee would like to request a mediator for the purposes of resolving performance appraisal issues, the request must be made no later **July 30, 2005**.



MOU Alternative Dispute Resolution Pilot 7-05.doc

3. Number of Promotion Opportunities - The intention of this language is to enhance the transparency of the Selection Board process. Decisions made by the Director General concerning the number of promotion opportunities will be provided to the AFSA VP in a sealed envelope prior to the convening of the Boards. Once the Boards have completed their process, the AFSA VP will open the envelope in the HR Manager's presence and review the number of promotions given against the number of opportunities approved.



MDU Number of Promotions 7-05.doc

4. Language Maintenance Incentive - The purposes of this incentive are to maintain a cadre of language proficient Foreign Service Officers (FSOs); to decrease the amount of time FSOs will need to be in language training prior to assignment; and to provide incentives to individual FSOs who independently retain their language proficiency level. Eligibility, qualifications and established dollar amounts are outlined below.



Language Maintenance Incentive 7-05.doc

Again , if you have any questions, please contact Mike Stein, Chief, ITA Labor Relations, or Donald Businger, AFSAP VP.

Tom Moore
Deputy Director General
Room H-3802
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230
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