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AGREEMENT

BETWEEN

NIAGARA COUNTY COMMUNITY COLLEGE

AND

**NCCC EDUCATIONAL SUPPORT PERSONNEL
ASSOCIATION, NYSUT/NY**

FOR A PERIOD

SEPTEMBER 1, 2012 - AUGUST 31, 2018

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PREAMBLE

The Parties to this Agreement, Niagara County Community College (“Employer”), and the Niagara County Community College Educational Support Personnel Association, NYSUT/NY (“Union”), in order to effectuate the provisions of the Public Employment Fair Employment Act, and to encourage and increase effective and harmonious work relationships agree as follows:

- (A) Term: This agreement will be effective September 1, 2012 and shall remain in effect until August 31, 2018. This agreement shall in all respects supersede the previous 2010-2013 agreement between the parties, including with regard to the 2012-13 school year.

- (B) Negotiations for a Subsequent Agreement - shall commence no later than March 1st of the last year of this agreement.

ARTICLE 1 - RECOGNITION AND DEFINITION

- 1.1 (a) **RECOGNITION:** The Employer hereby recognizes the Union as the exclusive representative for purposes of collective negotiations. Included in the bargaining unit are all full-time and regular part-time employees in those positions approved and funded by the Employer (commonly referred to as "permanent" positions). Also included are all full-time and part-time employees, provisional employees and temporary employees (commonly referred to as "substitute") where such employee has been appointed by the Employer for a period of at least 12 consecutive weeks. Those positions covered by this Agreement are: typist, senior typist, campus security officer, senior computer programmer, assistant superintendent of building services, senior clerk, stenographer, telephone operator, account clerk, account clerk stenographer, messenger, ETV operations supervisor, clerk, supervisor of central office services, senior library clerk, library circulation desk clerk, data entry operator, principal account clerk, payroll clerk, accounting supervisor, inventory clerk, senior A/V technician, senior security officer, principal library clerk, micro computer coordinator, microcomputer help desk receptionist, computer programmer, computer operator, senior stenographer, senior account clerk, senior account clerk typist, senior computer operator, data processing control clerk, administrative assistant/schools, principal audit clerk, registered professional nurse, multilith machine operator, principal clerk, assistant multilith machine operator, system analyst, database administrator, computer NW administrator, computer support coordinator, micro-computer specialist, programmer analyst, personnel records clerk-municipalities, registration and records assistant, vocational counselor, TV/video production assistant, public relations assistant, duplicating machine operator, part-time assistant multilith machine operator, part-time stenographer, part-time senior clerk, account clerk/typist, part-time typist, part-time messenger, part-time campus security officer and financial aid loan clerk.
- (b) **GRANT PERSONNEL:** A grant personnel appointment shall be an appointment to fill a position for the grant period or portion thereof. Any position encompassed by such grant which is included in any of those positions listed in (a) above shall be considered as a unit position for the grant period (unless excluded pursuant to Section 1.2 below). It is understood that any such appointment may be terminated at will at any time. However, when a grant personnel appointment continues without a break in service after the expiration of the grant as a College operating position, and is funded by the Employer, all service rendered under the grant program shall be converted for seniority purposes and benefit rights under the terms of this Agreement.
- 1.2 **EXCLUSIONS FROM THE BARGAINING UNIT:** Excluded from the bargaining unit are all the employees not specifically included above, all summer seasonal, work-study, student assistants, job training employees and two employees who voluntarily accept positions designated as managerial and confidential. If said employees refuse managerial and confidential positions, the employer will recruit from remaining work

force on a voluntary basis. Lacking volunteers, the employer may hire for the next entry-level position a managerial and confidential employee.

1.3 **DEFINITION OF EMPLOYEES:**

- (a) **Full-Time:** Those employees who work a minimum of 35 hours per week (or 40 hours per week for security personnel and the Assistant Superintendent of Buildings and Grounds) as defined by the job classification, and who occupy a permanent position.
- (b) **Regular Part-Time:** Those employees who work a minimum of 17.5 hours (or 20 hours) or more per week (based on the full-time rates noted above) on a regular schedule. These part-time employees shall be eligible for benefits only as noted below:
 - (1) **Health Insurance:** The College will pay 50% of the premium amount paid for full-time employees as noted in Sections 13.2 and 13.3 below.
 - (2) **Sick Leave:** One-half day per month (3.5 hours for 35 hour/week employees and 4.0 hours for 40 hours/week employees), subject to the remaining requirements of Article 8.
 - (3) **Personal Leave Time:** 10.5 hours/year for 35 hours/week employees and 12.0 hours/year for 40 hours/week employees, subject to the requirements of Article 8.5 below.
 - (4) **Vacation:** One (1) week per year (35 hours or 40 hours for 35 hours/week employees or 40 hours/week employees, respectively), subject to the requirements of Article 11 below (specifically 11.2 and 11.3).
 - (5) **Holidays:** One-half pay for each scheduled day pursuant to Article 10 below (3.5 hours for 35 hours/week employees, 4.0 hours for 40 hours/week employees).
 - (6) **Step Increases:** Where applicable, shall occur at a point in time when the employee's total accumulated hours equal one full year. (1,820 hours based upon a 35 hours per week full-time schedule, and 2,080 hours based upon a 40 hours per week full-time schedule.)
 - (7) **Credit Courses:** Regular part-time unit members shall be allowed to enroll in credit courses without charge to a maximum of four (4) credit hours per academic year on a seat available basis. Seat availability shall be determined after the conclusion of registration (including late registration) and prior to the commencement of classes. Regular part-time unit members are not eligible for leave time as specified in Articles 8.7(a) and 8.7(b). Effective with the Spring 2011 semester, the college will

provide free tuition for 4 credits a year for children of part-time ESPA members in lieu of the ESPA member not using their 4 credit entitlement. For purposes of the meaning of children under this provision, the term children means dependent children as defined by the Department of Education Title IV Financial Aid regulations.

(8) **Bereavement**

- a. Leave of absence with pay shall be granted to an employee who is absent from duty because of the death of a member of his/her immediate family. The immediate family of an employee shall include spouse, mother, father, sister, brother, children, current step-children, grandparents, spouse's grandparents, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandchildren, father-in-law and mother-in-law or any person occupying the position of a parent of the employee or their spouse and significant others (defined as an unmarried couple sharing a residence).
- b.
 1. The employer shall grant a leave of absence with pay for the duration of time not to exceed four (4) consecutive calendar days from the date of occurrence. The four (4) consecutive calendar days include the date of occurrence except as noted in (4) below.
 2. If the day of the funeral is not within the prescribed 4 consecutive calendar days from the date of occurrence, the member may be allowed to use one of the four bereavement days on the day of the funeral.
 3. Bereavement leave is not converted to hours when determining the 4 consecutive calendar days of entitlement.
 4. Where death occurs after the employee has reported to work on that day, that day does not count as one of the four (4) consecutive calendar days.
 5. Employees may, in addition to the four (4) days granted above, utilize vacation or personal leave time to extend the period of bereavement leave provided proper notice is given to the employee's immediate supervisor.

(c) **Less than 1/2 Time Campus Security Officers: Effective December 1, 2002:**

- (1) The persons currently assigned as Part-time Campus Security Officers who are working less than 1/2 time will become members of the ESPA and will receive only the benefits that are specifically listed in Article 1.3 (b) of the ESPA contract. Such benefits will be prorated based on the standard

number of hours per week for which the part-time position is designated. For example, if a less than 1/2 time position is designed to be filled for 16 hours per week, the person filling the position will receive 2/5 of the benefits listed in Article 1.3 (b); if the position is designed to be filled for 8 hours per week, the person will receive 1/5 of the authorized benefits.

- (2) The Campus Security Department will retain the flexibility to schedule these less than 1/2 time officers as needed.
- (3) Any vacancy occurring to a full-time campus security officer position will be filled immediately as long as there are less than 1/2 time Security Officers working in the Security Department.
- (4) The College will not replace full-time campus security officer positions with part-time campus security officers as long as there are less than 1/2 time Security Officers working in the Security Department.
- (5) Part-time Campus Security Officer(s) will be laid off before full-time Campus Security Officer(s).

(d) **Part-Time Positions Belonging to ESPA: Effective May 24, 2002:**

- (1) Regardless of the title given to a position, the job to be performed shall determine the placement of the position as an ESPA position. If the job assignment reflects the work performed by ESPA members, an appropriate Civil Service title shall be given to the position and the position shall be designated as an ESPA member position.
- (2) Any appointment of a part-time Technical Assistant, regardless of the division to which the job is assigned, shall be made known to the ESPA along with the job duties to be performed. The ESPA shall determine by evaluating the job assignment, whether the position is properly designated as an ESPA position or not.
- (3) Whenever part-time positions exist, the positions are subject to review by the ESPA so that a determination can be made as to whether the positions can be joined together in order to place such position into the bargaining unit for the purposes of contractual wages and benefits.
- (4) Wages offered to any part-time employee shall be commensurate with those hourly wages contained within the current contract between the ESPA and the College.

(e) **Less than 1/2 time Employees Performing Work of ESPA Members: Effective March 24, 2003:**

The following provisions will apply to all less than 1/2 time employees who

perform the work of ESPA members with the exception of Campus Security Officer, and who are appointed for a period of at least 12 consecutive weeks.

(1) the applicable part-time employees who work less than ½ time will become members of the ESPA and will receive only the benefits that are specifically listed in Article 1.3b of the ESPA contract. Such benefits will be prorated based on the average number of hours per week the persons work during the period of appointment. For example, if a person covered by this Article 1.3(e) works an average of 15 hours per week, the person filling the position will receive 3/7 of the benefits listed in Article 1.3b; if the person works an average of 12 hours per week, the person will receive 1/3 of the authorized benefits.

(2) persons who are appointed for less than 12 consecutive weeks and are appointed again immediately following the end of their appointment period or are appointed again after a break in service of not more than 12 full months computed from the first day of their initial appointment will receive the applicable benefits commencing with their 13th week of cumulative service.

(3) work schedules for persons receiving benefits under this Article 1.3(e) may be changed to meet the needs of the department provided at least one week's notice is given the employee. Requests by these employees to change their work schedule may be accommodated with approval of the supervisor.

(4) all less than ½ time employees, regardless of membership in the ESPA, will be laid off before any regular part time or full time member of the ESPA is laid off. In the event a noncompetitive ESPA member is laid off due to lack of continued funding, such members may bump into a less than ½ time position for which they are qualified. It is understood that persons who are members of the ESPA have greater retention rights than non-union persons.

(5) in the event that the College has a need to appoint a person to a position with an entry level (non-promotional) title that is not in Pay Grade 1, for example Account Clerk Typist, the College will review their need with the President of the ESPA, or designate, prior to implementation in an attempt to work out any concerns raised by the ESPA.

(6) the number of all less than ½ time positions may not exceed a number equivalent to 10% of the membership (not counting the less than ½ time positions), rounded to the next higher whole number, as of the effective date of this Article 1.3(e) and at each renewal thereafter without the approval of the ESPA.

(7) this Article 1.3(e) must be renewed by July 1, 2004 and each July 1 thereafter. In the event it is not mutually advantageous to continue the provisions of this Article 1.3(e), persons affected will retain their benefits

under this Article 1.3(e) until the end of their appointment period or the academic year, whichever occurs first.

ARTICLE 2 - MANAGEMENT RIGHTS

- 2.1 The Employer hereby retains and reserves unto itself all rights, powers, authority, duties and responsibilities conferred upon and vested in it by law.
- 2.2 Except as specifically addressed in this agreement, the Employer retains all rights, privileges, and authority, including but not limited to the exclusive right to direct and schedule the work force, plan, direct and control operations, and to promulgate and enforce rules and regulations as it may deem necessary in the management, direction and administration of all operations and activities of the college.
- 2.3 The College shall retain the sole right to determine whether and to what extent ESPA members are assigned to perform work at the site referred to as the Niagara Falls Culinary Institute (the "Institute") from the ratification date of this contract settlement through and including August 31, 2019. The ESPA shall not at any time during this period assert exclusivity over any of the work performed at the Institute, and the College shall be permitted to subcontract out any work at the Institute that otherwise would be considered exclusive ESPA work. The ESPA shall not be permitted to challenge the College's subcontracting of any work at the Institute during this period through the contractual grievance/arbitration process, PERB's improper practice procedure or in any other forum. The ESPA's agreement to permit any subcontracting at the Institute without challenge as set forth in this paragraph is without precedent and will not be cited or otherwise utilized by the College or the ESPA in any future proceeding between the parties except a proceeding concerning the enforcement of the terms of Section 2.3 of this Agreement.

This provision shall not apply to any site other than the Institute, which is located at 28 Old Falls Street in the City of Niagara Falls, County of Niagara and State of New York. On September 1, 2019, the subcontracting of any exclusive ESPA work at the Institute shall cease. The College shall not be permitted to permanently transfer any existing ESPA member (defined as an ESPA member hired on or before September 1, 2012) to work at the Institute without such member's consent, but the College may unilaterally assign an existing ESPA member to perform work at the Institute on an as-needed basis. As-needed means a temporary assignment not exceeding 30 days per ESPA member per academic year on a cumulative basis. Any ESPA member transferred to work at the Institute shall retain unit membership during the period of any such transfer. The terms of this section shall not apply to those ESPA members in the title of campus security officer and senior security officer.

In the event the college lays off a member of the ESPA hired before September 1, 2012 at any time during the duration of this Agreement, then one year from the date of such layoff, (a) this section 2.3 shall become null and void, (b) there shall be no further wage increases as specified in section 12.4(e) except that if the layoff occurs on September 1, the College agrees to pay the 1.8% increase due on the following September 1 notwithstanding the expiration of the Agreement pursuant to section (c) herein and (c) the Agreement shall be deemed expired and the parties shall commence negotiations for a successor agreement. Except as specifically provided in this paragraph, all other terms

and conditions of the expired Agreement shall be continued if required by law.

In the event the College lays off a member of the ESPA hired on or after September 1, 2012, the provisions of Article 1.3 (e) (4) shall not apply in such instance.

ARTICLE 3 - UNION RIGHTS

- 3.1 **DUES DEDUCTION**: The College shall deduct from the pay of each Union member, from whom it has received written authorization on a form to be provided by the Union, such amount for membership dues biweekly or as the Union shall supply in writing to the College, and will forward such dues to the treasurer of the Union.
- 3.2 **AGENCY FEE**: Any present or future employees represented by the Union who are not Union members and who do not make application for membership within thirty (30) days after mutual ratification of this agreement or who do not become members of the Union thirty (30) days after their hiring date, shall have deducted from their wages, an amount equivalent to the total annual membership dues levied by the Union. The College shall make such deductions and transmit the sums so deducted to the Union in the same procedural manner as for membership dues provided, however, the Union has established and maintained a procedure providing for the refund to any employee demanding the return of any part of an agency shop fee deduction as required pursuant to Section 208(b) of the New York State Civil Service Law.
- 3.3 **SAVE HARMLESS**: The Union shall hold harmless the College and its officials from any claims, suits, or any other forms of liability that may arise as a result of the College's action or inaction pursuant to this Article, except for any negligence by the College, which results in the failure to promptly furnish the Union monies deducted pursuant to this Article.
- 3.4 **LISTING OF EMPLOYEES**: The College agrees to furnish the Union with an updated report on a quarterly basis involving any personnel changes including names, work locations, and position titles of all employees in the bargaining unit covered by this Agreement.
- 3.5 **USE OF COLLEGE FACILITIES**: The Union is granted the use of College facilities, (for example, bulletin boards, meeting rooms, mail boxes), as are necessary for conducting its official business (for example, communication with its members, meetings of its membership and committees). The use is granted, provided that it does not interfere with normal operations of the College and subject to the College's internal assignment of space and bulletin board procedures. The Union agrees that any and all materials posted shall refer only to the professional business of the Union, and further agrees not to post election campaign material for or against any person, organization or faction thereof.
- 3.6 **LABOR-MANAGEMENT COMMITTEE**: A committee consisting of the President of the College or designee and the President of the Union plus one (1) additional person appointed by each president shall meet as needed to deal with issues not covered by this Agreement. Where appropriate, the College and Union presidents may agree to expand any such session to a committee consisting of an equal number of College and Union representatives. Meetings shall occur at least once each quarter (unless mutually waived) and additional meetings shall be held upon the request of either President.

3.7 **NO STRIKE PLEDGE:**

(a) Pursuant to the provision of Subdivision 3(b) of Section 207 of the Public Employees Fair Employment Law, the Union affirms:

That it does not assert the right to strike against any government, to assist or participate in any such strike or to impose an obligation to conduct, assist or participate in such strike and will not engage in a concerted stoppage of work or slowdown.

(b) Should any strike activity occur which the Union has not called, sanctioned or condoned, the Union must:

(1) advise the College, in writing, that the strike activity was not called or sanctioned by the Union;

(2) notify each employee engaging in the strike activity, in writing, with a copy supplied to the College President, that such activity has not been sanctioned or condoned by the Union;

(3) inform all unit members, in writing, with a copy to the College President, that such strike activity has not been sanctioned or condoned by the Union.

(c) Once the Union has performed the acts required by (b)(1) through (3) above, the union and its officers, agents and non-striking members shall have no further liability.

(d) It is understood and agreed that any strike activity performed by a unit member shall be cause for discharge.

No Lockout Pledge

The College shall not lockout any employee covered by this Agreement during the term of this Agreement.

3.8 **UNION OFFICER RELEASE TIME:** The Union officers shall have a cumulative total of ten (10) working days per contract year, without pay, to attend Union meetings. Unused time shall not accumulate from year to year. Reasonable notice, usually five working days, must be given to the College in advance of such leave. Such notice shall inform the College which Union officer(s) plan to be absent, on which date(s) and the approximate time involved. In addition, Union officers may use compensatory, personal or vacation time.

3.9 **UNION RIGHTS:** It is agreed that beginning in June 1995, the College shall deduct Ten dollars (\$10.00) from the first pay in June of each Association member having authorized such deduction. Written authorization shall be on a form provided by the Association and entitled (Government Affairs Deduction). Money collected by the College will be

forwarded to the Political Action Support Staff Treasurer.

ARTICLE 4 - GRIEVANCE PROCEDURE

4.1 **STATEMENT OF PURPOSE:** Whereas, the establishment and maintenance of a harmonious and cooperative relationship between the College and the employees is essential to the operation of the College, it is the purpose of this procedure to secure, at the lowest possible administrative level, equitable solutions to alleged grievances of employees through procedures under which they may present grievances free from coercion, interference, restraint, discrimination or reprisal, and by which the College and the employees are afforded adequate opportunity to dispose of their differences without the necessity of time-consuming and costly proceeding before administrative agencies or in the courts. In this regard, every dispute over which a grievance may be filed by members of the bargaining unit or the Union shall be processed under this procedure, and recourse may not be instituted in any other forum.

4.2 **REPRESENTATION OF EMPLOYEES:**

- (a) The Union shall select Grievance Committee members to represent employees covered by this Agreement. The Secretary of the Union shall provide the College/County with a list of Grievance Committee members at the beginning of the contract year.
- (b) A total of three Union representatives, any one of which shall be permitted a maximum of one (1) hour per day to investigate and process grievances provided:
 - (1) notice to and permission from his/her immediate supervisor is given and secured, and
 - (2) such action does not interfere with the operation of any College department.

Additional time beyond the one (1) hour maximum noted above may be approved by the department head subject to the requirements noted above.

4.3 **DEFINITIONS:**

- (a) **Grievance:** a grievance shall be defined as a complaint by an employee or group of employees in the bargaining unit, or by the Union, that there is an alleged violation, misinterpretation or misapplication of the terms of this agreement.
- (b) **Grievant:** the person, group of persons, or the Union submitting the grievance.
- (c) **Grievance Committee:** a duly constituted committee of the Union, composed of not more than three (3) members.
- (d) **Department Head or Hearing Officer:** the individual charged with the duty of

rendering a decision at a particular stage of this procedure.

- (e) **Representative of His/Her Choice:** an individual employee, or representative of the Union or its grievance committee, who shall represent the grievant.

4.4 **TIME LIMITS:**

- (a) **When to File:** Grievances may be initiated, in writing, at the first applicable step within twenty (20) working days of the occurrence or knowledge of the occurrence. This latter situation shall only apply in those legitimate situations when circumstances beyond the control of the employee (or Union) prevented knowledge of the occurrence. In addition, it is agreed that when the Union becomes the grievant, a class action grievance shall not be used as a substitute for an individual filing.
- (b) **Filing of Grievances:** Grievances shall be filed on a form agreed upon by the parties, and attached hereto as Appendix A. Such grievance shall contain a brief statement of the nature of the grievance, and the specific provision(s) of the Agreement alleged to have been violated. Failure to process a grievance within the time limit noted above shall be deemed waived.
- (c) **Filing By a Group of Employees or By the Union:** When a group of employees are affected by the same act or failure to act by the College, or the alleged violation impinges upon the rights of the Union as set forth in this Agreement, the Union may submit a grievance on its own behalf, directly at Step 2, within the time limits set forth in Section 4.4(a) above.
- (d) **Proceeding to the Next Step:**
 - (1) The failure of the department head or hearing officer at any step to communicate his/her decision within the designated time limits shall permit the grievant to proceed to the next step of the grievance procedure.
 - (2) The failure of the grievant to appeal a decision to the next higher step within the designated time limits, as detailed below, shall constitute a withdrawal of the grievance, and shall bar further action.
- (e) **Grievance Hearings During Working Hours:** Where it has been mutually agreed between the Union and the College to hold grievance hearings during working hours, time spent in the presentation of a grievance shall be paid and not charged against any employee's leave time.
- (f) **Time Extensions Must Be in Writing:** All time limits specified in the procedural steps of Section 4.5 below may be extended only upon the mutual consent of the parties, which shall be expressed in writing.

4.5 **PROCEDURAL STEPS:** All grievances arising out of an alleged violation,

misinterpretation or misapplication of the terms of this agreement shall be presented and adjusted in the following manner:

- (a) **Step 1:** A grievant having a grievance shall file such grievance in writing with his/her department head either directly or through a Union representative. The grievance shall contain a brief statement of the nature of the grievance and a specific provision(s) of this Agreement alleged to have been violated. Within ten (10) working days after the written grievance is presented, the appropriate department head shall render a decision thereon, in writing, and present it to the grievant, with a copy to his/her designated union representative. It is the intent of the parties to seek an informal resolution of the grievance, if possible, at this step.
- (b) **Step 2:** If the grievance is not resolved through the efforts at Step 1 above, it shall be presented to a designated hearing officer within five (5) working days after receipt of the Step 1 decision, or failing a decision within the time provided, no later than five (5) working days after a decision has been provided. Within ten (10) working days after receipt of the appeal, the hearing officer shall render a decision thereon, in writing, and present it to the Union, with a copy to the grievant. The President shall appoint a hearing officer prior to each hearing and shall notify the Union president of said appointment.
- (c) **Step 3:** The grievant may appeal the decision rendered at Step 2 above within ten (10) working days after receipt of the decision by submitting a written appeal to the President of the College. Such written appeal shall set forth specifically the nature of the grievance, the facts relating thereto, and the Grievant's reasons for rejection of the decision rendered at the second stage. The President will make every reasonable effort to arrange a hearing within five (5) workdays following his receipt of the Union's Step 3 appeal. The President (or designee) shall have the right to invite any additional person(s) to participate at the hearing. The President (or designee) shall then render a decision, in writing, to the Union, within five (5) working days after the conclusion of the hearing.
- (d) **Step 4:** In the event there has been no resolution of the grievance regarding the terms of this agreement, the unresolved issues may be submitted by the Union to binding arbitration no later than fifteen (15) days from the written decision at Step 3 above, by filing a demand for binding arbitration with the Public Employment Relations Board. Thereinafter, arbitrator selection and arbitration procedures on this Article shall be conducted pursuant to the rules and regulations of the Public Employment Relations Board.
- (e) **Power and Authority of the Arbitrator:** It is understood and agreed that this Agreement constitutes the entire agreement of the parties. Accordingly, the arbitrator shall limit his/her decision strictly to the interpretation or application of the express provision(s) of this Agreement, and shall be without power or authority to make any decision or award:

- (1) modifying or amending in any way, or inconsistent with the terms of this agreement;
- (2) which is contrary to law.
- (3) The decision of the arbitrator shall be final and binding upon all parties.
- (f) All fees and expenses of the arbitrator shall be borne equally by the College and the Union.

4.6 **REMEDY**: The arbitrator shall have the power and authority to decide whether or not the Agreement has been violated, and to issue a make whole award.

ARTICLE 5 - DISCIPLINE/DISCHARGE

5.1 **RIGHTS UNDER CIVIL SERVICE LAW**: No employee having the benefit of seniority shall be disciplined or discharged without just cause.

5.2 **MEASURES TO CORRECT UNSATISFACTORY PERFORMANCE OR UNACCEPTABLE CONDUCT**

The measures listed below may be utilized when it is necessary to respond to unsatisfactory work performance or unacceptable conduct. The primary goal of implementing these measures is corrective; however, nothing in this Agreement prohibits the College from imposing whichever level of discipline the College believes appropriate under the circumstances. It is mutually understood that some offenses, violations and/or acts of misconduct are so serious that the College's response must not be limited, and severe disciplinary action, including suspension without pay and/or termination, may be warranted for a first offense. The measures below are listed to identify and explain the means to address unsatisfactory work performance and unacceptable conduct as well as to identify avenues for rebuttal or review of such action.

a. **Verbal Counseling** – a method (non disciplinary action) used to inform employee of unsatisfactory work performance or unacceptable conduct as well as the expectations for avoiding future occurrences. The supervisor normally holds a private meeting with the employee following the performance or conduct at issue. The verbal counseling is not subject to the grievance procedures.

b. **Written Counseling** – a method (non disciplinary action) used to inform employee of unsatisfactory work performance or unacceptable conduct and, where appropriate, any action deemed necessary to prevent further occurrences. The supervisor will conduct a meeting with the employee to review the performance or conduct at issue. The employee has a right to union representation at the meeting. If warranted, the supervisor will present a written memorandum following such meeting documenting the unsatisfactory work performance or unacceptable conduct. Such written counseling memorandum is placed in the employee's personnel file. The written counseling is not subject to the grievance procedures but may be rebutted within ten (10) working days following receipt of the written counseling memorandum. Written rebuttals, if any, will be filed in the personnel file along with the written counseling memorandum.

c. **Written Reprimand** – a disciplinary action used to inform the employee of unsatisfactory work performance or unacceptable conduct and stating that further occurrences are subject to further disciplinary action up to and including termination. The supervisor will conduct a meeting with the employee to review the performance or conduct at issue. The employee has a right to union representation at the meeting. If warranted, the supervisor will present a written memorandum following such meeting documenting the unsatisfactory work performance or unacceptable conduct. Written reprimands are subject to the grievance procedures but may not be arbitrated. The written

reprimand, and any rebuttal from the employee presented during the grievance process, is placed in the employee's personnel file.

d. Suspensions Without Pay or Which Involve a Fine – a disciplinary action for just cause that indicates the employee's unsatisfactory work performance or unacceptable conduct is of a level of seriousness that warrants a penalty affecting the employee's pay. The supervisor will conduct a meeting with the employee to review the performance or conduct at issue. The employee has a right to union representation at the meeting. If warranted, the supervisor will present a written memorandum following such meeting documenting the unsatisfactory work performance or unacceptable conduct and the dates of the suspension without pay. All documentation of suspensions without pay is filed in the employee's personnel file. Suspensions without pay or when fines are imposed are subject to the grievance procedures and arbitration.

e. Termination – a disciplinary action for just cause which indicates that the employee's unsatisfactory work performance or unacceptable conduct is of a level of seriousness that employment must be terminated. The supervisor will conduct a meeting with the employee to review the performance or conduct at issue. If warranted, the supervisor will present following such meeting a written memorandum documenting the unsatisfactory work performance or unacceptable conduct and the date of termination. The employee has a right to union representation at the meeting. All documentation of terminations becomes a record in the employee's personnel file. Terminations are subject to the grievance procedures and arbitration.

5.3 TIME LIMITATIONS

Employees shall not be disciplined on any infraction(s) which occurred more than three (3) years prior. However, beyond the three (3) year period, such infraction(s) may be utilized for the purpose of demonstrating a pattern or practice, and/or for determining the appropriate penalty.

ARTICLE 6 - WORK HOURS

6.1 WORK WEEK:

- (a) The work week for full-time employees shall be scheduled between Sunday through Saturday and shall consist of 35 hours per week or 40 hours per week for security personnel and assistant superintendent of buildings and grounds. However, current employees of the College hired prior to September 1, 1991, shall be scheduled between Monday through Friday, unless they agree otherwise. It is understood and agreed that the College may create new positions and/or fill vacancies on a Sunday through Saturday basis.
- (b) For employees whose regular work schedule is other than Monday through Friday, the College will provide the affected employee with two (2) consecutive days off unless the employee agrees otherwise.
- (c) An employee may submit to the President, with the supervisor's approval, a request that would allow the employee to work a flexible schedule that is not four consecutive days, e.g., work Monday, Tuesday, Wednesday, Friday and have Thursday off.

6.2 WORK HOURS: Within the 35 hours or 40 hours per week noted above, the College may schedule hours during the workweek so that a workday is seven (7) consecutive hours for 35 hour/week employees and eight (8) consecutive hours for 40 hour/week employees. However, the College reserves the right for new employees hired on or after September 1, 1991, or for new positions or vacancies, to schedule hours during the workweek so that a workday is not less than seven (7) consecutive hours or more than ten (10) consecutive hours for a minimum of four (4) consecutive days. Employees hired prior to September 1, 1991, may also volunteer to be placed on this seven (7) to ten (10) hour schedule.

6.3 WORK SCHEDULE:

- (a) Work schedules for the Fall, Spring, or Summer semester shall be provided to employees as soon in advance as possible and posted on each department's bulletin board. Within the parameters of 6.1 and 6.2 above, schedules may be changed or altered based upon the operational needs of the College, but any such changes shall be kept, insofar as feasible, to a minimum, and such schedule changes shall not be used solely to avoid the payment of overtime. Reasonable advance notice shall be given for changes in work schedules, except for emergency situations.
- (b) The College agrees to speak with employees who may be adversely affected by the changes or alterations in their schedule, and to cooperate with them to the extent feasible (e.g., employees who may have child care difficulties, or who may

be caring for ill or disabled immediate family members, etc.).

- (c) The College shall give a 1-week notice prior to any involuntary shift change of a unit member.

6.4 **LUNCH PERIODS:** Management will assign lunch periods to assure appropriate office/job coverage. However, once assigned, employees shall be guaranteed an uninterrupted lunch break, which will only be interrupted in the case of an emergency. Employees may request an optional one-half (1/2) hour lunch period with the mutual approval of the department head.

6.5 **CALL-IN:** Employees who are called in for emergency duty at times beyond their normal working days shall receive a guarantee of four (4) hours pay at their applicable straight time rate, or when their workweek exceeds 40 hours at a one-time rate of time and one-half for all times beyond forty (40) hours.

6.6 **SUMMER HOURS:**

- (a) **Summer Schedule:** The College reserves the right to convert to a summer schedule. This schedule shall normally consist of Monday through Thursday as working days, with Friday, Saturday and Sunday off, and shall commence not earlier than the first Monday after graduation and end no later than the Friday preceding Labor Day.
- (b) **Employee Options:** During a summer schedule, employees shall be given the option of completing their work schedules on a Monday through Thursday basis or elect to work their regular schedule for Monday through Thursday and have the option of:
 - (1) receiving pay, on an hourly basis, for time actually worked (including approved leave time with full pay) or
 - (2) making up lost time through the use of compensatory, personal and/or vacation time.
 - (3) Employees choosing any of the options available during the summer four-day workweek period may choose to take either a 30 minute or 60 minute lunch break.
- (c) When the College is closed on Fridays as part of the summer schedule and a unit member works a Friday which is not part of their normal summer work schedule, he/she will be paid time and one-half for all hours worked on that Friday. It is understood that this provision does not supersede the provisions of section (e) below.
- (d) Effective November 7, 1996, when the College calendar stipulates that the College will be open to the public five days per week during the summer period,

employees shall be given the option of completing their work schedules on a 4 day work week basis, working their regular schedule on a 4 day basis, or to continue to work a 5 day schedule. Employees who elect to work a 4 day work week may be scheduled, based on the operational needs of the College, on Monday through Thursday with Friday, Saturday, and Sunday off, or Tuesday through Friday with Saturday, Sunday and Monday off. Any conflicts in scheduling between either a Monday through Thursday or Tuesday through Friday schedule will be determined on the basis of seniority. Those employees working their regular schedule on a 4-day basis shall have the option of:

- (1) receiving pay, on an hourly basis, for time actually worked (including approved leave time with full pay) or
 - (2) making up the lost time through the use of compensatory, personal and/or vacation time.
 - (3) Employees choosing the 4-day workweek option during the summer schedule may choose to take either a 30- minute or 60-minute lunch break.
- (e) **Essential Personnel:** The summer hour schedule noted above shall not apply to security personnel, grant personnel or to the Assistant Superintendent of Building Services. However, where the College is satisfied that security and/or grant personnel are able to complete their tasks and responsibilities on a Monday through Thursday or Tuesday through Friday basis, the summer hour schedule shall be offered to the extent feasible to these employees based on seniority.
- (f) **Notice:**
- (1) Notice to the Union shall be provided at least sixty (60) days prior to the effective date of any summer hour change, together with the staffing needs and work hours associated with such needs.
 - (2) Employees shall notify their supervisor, at least four (4) weeks prior to the effective date of the first day of the College's summer hours schedule of which option in Section (b) above each employee selects. Once the option is chosen, it may be changed only with the consent of that employee's supervisor, which shall not unreasonably be denied. However, the supervisor's decision is final and shall not be subject to the grievance and arbitration procedure of this Agreement.
 - (3) The College shall notify employees of their work schedules as far in advance as possible following receipt of the employee's options, but in any event no later than one (1) week prior to the beginning of the summer schedule. The College shall have the option of changing an employee's work location in order to accommodate its needs.

6.7 **TEN MONTH EMPLOYMENT:**

- (a) The College shall have the option of creating ten-month position(s). Such position(s) will include any 42 consecutive week period during the year with the approval of the employee and the College President.
- (b) **Implementation:**
 - (1) **Procedure:** Once the College designates ten (10) month position(s), within any department it shall post notice of such position(s) on the Human Resources' bulletin board and simultaneously send a copy of such notice to the Union president. Following the procedure outlined in such notice, employees may voluntarily elect to convert to a ten (10) month schedule.
 - (2) **Return to Normal Position:** Twelve (12) month employees who may be affected by the College's conversion of any department (or portion thereof) to a ten month operation, shall be transferred to any other College department, based upon need, for the remaining two (2) months. Following such period, such employee(s) shall be returned to his/her normal position.
- (c) **New Hires/New Positions:**
 - (1) The College reserves the right to create new ten (10) month positions in their own right, or as a replacement for a twelve (12) month position where the incumbent in such position has resigned, retired, transferred from or otherwise left such position.
 - (2) New employees may be hired by the College on less than a twelve (12) month basis.
- (d) **Permanent Transfers to Ten (10) And/or Twelve (12) Month Positions:** Employees who desire a twelve (12) or ten (10) month position may be transferred in order to meet the needs of the College. However, it is understood that such transfers must be on a voluntary basis.
- (e) **Ten month employees shall be eligible for benefits as noted below:**
 - (1) **Health Insurance:** 100% of the applicable benefit for full-time employees as provided in Article 13.
 - (2) **Leaves of Absence:** As per Article 8 and Article 9.
 - (3) **Holidays:** All paid holidays listed in Article 10 which fall within the employee's work year.

- (4) **Step Increase**: Step movement for each full ten (10) month year worked.
- (5) **Christmas and/or Spring Recess**: When the College exercises its option to shut down for Christmas and/or Spring recess, non-essential ten-month employees affected thereby shall be paid at their regular rate of pay for the duration of such recess period(s).
- (6) Credit in the New York State Employees Retirement System up to a maximum of ten (10) months.
- (7) Upon mutual consent of the supervisor and the employee, a supervisor may make a request to the President of the College that a ten-month employee work additional days above and beyond the normal 10-month year.

When a ten-month employee is on the payroll for a minimum of 70/80 hours during the month of June, and/or a minimum of 70/80 hours during the month of August, such employee will earn 3.5 hours of sick time for that month. It is understood that one must be on the payroll and accumulate the 70/80 hours during the first 10 work days of June or the last 10 work days of August in order to earn the sick time. Hours worked beyond 35/40 in any given pay week are not included in the minimum of 70/80 hours required for earning the 3.5 hours of sick time.

During the months of September through May, sick time for ten-month employees is governed by Article 8.1.

Should the above list fail to include any benefit which the Union feels that ten (10) month employees are entitled to, the Union President shall bring same to the attention of the College President. It shall be left to the two Presidents to resolve any such issue.

6.8 **WINTER AND/OR SPRING RECESS:**

- (a) This will constitute formal notice that the College intends to implement a total shutdown for the winter recess period (defined as a period encompassing an employee's regularly scheduled work hours following Christmas Day and before New Year's Eve Day, excluding holidays) and for the spring recess period (defined as a 5 consecutive day period, Monday through Friday, during the college's spring semester). During the shutdown period(s) only essential personnel, as defined in Article 6.6(c), will be required to report to work unless specifically excused by the President of the College or his/her designee. Employees will be paid as per Article 7, College Closing. Within the same parameters as outlined in Section 6.6 (c) above regarding essential personnel, the College President may excuse any such employees for any part or all of each

recess period on the basis of seniority.

- (b) Effective April 21, 1999, in the event that the college has a need for a non-essential unit member to work during all or a portion of a winter or spring recess day(s), the college may request an employee(s) to work. Employees who agree to work will be paid the same as essential personnel are paid for working during a recess day(s). Prior to requesting an employee(s) to work, the supervisor will obtain authorization from the President of the College. Such authorization will then be communicated to the President of the ESPA. Employee(s) who primarily perform the duties needed to be accomplished during a recess day will be asked to work the recess day(s) first. Should the primary individual(s) not accept the assignment to work, other employees within the department who are qualified to perform the necessary duties will be asked to work based on the departmental overtime list. It is understood that the employee(s) who are requested to work may refuse such work. The only action taken by the College for not working is to charge a refusal provided sufficient advance notice was given the employee.

6.9 **SHIFT DIFFERENTIAL:**

- (a) Employees who are regularly scheduled to begin work for the day (a day is considered to be the hours from midnight to midnight) at a time that is after 10:30 am shall receive an additional 30 cents per hour for all hours worked after 3:00 p.m. Employees regularly scheduled to begin work prior to 7:00 a.m. shall also receive an additional 30 cents per hour for all hours worked from the start of their regular shift until 7:00 a.m.
- (b) An employee may submit to the President, with the supervisor's approval, a request that would allow the employee to work hours outside of the 8:00 a.m. to 8:00 p.m. normal hours with no shift differential.
- (c) It is understood that at no time is shift differential paid for time that is worked on an overtime basis.
- (d) Effective September 1, 2008 employees regularly scheduled to work the 11pm to 7 am shift will receive an additional 40 cents per hour for all hours worked between 11 pm and 7 am.

6.10 **TRANSFERS:**

- (a) **Intra-College (Competitive and Non-Competitive):** Requests for transfer to a posted vacancy will be in accordance with the instructions contained in the notice.
- (b) **Involuntary Transfers:** The College retains the unfettered right to transfer employees. Employees may request, in writing, a reason for any such transfer where there is a perceived hardship (financial or physical).

6.11 **PROFESSIONAL DEVELOPMENT:**

The College will provide \$35 towards membership in professional organizations, excluding the NCCC ESPA, which is jointly approved by the Director of Human Resources and the President of the ESPA. In addition, the College will guarantee that each unit member will be able to attend skill-based professional development programs of their choice to a maximum of 1 day per year.

ARTICLE 7 - COLLEGE CLOSING

- 7.1 **SNOW/RECESS/EMERGENCY CLOSING SITUATIONS:** When the College is officially closed for inclement weather, recess periods, or other emergency situations, the following procedures shall apply:
- (a) **Essential Personnel:** (Security and Assistant Superintendent of Buildings and Grounds): These employees shall report to work unless otherwise determined by the College President or his designee. If excused, an employee shall receive his/her regular salary for time not worked. Essential employees who work during the College closing will receive the equivalent of double time for time worked as follows:
 - (1) pay, on a straight time basis, for all time worked plus compensatory time equivalent to all time worked, subject to the limitations of Article 12.10 (b), or
 - (2) pay, at the rate of double time, for all time worked.
 - (b) **Other Unit Employees:** When excused from duty by the College President or his designee, employees shall be paid their regular salary for time not worked.
- 7.2 **EMPLOYEE CALL-IN:** Employees who are called into work shall receive a call-in guarantee of four (4) hours pay at the applicable straight time or overtime rate. If employees work beyond the call-in time set forth herein, the employees shall continue to be paid for all such hours or part thereof worked at a straight time or overtime rate, whichever is applicable.
- 7.3 **CLOSING TIMES:** Notwithstanding Article 6.9, for the purpose of this article a day shall be defined as 12:01 o'clock A.M. through twelve o'clock A.M. (midnight). If the College is forced to close after 7:00 AM, employees working between that time and 12:00 A.M.(midnight) shall benefit from Section 7.1 above. If the College is forced to close before 7:00 A.M., employees working between 12:01 A.M. and the announced closing shall benefit from Section 7.1 above.
- 7.4 **OFF-SITE CLOSINGS:** In the event it is necessary to close an individual building or portion thereof, the main campus or some or all of the off-campus sites for health/safety related reasons or for weather related reasons and individual unit members are therefore unable to work at their site or in another location, they shall be excused from work and receive their normal hourly rate of pay for the portion of their normal work schedule for the day in which their work location was closed. It is agreed that such circumstance does not necessitate the payment of additional remuneration or time off to members of the bargaining unit who remain at work at the other unaffected areas.

ARTICLE 8 - SHORT TERM LEAVES OF ABSENCE

8.1 SICK DAYS:

- (a) **Sick Leave:** All full-time employees (including probationary employees) shall be credited with one sick leave day per month of service which may accumulate up to a maximum of 229 days (1,832 hours or 1,603 hours for full-time 40-hour personnel or full-time 35-hour personnel, respectively). Once this maximum accumulation is reached, no more sick leave credits may be earned by the employee except to the extent of restoring credits subsequently drawn for sick leave and thereby building up accruals again to the appropriate number of maximum days.
- (b) Sick leave credits shall not be earned while an employee is on a leave of absence without pay for more than 50% of the workdays in a month, under disciplinary punishment involving the loss of work time in excess of five (5) workdays per calendar month, or while on a leave of absence with one-half (1/2) pay.

8.2 SICK LEAVE USAGE:

- (a) Employees will be eligible for paid sick leave only when suffering from an illness or injury that would prevent the performance of his/her duties. Employees who feign sickness or injury, deceive or attempt to deceive any physician, or any other competent authority concerning his/her mental or physical condition, or fraudulently use or abuse sick leave in any regard, may be subject to disciplinary action including discharge.
- (b) Employees shall be permitted to use a maximum of ten (10) of his/her sick leave days per year for illness of a spouse or child or for the illness of a parent. In cases of a catastrophic illness or injury of a spouse, child or parent, the employee may use his/her accumulated sick leave time and personal business leave. The department head may request a physician's statement of illness for an employee if family illness causes an absence of the employee in excess of three (3) consecutive workdays.
- (c) Employees may utilize accumulated sick leave credits in no less than 15 minute increments for medical or dental visits which cannot be scheduled other than during the time of the employee's normal work schedule, subject to approval of his/her immediate supervisor.
- (d) **Notice:** An employee must have given notice of his/her absence due to illness to his/her immediate supervisor (or designee) as far in advance as possible, preferably at least one (1) hour before the employee's regular shift starting time. Said notice must be given personally or, if totally incapacitated, by a representative. The notice may be reduced or waived in case of an emergency. In such case, the employee's immediate supervisor may inquire into the nature of the

emergency.

- (e) **Medical Substantiation Required:** An employee may be requested to furnish a medical certificate under the following circumstances:
- (1) For any absence which exceeds three (3) consecutive workdays.
 - (2) Where reasonable cause exists to believe that an employee may be abusing sick leave privileges (for example, calling off sick after being denied a time off request, or where review of the employee's record of sick leave usage demonstrates the existence of a pattern or practice). An employee required to obtain a doctor's statement must present same to his/her immediate supervisor within 48 hours after the earlier of (a) his/her return to work from an illness exceeding three (3) consecutive days, or (b) after being told to submit such excuse.
- (f) **Requirements for Medical Verification:** to meet the requirements of Section (e) above, a medical certificate must:
- (1) be signed by a person licensed to practice medicine;
 - (2) describe briefly the nature of the illness or injury which resulted in the employee's absence;
 - (3) state the date or dates on which the person signing the certificate treated the employee for the illness or injury which resulted in the employee's absence;
 - (4) state any duties and responsibilities that the employee is incapable of performing with the medical condition treated; and
 - (5) state that the employee is fit to resume the duties of his/her position.

8.3 **SICK LEAVE EXTENSION:**

- (a) Permanent employees who have served continuously for two (2) years may, after approval from the College president, be granted sick leave with one-half pay for a period not to exceed six (6) months and only after all accumulated sick leave days and vacation credits have been used. During this period it will be the employee's responsibility to present each month a document prepared by a physician of the employee's choice which certifies as to the employee's continued disability. The College will have the right to have the employee examined by their physician as they deem necessary. In special instances, sick leave with half pay may be further extended with the approval of the College president. Leave, not exceeding twelve (12) months without pay, may be granted in the case of employees who have served continuously for at least one (1) year in the College service. No sick leave without pay in excess of twelve (12) months shall be granted unless Human

Resources has obtained prior approval for such an extension from the Niagara County Civil Service Commission.

- (b) The College retains the right to deny a sick leave extension without being subject to the grievance procedure.
- (c) It will be necessary for the employee who is requesting additional sick leave to furnish the College President or his designee with a documented medical certificate.

8.4 **TERMINATION COMPENSATION:** Employees retiring from College service shall be entitled to one (1) day pay at their current rate of pay when they leave for each block of four (4) full unused accumulated sick days.

8.5 **PERSONAL BUSINESS LEAVE:** All full-time employees and probationary employees who have completed ninety (90) days of continuous service shall receive three (3) days for personal business leave subject to the following conditions:

- (a) Personal business leave shall be deemed to mean a personal leave day to conduct personal business of such nature that it cannot be conducted at a time other than the employee's regularly scheduled working hours.
- (b) Written request shall be made to the department head, at least three (3) business days prior to the day of leave, except in the case of an emergency.
- (c) The personal leave day shall not apply on the day before or the day after a holiday or in conjunction with a vacation except with the express written approval of the College President or his designee.
- (d) The College may disapprove the use of a personal business leave day when the number of personal leave requests falling on any one day endangers the proper function of the department.
- (e) Unused personal leave days which remain as of August 31st of any year shall accumulate as unused sick leave.
- (f) Upon retirement or resignation, all bargaining unit members shall be paid for any unused personal business leave days as of the date of retirement or resignation at the current rate of pay.
- (g) Personal business leave days may be used in no less than one-quarter hour (15 minute) intervals.

8.6 **BEREAVEMENT LEAVE:**

- (a) Leave of absence with pay shall be granted to an employee who is absent from duty because of the death of a member of his/her immediate family. The

immediate family of an employee shall include spouse, mother, father, sister, brother, children, current step-children, grandparents, spouse's grandparents, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandchildren, father-in-law and mother-in-law or any person occupying the position of a parent of the employee or their spouse and significant others (defined as an unmarried couple sharing a residence).

- (b) (1) The employer shall grant a leave of absence with pay for the duration of time not to exceed four (4) consecutive regularly scheduled workdays. If the day of the funeral is not within the prescribed 4 consecutive workday period from the date of occurrence, a unit member may be allowed to use one of the four bereavement days on the day of the funeral.
- (2) Where death occurs after the employee has reported from work, that day does not count as one of the four (4) release days.
- (3) Employees may, in addition to the four (4) workdays granted above, utilize vacation or personal leave time to extend the period of bereavement leave provided proper notice is given to the employee's immediate supervisor.

8.7 **LEAVE OR TIME OFF FOR STUDY OR EXAMINATION OR OTHER EDUCATIONAL PURPOSES:**

- (a) Full-time leave without pay for study or examinations shall be granted in special cases and is determined on the individual factors affecting the request. Approval shall be within the discretion of the College President or his designee and is not subject to the grievance procedure.
- (b) Employees may be granted two (2) hours off per week with pay to attend school under the following conditions, subject to the approval of the College President or designee:
 - (1) The course must be directly related to the work of the department and increase the usefulness of the employee to the department.
 - (2) It must be a course that is not available after work hours.
 - (3) The work of the department makes it possible for the employee to be spared for that amount of time.
 - (4) It must be a course offered by a recognized college, university or school.
- (c) **Credit Courses at NCCC:** Full-time bargaining unit members shall be allowed to enroll for credit in courses, without charge, to a maximum of eight (8) credit hours per academic year. Full-time unit members who are matriculating students may register for classes at the time of their regularly scheduled registration appointment. Non-matriculating full-time unit members may take courses on a

seat available basis with seat availability being determined after the conclusion of registration (including late registration) and prior to the commencement of classes. The College placement testing fee will be waived. Leave time, with or without pay, shall be determined pursuant to (a) and (b) above. Effective with the Spring 2011 semester, the college will provide free tuition for 8 credits a year for children of ESPA members in lieu of the ESPA member not using their 8 credit entitlement. For purposes of the meaning of children under this provision, the term children means dependent children as defined by the Department of Education Title IV Financial Aid regulations.

8.8 **MILITARY LEAVE**: Military leave shall be granted according to the laws of the State of New York and the United States.

8.9 **LEAVE FROM SERVICE IN EXEMPT, NON-COMPETITIVE CLASS OR UNCLASSIFIED SERVICE**: Shall be in accordance with Civil Service Law, Rules and Regulations.

8.10 **JURY DUTY SERVICE**:

- (a) An employee who is summoned and is actually required to attend and serve as a juror will not suffer any loss of pay as a result of time actually lost from work due to such jury duty provided that the employee shall be required to:
 - (1) notify his/her immediate supervisor as soon as possible, within at least two (2) weeks before the day the employee is required to report for jury service, and if not possible, as soon as possible after receiving the notice to report;
 - (2) return to his/her immediate supervisor completed forms certified by the Court Clerk;
 - (3) cooperate with the College in requesting excuse or delay from jury service where the employee's absence will adversely affect the College's operations.
- (b) It is understood that employees will report back for work at any time when they are free from their responsibilities of jury duty.
- (c) Employees who serve on jury duty on any given workday will be excused with pay from their regular work shift as follows:
 - (1) Second shift employees will be excused with pay for each second shift immediately following the day served on jury duty.
 - (2) Third shift employees will be excused with pay for each third shift immediately preceding the day served on jury duty provided the immediate

preceding day is a workday.

- 8.11 **COURT APPEARANCE:** Employees shall be granted time off up to a maximum of three (3) workdays without loss of pay when subpoenaed or summoned to appear as a witness, or when required to appear for the purpose of making a deposition. This leave shall not apply when the employee is a plaintiff or a defendant in any proceeding, but absence due to the necessity for court appearance as a plaintiff or defendant may be charged against personal leave.
- 8.12 **LEAVE DUE TO INJURY OR DISEASE INCURRED IN THE PERFORMANCE OF DUTY:** An employee who is necessarily absent from duty because of occupational injury or disease, as defined by the Worker's Compensation Law, may, pending adjudication of his or her case and while his or her disability renders him or her unable to perform the duties of his or her position, be granted leave with full pay for a period not to exceed six (6) months (exclusive of accumulated sick leave credits and other time credit(s), on approval of the appointing authority after full consideration of all facts involved. Vacation and sick leave credits shall not be earned under these circumstances for periods that an employee is on such discretionary six (6) months' leave with pay. Should the disability persist beyond this period, plus accumulated sick leave credits and other time credits, such employee may be placed on leave without pay for a further period not to exceed twelve (12) months. When employee has been awarded compensation by the Worker's Compensation Board for the period of his or her leave with pay, such compensation award for loss of time for such period shall be credited to the College. Upon his or her return to active duty, such employee shall be re-credited with that proportion of earned credits consumed during the period of his or her absence, which the amount of his or her Worker's Compensation award covering the period of earned sick leave and other time credits consumed and credited to the College, bears to the amount of salary he or she received during the period that sick leave and other time credits were consumed. All lump sum payments and/or awards to which the employee is entitled by law for injury or disability shall be retained by the employee and the College shall not make any claim for all or any portion of such award. If any employee requests vacation pay for his or her vacation while on a compensable leave, the employer shall pay such employee for the accrued leave.

ARTICLE 9 - CHILD REARING LEAVE

9.1 **MATERNITY-DISABILITY LEAVE**: Shall be governed by Sections 8.1 through 8.3 above.

9.2 **CHILD REARING LEAVE – PURPOSE**:

- (a) Subject to the conditions set forth in this Article, child rearing leave shall be granted to any employee for the purpose of caring for a child who is resident in the employee's own home during the period of the leave, provided that the employee desires to resume active employment following the expiration of such leave period.
- (b) Further, the leave shall apply for caring for a newborn child or a newly adopted child six (6) years of age or younger.
- (c) Employees serving their initial probationary period at the time of hire or rehire shall not be entitled to child rearing leave pursuant to this Article. Employees serving a probationary period as a result of a promotion to a different competitive class position subsequent to having fulfilled their initial probationary period shall be eligible for the benefits of this Article.

9.3 **ADVANCE WRITTEN NOTICE**: Where the need for a leave can reasonably be anticipated in advance, as in the case of pregnancy, pending adoption or the like, the employee shall give his/her immediate supervisor written notice of the impending need for the leave and as close an approximation as possible of the date when the employee requests the leave to begin.

9.4 **APPLICATION**:

- (a) **Child Rearing**: Actual application for the leave shall be submitted to the employee's immediate supervisor at least thirty (30) calendar days in advance of the first day of leave. Such 30-day notice may be reduced or waived if immediate leave had to be taken without notice because of circumstances beyond the employee's control.
- (b) **Adoption**: The employee will make every effort to provide at least thirty (30) days notice of intent. Leave shall commence with the adoption.

- 9.5 **TERM OF LEAVE**: An employee will be permitted up to a maximum of ten (10) months of unpaid leave for child rearing pursuant to this Article.
- 9.6 **WITHOUT PAY**: Child rearing leave is without pay or benefits of any kind except as provided in 13.9 below.
- 9.7 **NOTICE OF INTENT TO RETURN**: The College shall send a notice to employees who are on an approved childcare leave as a reminder that the leave period is nearly up. Such notice shall be sent at least forty-five (45) days prior to the employee's scheduled date of return. The employee must then confirm to his/her immediate supervisor, in writing, the employee's intent to return on the required day and such writing shall be delivered to the immediate supervisor not later than the thirtieth (30th) consecutive calendar day prior to the last day of the leave. Failure to give such notice on time may be deemed to be a voluntary resignation by the employee, which the college is entitled to accept, effective as of the last day of the leave.
- 9.8 **FAILURE TO RETURN**: If the employee fails to resume active employment by the end of the granted leave period, the employee will be considered as having voluntarily resigned. The effect of any such resignation shall include permanent severance of employment with the college for all purposes under the law. However, if the employee's failure to file or return when scheduled was due to an emergency, the employee may be excused, if the employee:
- (a) notifies his/her immediate supervisor as soon as possible following the emergency;
 - (b) provides any documentation which may be requested by the supervisor; and
 - (c) the College President, or his designee, determines that the documentation submitted suffices.

For purposes of this Section, an emergency is any circumstance beyond the control of the employee, where, even with due diligence, such unforeseen circumstance prevented the employee from complying with the requirements of this Article.

- 9.9 **ACCUMULATION OF SENIORITY OR SERVICE CREDIT**:
- (a) Probationary service credit or seniority will not be granted for any period of time spent on child rearing leave.
 - (b) When employees return from child rearing leave, they shall be re-credited with all unused time accumulated benefits which they had accumulated as of the day prior to the first day of their leave.

ARTICLE 10 - HOLIDAYS

10.1 The following are legal holidays for members of the bargaining unit. If any of the following holidays fall on a Sunday, the next day thereafter shall be observed. If any of the following holidays fall on a Saturday, they shall be observed the previous Friday.

New Year's Day	Columbus Day
Martin Luther King Jr. Day	Veterans Day
President's Day	Thanksgiving Day
Good Friday	Day after Thanksgiving
Memorial Day	Christmas Eve
Independence Day	Christmas Day
Labor Day	New Year's Eve

10.2 Should an employee be required to work on a holiday or on a day on which the holiday is celebrated, each employee so required to work shall be paid time and one-half the regular rate of pay for that day's work, but, in no event, shall an employee who works on the actual holiday and on the day on which the holiday is celebrated, be paid time and one-half for both days. Such employee may only be paid time and one-half for one of those days, and said employee shall also receive one compensatory day off.

10.3 If a holiday(s) falls within the vacation period of an employee, the employee's accrued vacation leave shall be credited with the holiday(s) falling within his or her vacation period.

10.4 If an employee who is scheduled to work on a holiday or who is called into work on a holiday works a second shift during the twenty-four (24) hour period which constitutes the holiday, such employee shall be paid at the rate of two and one-half (2 1/2) times his or her hourly rate of pay for each hour of the additional eight (8) hour shift(s). The twenty-four (24) hour period which constitutes the holiday shall begin at 12:01 a.m. on the holiday and end at 12:00 Midnight on the following day.

10.5 Employees who have reached the maximum accumulated compensatory time limit shall be paid in lieu of the additional compensatory day off noted in Section 10.2 above.

10.6 For those employees on a five-day workweek, the following will apply:

(a) When a holiday falls on an employee's regularly scheduled day off, the employee will receive, at the employee's option, pay or compensatory time, (subject to Article 12.10(b), equivalent to their regular work schedule.

(b) Employees who have reached the maximum accumulated compensatory time limit shall be paid in lieu of the additional compensatory time.

10.7 For those employees on a four-day workweek, the following will apply:

(a) If a holiday falls on an employee's regularly scheduled work day, the employee

will be paid the number of hours equivalent to their regular work schedule.

- (b) When a holiday falls on an employees' regularly scheduled day off, the holiday will be celebrated on the next regularly scheduled workday. .

10.8 Security Department Shift Schedule during holiday periods, as designated in 10.1 above, the following shall apply:

- (a) That when the College is closed, holiday work schedules for the Security Department ESPA personnel will be scheduled between the hours of 7:00 am and 3:00 pm; and, 3:00 pm to 11:00 pm. At such time that a 3rd shift may be re-established or permanent part-time personnel are appointed, this Article 10.8, may be revisited.
- (b) Scheduling of officers will be done by offering the first shift of the holiday hours (7:00 am to 3:00 pm) to Officers who begin their regular shifts before noon on the day of the holiday. Second shift of the holiday hours (3:00 pm to 11:00 pm) will be offered to Officers who begin their regular shifts at noon or later on the day of the holiday.
- (c) The purpose of Article 10.8 is to permit the changing of shifts for holidays as indicated above, and will not set a precedent in any other department of the College.

ARTICLE 11 - VACATION

11.1 **VACATION ACCRUALS**: Full-time employees in addition to time off for holidays will be granted annual vacation with pay as per the following schedule; continuous service (as per Article 15.6(d)) shall be necessary:

- (a) Upon ratification of this agreement by both parties, employees will begin to accrue vacation days at the monthly rate appropriate for the level of annual benefit authorized, (for current members, already accrued service counts towards years of service for purposes of this article) i.e.:

10 days -- .83 days (5.84 hours/6.67 hours) per month

Upon completion of fifth year of service: 15 days -- 1.25 days (8.75 hours/10 hours) per month

Upon completion of eighth year of service: 17 days -- 1.42 days (9.94 hours/11.36 hours) per month

Upon completion of fourteenth year of service: 20 days -- 1.67 days (11.69 hours/13.36 hours) per month

Upon completion of the twenty-fifth year of service: 21 days - 1.75 days (12.25/14.0 hours) per month.

Upon completion of the twenty-sixth year of service: 22 days -- 1.83 days (12.84/14.67 hours) per month.

Upon completion of the twenty-seventh year of service: 23 days -- 1.92 days (13.44/15.36 hours) per month.

Upon completion of the twenty-eighth year of service: 24 days -- 2.00 days (14.0/16.0 hours) per month.

Upon completion of the twenty-ninth year of service: 25 days -- 2.08 days (14.59/16.67 hours) per month.

These days will be credited on the last day of the month. As vacation days may not be taken before they are earned, employees may not use the vacation day during the month in which it is earned.

- (b) Employees who will reach their 6th, 9th, 15th, 26th, 27th, 28th, 29th and 30th anniversary date during the 12 month period 9/1 to 8/31 will begin accumulating their new monthly vacation accrual rate on 9/1 of that period.
- (c) A maximum of twenty-five (25) unused vacation days may be carried over automatically into the next contract year, i.e. as of end of August and credited on

September 1. Unused vacation days greater than twenty-five (245 hours/320 hours), as of August 31 of each year, will be lost.

11.2 **VACATION SCHEDULE:**

- (a) All vacations must be earned and earned vacations may be taken by the employees at a time convenient to the department with the approval of the department head. Vacation leave time may be used in no less than 1/4 hour (15 minute) intervals.
- (b) No vacation will accumulate while employees are on a leave of absence without pay for more than 50% of the workdays in a month, under disciplinary punishment involving the loss of work time in excess of five (5) days per calendar month, or while on a leave of absence with one-half pay.

11.3 **VACATION PAY UPON TERMINATION OF SERVICE:** Employees who sever their employment relationship with the College for any reason, including discharge, shall receive all credited vacation accruals at such time. It is understood and agreed that employees shall receive no vacation credit for that month in which a discharge takes place.

ARTICLE 12 - COMPENSATION PLAN

- 12.1 All employees shall be compensated according to the salary schedules in the attached Appendices.
- 12.2 **PROMOTIONS**: When employees are promoted to a position in a higher pay group, the increase in wage will be to the same step in the new pay grade provided however such increase does not exceed \$1.25. If the same step in the new pay group is greater than \$1.25, the employee will be placed at the step of the new pay grade that provides an increase that is closest to but does not exceed \$1.25. If Step 1 of new pay grade is greater than \$1.25, placement will be to step 1 of the new pay grade.
- 12.3 **NEW POSITIONS**: All new positions must be approved and the salaries set by the Employer. The College will post notices of vacancies or new positions, when they occur, on the College's bulletin board. This posting is for information only and in no way obligates the College to fill such vacancy and does not in any way relate to or affect the posting procedures under Civil Service Law.

When such vacancies are announced as provided herein, employees who wish to be considered for appointment or transfer to such vacancies shall be allowed to request such a transfer provided, however, that such request must be filed with the appointing authority within ten (10) days following announcement of the vacancy.

- 12.4 **STEP PLACEMENT**: Movement on the schedule shall be as follows:
- (a) New employees shall be paid at Step 1. Title and group designations are contained in Appendix B.
 - (b) Effective October 1, 2012 advancement to steps 2, 3, 4, 5, 8, 10, 14, 17, 20, 25, 28 and 31 shall require the employee to complete a minimum of 1, 2, 3, 4, 5, 8, 10, 14, 17, 20, 25, 28 and 31 years of continuous and satisfactory service in order to be considered for advancement to these steps. Movement shall be on the employee's anniversary date. Step advancements for members on steps 1 through 4 as of September 30, 2012 will continue to occur on September 1 until such time as the step coincides with their anniversary date.
 - (c) Advancement to all steps of the salary schedule shall be governed by Section 12.5.
 - (d) Salary schedules reflecting the foregoing, together with agreed upon rate increases, are attached hereto as:

Appendix C: ESPA Wage Chart for 2012 - 2013
Appendix D: ESPA Wage Chart for 2013 - 2014
Appendix E: ESPA Wage Chart for 2014 - 2015
Appendix F: ESPA Wage Chart for 2015 - 2016
Appendix G: ESPA Wage Chart for 2016 - 2017

Appendix H: ESPA Wage Chart for 2017 – 2018

In addition, the College will pay, within 60 days of ratification, a bonus of \$900 (not added to base) for all full-time members and \$450 (not added to base) to all part time members who are members at the time of ratification.

- 12.5 **STEP ADVANCEMENT**: Step advancements are not mandatory, but each employee shall be entitled to one (1) step increase up to the maximum for the position, provided that the step is recommended by the department head and forwarded to the College President for approval. An employee on leave of absence without pay may be considered for a step increase, providing he/she worked a minimum of six (6) months in the academic year. An employee who has received a promotion, or who has been upgraded to a higher job group, may be given consideration for a step increase in salary as of September 1st following the promotion or upgrade.
- 12.6 **STEP INCREASES OF PROVISIONAL OR TEMPORARY APPOINTEES**: Step increases of provisional or temporary appointees shall be carried over when such appointees are given permanent appointment from an eligible list in the same position.
- 12.7 **JOB PARITY (Temporary Work Assignment)**: Full-time employees and part-time employees of the College who are temporarily assigned or transferred to a classification which is in a higher pay group and are required to perform the duties of that classification for the sum total of ten (10) days in any fiscal year shall be paid at the wage scale of the higher pay group for the classification to which they are assigned on a step-for-step basis for every day worked beyond the tenth (10th) day in the higher classification. Such payment shall not apply unless the employees have worked an accumulative total of ten (10) days in the classification that is assigned to a higher pay group within a fiscal year of the employer.
- 12.8 **ALLOCATION DOWNWARD**: When employees are reallocated to a lower class position as a result of layoff, recall, voluntary or involuntary demotion, they shall be permitted to continue at their present rate of pay during the period of incumbency (except in event of general service-wide reductions), but shall not be entitled to salary increases.
- 12.9 **RESIGNATIONS AND REINSTATEMENTS**: Full-time employees who have resigned from their position may be reinstated within one (1) year from the date of such resignation to the position from which they resigned if then vacant, or to any vacant position to which they are eligible for transfer or reassignment. Full-time employees so reinstated shall be paid the salary for the position to which they were reinstated and re-credited with benefits from their previous hire date. Reinstated employees shall not be entitled to any retroactive pay increase or benefits which occurred when they were in a resigned status. It is understood and agreed that reinstatement shall be at the sole discretion of the Employer, whose decision shall not be subject to the grievance procedures herein.
- 12.10 **OVERTIME**: Compensation shall be at time and one-half (1 1/2) the hourly rate for

time actually worked beyond forty (40) hours per week, except where otherwise specified herein. The department will extend every effort to distribute overtime as equitably as possible and will post records monthly concerning overtime worked.

- (a) Employees covered under this Agreement who work thirty-five (35) hours per week shall receive pay at their regular hourly rate of pay for each hour or part thereof between the thirty-fifth (35th) and fortieth (40th) hour. Work beyond forty (40) hours per week will be paid at the rate of time and one-half the employee's regular hourly rate for all time worked, or, at the employee's option, the equivalent compensatory time.
- (b) Employees electing compensatory time in lieu of pay may accumulate a maximum of 120 hours. Employees who, as of the effective date of this Agreement have accumulated greater than the maximum noted herein shall be grandfathered to the extent of their accumulation only. Such employees may not accumulate any further compensatory time until their levels fall below the respective maximum noted.
- (c) The College shall make every effort to pay employees who perform an overtime assignment for such work at the rate of pay set forth in this Section on the first pay day following the payroll period in which they worked the overtime. If the College does not pay the employees on the first pay day, the College, without fail, shall pay the employees on the second pay day following the payroll period in which the overtime was worked.
- (d) Employees may refuse overtime as long as said refusal does not work a hardship on the department concerned as determined by the department head. If employees refuse the overtime, the hours refused shall be charged as time worked, for the purpose of overtime equalization.
- (e) **Advance Notice of Overtime Work:** Where scheduling permits and overtime work is contemplated, employees shall be given at least one (1) week notice of such. If such notice is not given, the employee who would be next to work such overtime shall not be charged if he/she refuses. Unanticipated overtime resulting from absent employees or other emergency situations shall not require advance notice.
- (f) Each contract year, the overtime distribution will begin anew on the basis of seniority. Employees who have not yet been called at the end of the previous contract year shall have their names placed at the top of the overtime list. The order of employees on this list shall not change except for new employees, retirees, resignations, etc.

12.11 **PAY BI-WEEKLY:** The salaries and wages of employees shall be paid bi-weekly on Friday. In the event this day is a holiday or the College institutes a summer hours

program, the preceding day shall be the pay day.

Every effort will be made to pay the second and third shifts a day previous to the first shift employees.

- 12.12 **PAY RATES**: All rates prescribed in the scales of pay are the standard rates of pay authorized for full-time employment. When employment is on a part-time basis, employees shall be paid for all time actually worked.
- 12.13 **MILEAGE**: Employees who are required to travel on College business shall be compensated at the established College mileage rate.
- 12.14 **CIVIL SERVICE LAW AND RULES**: The provisions of the Civil Service Law of the State of New York and the Rules of the Niagara County Civil Service Commission shall at all times apply.

ARTICLE 13 - HEALTH AND MEDICAL INSURANCE

13.1 BENEFIT FOR ELIGIBLE FULL-TIME EMPLOYEES:

- (a) The College shall provide for all eligible full-time employees a health insurance plan as specified in article 13.3 below.
- (b) (1) The College will make available to all full-time unit members health insurance as provided in Article 13.3 below. Effective on or about April 1, 2011, the College will provide a cash payment of \$8,000 to each unit member subscribing to the BC/BS Traditional Plan and \$4,000 to each member currently in an HMO or on a waiver that did not receive a buy-out offered by the college in any previous bargaining agreement. Members receiving an \$8,000 buy-out will be enrolled in an HMO of their choice as provided below. Members receiving a cash buy-out will not be able to enroll in the BC/BS Traditional plan in the future including at the time of their retirement.

(2) It is understood that the above buy-out is for full-time unit members and that regular part-time unit members will receive ½ of the applicable full-time amount and the less than ½ time unit members will receive the applicable % of the full-time amount.

(3) Persons must be employed by the College at the time payment is made. Unit members designated as temporary employees will not be entitled to the buy-out. It is understood that members funded by a grant are not considered temporary for purposes of eligibility for the buy-out.

(4) For members hired prior to August 17, 2004 who move out of the coverage area of the health insurance plan provided upon retirement pursuant to Articles 13.7 or 13.8, below, and who have not prior to 9/1/2010 surrendered their right to traditional coverage by electing a previous buy-out, the College will provide a New York State- issued replacement plan with benefits that are comparable (meaning as close as possible) on an overall basis to the coverage issued in New York State to which the member is entitled under Articles 13.7 or 13.8, whichever is applicable.

13.2 HEALTH CARE COVERAGE - PAYMENT SCHEDULE:

- (a) Unit members will be eligible for enrollment in an HMO the first day of the first full month after 60 days of employment.
- (b) For unit members employed as of August 21, 2001, the employee shall pay the cost of the health insurance plan chosen by the employee by contributing 20% of the annual premium cost increase on a non-cumulative basis. Calculation of the bi-weekly amount the employee shall pay towards the annual increase will be

based on annual increases occurring on 9/1/10 and thereafter. Payment of this bi-weekly amount will commence as soon as practical after final ratification and paid prospectively each pay period until the next increase of the applicable health insurance plan.

- (c) For unit members hired after August 21, 2001, the College and employee will share the cost of the health plan chosen by the employee as specified below. The cost sharing provisions below apply to employees currently paying 45% (as of the ratification date) their health insurance premium. This provision has no retroactive effect.

<u>MONTH OF CUMULATIVE SVCE</u>	<u>EMPLOYEE CONTRIBUTION</u>	<u>EMPLOYER CONTRIBUTION</u>
First 36 months*	20%	80%
Commencing with 37 th month	10%	90%

*eligibility commences on the first day of the first month after 60 days of employment

13.3 HMO COVERAGE:

- (a) The employer agrees to provide State approved HMO's (Independent Health and Community Blue I Plan) to eligible employees.
- (b) The employee's share of any HMO coverage selected shall be paid on a payroll deduction basis.
- (c) It is understood that should the health insurance carrier unilaterally eliminate or modify the plan, the College will provide a comparable (meaning as close as possible) plan. It is understood that the College will meet with the ESPA to determine a comparable resolution. The intent of this language is to ensure that the College will meet with the ESPA to discuss any unilaterally changed benefit by the HMO so that the College cannot arbitrarily determine the change.

13.4 DUPLICATE HEALTH COVERAGE:

- (a) All members of the bargaining unit shall have a maximum of one (1) family health plan per family. If a unit member is covered (or eligible for coverage) under a spouse's insurance plan which provides coverage that is comparable to that provided by the College, then the unit member may not take health insurance

through the College and must take the waiver option discussed below.

- (b) When a husband and wife are both employees of the College in any capacity, only one (1) family coverage with a waiver may be selected.
- (c) Should a spouse's health coverage be terminated for any reason, the unit employee will be entitled to coverage under the health plan herein, provided he/she notifies the college, in writing, immediately following his/her spouse's loss of health care coverage, and coverage shall be reinstated on the first day of the month following thirty (30) days of the College's receipt of the above notification or sooner where carrier permits.

13.5 USE OF ALTERNATE CARRIER(S):

Should the College wish to provide coverage through a carrier other than BC/BS, it shall so notify the union and negotiate same.

13.6 WAIVER BENEFIT:

- (a) The College agrees to provide unit members, on or about May 1st of each year, the following amounts in exchange for a waiver of health insurance benefits for the year: \$500 (for waiver of single coverage) or \$1000 (for waiver of family coverage). Part-time unit members shall be eligible for the health insurance waiver benefit determined in the same manner as full-time members.
- (b) Written notification to the college must be submitted on or before September 1st, on a form agreed to by the parties annexed to this Agreement as Appendix F. Once such a written waiver notice is submitted, it shall continue in effect unless and until rescinded, in writing, by the bargaining unit member.
- (c) It is understood and agreed that any unit member who waives health insurance coverage for any one year may elect coverage for any subsequent year. Such election must be made during the college's open enrollment period.
- (d) Notwithstanding the waiver of health insurance coverage by a unit member for any year, the unit member will be permitted re-entry into the college's health plan when a "Qualifying Event" occurs. A qualifying event is defined as marriage, birth, adoption of child, legal guardianship, divorce, death, national support notice, involuntary loss of coverage, and other events as determined by insurance carrier. Some events require proof or documentation.
- (e) The actual waiver amount paid to any employee pursuant to this section shall be determined by applying the College's contribution rate for that employee to the appropriate maximum waiver amount noted above.
- (f) Prorated waiver payments: employees who submit written notification to the College before the first of any month of their intention to drop the College's

coverage shall be credited with a full month for purposes of the waiver beginning with the next full month following notification. Said employees will thereafter receive one-twelfth (1/12th) of the appropriate waiver sum for each full month in which health insurance is waived.

13.7 HEALTH INSURANCE COVERAGE UPON RETIREMENT:

- (a) (1) Upon retirement, current College employees shall be eligible for group coverage as noted below. Continuous full time College service is required. Retirement shall be defined as retirement under the New York State Employees Retirement System:

<u>College Service*</u>	<u>Employee Share</u>	<u>College Share</u>
Less than 10 years of service	100%	0%
10 years but less than 15 years	50%	50%
15 years but less than 20 years	25%	75%
20 years or over	0%	100%

The College will, for unit members hired prior to final ratification of this (August 17, 2004), maintain their health insurance plan as provided for in Article 13 that is in effect at the time of their retirement. It is understood that should the health insurance carrier unilaterally eliminate or modify the plan, the College will provide a comparable (meaning as close as possible) plan.

* Includes credited service with Niagara County as may be granted by the College at the employee’s date of hire or rehire.

- (2) Upon retirement, unit members hired after August 17, 2004 shall be eligible for group coverage as noted below. Continuous full-time College service is required. Retirement shall be defined as retirement under the New York State Employees Retirement System.

<u>College Service</u>	<u>Employee Share</u>	<u>College Share</u>
Less than 15 years	100%	0%
15 years but < 20 years	75%	25%
20 years but < 25 years	50%	50%
25 years but < 35 years	25%	75%
35 years or over	0%	100%

- (b) Retiree health insurance coverage for employees hired after August 17, 2004,

shall be based on the current health insurance program covering active College employees.

- (c) Retirees eligible for health insurance may waive health insurance coverage and receive a cash payment that is equal to the amount specified in article 13.6 above. Such payment will be made no less than annually on or about May 1.

13.8 MEDICARE ELIGIBILITY: Commencing on their 65th birthday, unit members who retire from the College (and covered spouses) are required to utilize Medicare Part B in conjunction with a Medicare Advantage Plan that provides a level of benefit as close as possible to the College's plan for which they would be eligible if the retiree and/or spouse was not yet 65. Except as provided in Article 13.1(b)(4), if a member (and/or covered spouse) moves out of the coverage area of the Medicare Advantage Plan provided under this Section, the College will provide an out-of-area Medicare Advantage Plan which provides benefits that are comparable (meaning as close as possible) on an overall basis to the coverage that would otherwise be provided under this Article. In the event Medicare Advantage Plans are not available, the college will provide a replacement plan that provides a level of benefit that is comparable (meaning as close as possible) on an overall basis to the coverage that would otherwise be provided under this article.

13.9 HEALTH INSURANCE - UNPAID LEAVES OF ABSENCE: Health insurance benefits shall continue for up to a period of two (2) months during any approved unpaid leave of absence.

ARTICLE 14 - IRS SECTION 125 FLEXIBLE SPENDING ACCOUNT PLAN

It is agreed that the College and the Educational Support Personnel Association will provide an Internal Revenue Service (IRS) Section 125 Flexible Spending Account.

It is also agreed that the College will be able to recoup any and all costs from any surplus funds at the end of each year. Surplus monies remaining after the College has recouped any and all costs will be contributed to the Niagara County Community College Foundation, Inc. unrestricted fund.

Participants will notify the College on a form to be provided no later than a date to be mutually agreed upon by the College and the Association.

ARTICLE 15 - SAFETY CONSIDERATIONS

15.1 SAFETY: The College shall continue to make reasonable and necessary provisions for the safety and health of its employees during their hours of work. All employees covered by this Agreement shall cooperate in the implementation of all such reasonable and necessary safety and health provisions. It is recognized as being the mutual obligation of the College and the Union to assist in the elimination and prevention of unsafe and unhealthy working conditions and practices, and jointly to assist in the prevention of accidents.

ARTICLE 16 - SENIORITY/LAYOFF

16.1 **SENIORITY DEFINED:**

- (a) Seniority shall be defined as an employee's length of continuous service with the College following successful completion of the probationary period served after original hire or rehire. An employee's seniority shall include any credited service with the County granted at the time of hire or rehire on or before August 31, 1991.
- (b) For purposes of seniority under this Article, an unpaid leave of absence shall not accrue seniority for each calendar day of the unpaid leave. It is understood that seniority dates will not be adjusted for persons choosing the option specified in article 6.6 (b) (1) relative to the summer schedule. Paid sick leave shall continue to accrue full seniority in proportion to the amount of payment received.
- (c) **Part-time Service:** Part-time service shall be credited on the following basis: All schedules of less than 35 hours shall be considered part-time and prorated on the basis of a full-time 35-hour week for credit on the seniority list. All schedules of less than 40 hours shall be considered part-time and prorated on the basis of a full-time 40-hour week for credit on the seniority list.

16.2 **SENIORITY LISTING:** There shall be two seniority lists encompassing bargaining unit personnel, one for competitive class employees, and one for non-competitive class employees. The Human Resource Office shall provide the local Union secretary with a current seniority listing of all unit employees on an annual basis, which shall include names, date of hire, home addresses, departments, status (competitive/non-competitive) and position titles.

16.3 **PROBATIONARY PERIOD:**

- (a) Employees in the bargaining unit covered by this Agreement shall be considered probationary for the first twenty-six (26) weeks of full-time employment. For the purpose of fulfilling this twenty-six (26) week requirement, part-time service may be prorated in direct proportion to the full-time service for each unit description. Whenever the term "probationary" or "probationary period" is used in this Agreement, the reference shall apply to initial employment or reemployment. Seniority will not be recognized while an employee is serving a probationary period.
- (b) The probationary period will be automatically extended by one (1) day for each scheduled workday a probationary employee is absent.
- (c) Employees serving their initial probationary period at the time of hire or rehire shall not be eligible for any benefits as provided in this Agreement, unless otherwise expressly stated.
- (d) During the probationary period, employees shall not have any seniority rights, and

may be dismissed, disciplined or terminated by the College, and any such action by the College shall not be subject to the grievance and arbitration provisions of this Agreement.

- (e) Seniority rights shall begin upon successful completion of the probationary period, and shall be retroactive to the date of hire. However, benefits shall, unless otherwise specified, be granted prospectively.

16.4 **IMPACT OF ABSENCES ON SENIORITY**: Seniority shall not accumulate during the following periods, and the employee's seniority date shall be adjusted by one (1) calendar day for each calendar day of these absences:

- (a) Layoff.
- (b) Unpaid leaves of absence. It is understood that seniority dates will not be adjusted for persons choosing the option specified in article 6.6 (b) (1) relative to the summer schedule.
- (c) Disciplinary suspension.

16.5 **TIE BREAKING POLICY**: If two or more employees have the same seniority, the more senior will be determined by date and order of appointment. Should this method be unable to resolve the tie, then the employee holding the highest rank on the Civil Service Eligibility List shall receive preference.

16.6 **SENIORITY FORFEITURE**: All seniority rights shall be forfeited and employment shall be permanently severed for any of the following reasons:

- (a) Discharge or dismissal for cause.
- (b) Resignation.
- (c) Retirement under any retirement benefit plan.
- (d) Layoff for more than two (2) consecutive years.
- (e) Refusal to accept recall from layoff for a comparable position.
- (f) Failure to report to work pursuant to recall from layoff requirements contained in this Agreement.
- (g) Failure to return to work on the first day after the expiration of any leave of absence.
- (h) Abandonment, actual or constructive, of employment due to no-call, no-show (AWOL) of three (3) or more consecutive workdays, unless otherwise excused by the College, in writing, because of the existence of an emergency. For the

purpose of this provision, an emergency is the existence of any circumstances beyond the employee's control which, even with all due diligence, prevented the employee from contacting the College within the three (3) day period noted above.

16.7 **RESIGNATIONS:**

- (a) All resignations must be submitted in writing to the President of the College and shall specify the employee's last day of work.
- (b) It shall be the policy of the College to consider resignations submitted to and accepted by the President of the College binding upon the person resigning.
- (c) In the event that the person is applying for reemployment with the College, that person will be classified as a new employee in all respects.
- (d) If an employee resigns from employment and is rehired to a permanent position within twelve (12) consecutive calendar months of the effective resignation date, there shall be no break in the employee's College seniority. Seniority shall not accumulate during this period of absence from employment.

16.8 **LAYOFF:**

- (a) **Competitive Class Employees:** All employees occupying competitive positions who are subjected to layoff or recall shall be laid off and recalled according to the Civil Service rules and absent Civil Service rules their position on the seniority list shall apply. Competitive employees who have been laid off shall be given preference over all other bargaining unit members and new applicants for existing, new or vacant positions for which they are qualified and where the laid off employee can assume the duties of the existing, new or vacant positions with minimal training.

In the event of a layoff in which bargaining unit members have the right to displace grant funded bargaining unit members, they will have one week from the receipt of notification (certified return receipt requested), of layoff per Article 16.8 (c) (2) in which to notify the College of their desire to exercise this right. The employee must indicate what positions they wish to bump.

The College will have one week from the receipt of the employee's notification to notify laid off employees what position they may bump.

- (b) **Non-Competitive Class Employees:** All non-competitive employees in the bargaining unit shall be laid off and recalled according to their seniority. Non-competitive employees on the seniority list shall be given preference over new applicants for new or vacant positions (provided they are reachable on the appropriate Civil Service list) on the basis of seniority and will continue with their accrued seniority when a Civil Service appointment is made and probationary

period is completed.

(c) **Procedure:**

- (1) **Federal-State Funding:** In the event a program or project is funded either by federal funds or state funds, or is self-funded, and such funds are eliminated or terminated by the funding agent, there shall be no liability on the part of the employer to continue such programs or projects beyond the funding period.
- (2) In the event the College plans to layoff unit employees, the College shall meet with the Union to review such anticipated layoff at least thirty (30) days prior to the date such action is to be taken and the employee to be laid-off will have at least fourteen (14) calendar days' notice of layoff.
- (3) When such action takes place it shall be accomplished by laying off temporary (including non-competitive grant personnel), provisional and probationary unit employees first. Should it be necessary to further reduce the work force, then regular employees shall be laid off in the inverse order of seniority as determined by the appropriate seniority list in 16.2 above.
- (4) However, if an employee's position is in the competitive class, the layoff procedure shall be in accordance with the Civil Service Law and Rules.
- (5) The College shall forward a list of those employees being laid off to the local Union Secretary on the same date that the notices are issued to the employees.

16.9 **RECALL:** Recall in each job title shall be in the inverse order of layoff in that job title. Recall of competitive class employees will be according to law.

ARTICLE 17 - PENSION BENEFITS

- 17.1 Employees shall be provided with pension benefits as provided by the New York State retirement system.

ARTICLE 18 - DEFERRED COMPENSATION PLAN

- 18.1 Any and all members of this Bargaining Unit may avail themselves of the existing deferred compensation plan (457 Plan) currently in effect through Niagara County. Said plan is administered by NYS Deferred Compensation Plan.
- 18.2 Unit members may also participate in the tax sheltered annuity plans (403b).

ARTICLE 19 - PERSONNEL FILES

- 19.1 Employees will receive copies of any and all derogatory materials which will be entered into an employee's personnel record. Employees shall have the right to respond to any such material, in writing, within ten (10) working days after his/her receipt of such derogatory materials. Such written response will be included in the employee's personnel file.

- 19.2 Employees may inspect their personnel files, except for confidential references pertaining to hiring or promotion, upon advance written notice of at least five (5) working days to the College. Inspection must take place under the observation of a college official. Employees may request a copy of any viewable material in the normal and ordinary course of business free of charge.

- 19.3 All material pertaining to evaluation and/or discipline which is to be placed in the employee's file shall be signed and dated by the employee to indicate that the material was seen by him/her. Such signature does not indicate agreement with the material.

ARTICLE 20 - USE OF STUDENT AND SEASONAL EMPLOYEES

- 20.1 **USAGE**: The College retains the right to hire college work-study students, co-op students, student assistants, seasonal workers and to participate in other employment programs to assist the regular educational support personnel in carrying out the necessary support functions of the college including but not limited to: typing, reception, telephone answering and security.
- 20.2 **USE OF STUDENT WORKERS**: The College will utilize student workers in accordance with Federal Work Study Guidelines. Student workers will be assigned duties that directly assist ESPA members and shall take direction from the ESPA member to whom the student is assigned. The College will not hire student workers to replace current ESPA members.

ARTICLE 21 - UNIFORMS FOR SECURITY

Campus Security Officers will be required to wear uniforms while on official duty as prescribed by the College. Upon hire, the College will pay 100% of the cost of four (4) trousers, two (2) pair of walking shoes, one belt, one (1) white dress shirts, one (1) sweaters, two (2) short sleeve collared shirts, two (2) long sleeved collared shirts, one (1) tie, one (1) ball cap, one (1) polo shirt, one (1) dress hat, and one (1) winter coat with removable liner. Care and maintenance of the uniform is the responsibility of the officer. The College will replace a uniform item when it becomes damaged or tattered and no longer appears professional. Some wear and tear is to be expected without replacement. Officers leaving employment of the College are required to turn-in all College-issued uniforms and equipment.

ARTICLE 22 - SUPERSEDURE

- 22.1 **PROPOSALS**: The Employer and the Union acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make and submit proposals with respect to any subject or matter not removed by law from the area of collective negotiations.
- 22.2 **RULES AND REGULATIONS**: This Agreement shall supersede any rules, regulations, practices or arbitration awards which are contrary or incompatible with its terms.
- 22.3 **CONTRARY TO LAW**: If any Article or a part thereof of this Agreement or any addition thereto should be decided as in violation of any Federal or State law or if adherence to or enforcement of any Article or part thereof should be restrained by a court of law, the remaining Articles of the Agreement or any addition thereto shall not be affected. Both parties shall convene immediately to negotiate satisfactory replacement language to any Article found to be contrary to law.
- 22.4 **COMPLETE AGREEMENT**: The foregoing constitutes the entire Agreement between the parties and no verbal statement or other agreement in whatever form except an amendment to this Agreement, in writing annexed hereto and specifically designated as an amendment to this Agreement, shall supersede or vary.
- 22.5 **MODIFICATION**: This Agreement may not be modified in whole or in part by the parties except by an instrument in writing duly executed by the signatories to the Agreement.
- 22.6 **LEGISLATIVE ACTION**:

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFORE, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

ARTICLE 23 - DURATION OF AGREEMENT

23.1 This Agreement shall become effective on September 1, 2012, and shall expire on August 31, 2018. Articles shall be applied retroactively only to the extent noted.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in the following manner:

**For the Employer as authorized
by Board of Trustees Resolution
dated January 2, 2013**

Dr. James P. Klyczek
President, Niagara County
Community College

**For the Union as ratified by the membership of
the Educational Support Personnel
Association (ESPA) on December 17, 2012**

Debbie Beach
President, ESPA

Cheryl Beyer
Member, Negotiating Team

APPENDIX A

FORM FOR FILING GRIEVANCE
NCCC EDUCATIONAL SUPPORT STAFF
NEA/NY

To be completed by Grievant or his/her representative:

Name _____ Title _____

Home Phone _____

Division/Department _____

Provision(s) Alleged To Be Violated: Article(s) _____

Section(s) _____

STEP 1

Date of Occurrence _____ (if known)

Statement of Facts (may attach an additional sheet) _____

Remedy Sought _____

Date Submitted _____ Grievant _____

Union Rep. _____

STEP 1 DECISION

Date Grievance Received _____

Date Decision Issued _____

Authorized Signature _____

(Determination Attached)

STEP 2 APPEAL

(To be submitted to the designated hearing officer
within five (5) workdays following receipt of the Step 1 decision)

The decision of Step 1 above is unsatisfactory because: _____

Date Submitted _____ **Grievant** _____

STEP 2 DECISION

Date Received: _____

(Determination Attached)

STEP 3 APPEAL (PRESIDENT'S STEP)

(To be submitted to the President (or his designee) within ten (10) working days after receipt of the Step 2 decision)

The decision of Step 2 above is unsatisfactory because: _____

Date Submitted _____ **Grievant** _____

Telephone _____

DETERMINATION ATTACHED

Decision Issued (Date)

Signature (President)

APPENDIX B

ECONOMICS

I. Title and Group Designation

- Group 1: Typist
(3) Telephone Operator
Messenger
Clerk
Library Circulation Desk Clerk
Duplicating Machine Operator
- Group 2: Senior Typist
(4) Senior Clerk
Senior Library Clerk
Stenographer
Account Clerk Typist
Data Entry Operator
Data Processing Control Clerk
Asst. Multilith Machine Operator
Account Clerk
Microcomputer Help Desk Receptionist
- Group 3: Account Clerk Stenographer
(5) Payroll Clerk
Computer Operator
Cash Account Clerk
- Group 4: Inventory Clerk
(6) Principal Library Clerk
Senior Stenographer
Senior Account Clerk/Senior Account Clerk Typist
Multilith Machine Operator
Principal Clerk
Personnel Records Clerk - Municipalities
- Group 5: Senior Computer Operator
(7)
- Group 6: Registered Professional Nurse
(8) Principal Audit Clerk
Principal Account Clerk
Registration and Records Assistant

	Vocational Counselor
<u>Group 7:</u> (9)	Supervisor of Central Office Services Micro Computer Coordinator Public Relations Assistant
<u>Group 8:</u> (10)	Educational TV Operations Supervisor Accounting Supervisor Administrative Assistant/Schools Senior Audio/Visual Technician
<u>Group 9:</u> (11)	Computer Programmer
<u>Group 10</u>	Programmer Analyst
<u>Group 11:</u> (13)	Senior Computer Programmer
Others	Campus Security Officer Senior Security Officer Assistant Superintendent of Building Services

II. RETROACTIVITY: Salary increases consistent with the terms of this memorandum will be paid retroactively to unit members on active status as of January 2, 2013. In addition, all full-time unit members on active status as of January 2, 2013 will receive a bonus of \$900 (not added to base) and all part-times unit members on active status as of January 2, 2013 will receive a bonus of \$450 (not added to base), which will be paid within 60 days of ratification this agreement.

All remaining items shall have prospective application effective with the signing of the finalized contract unless the parties specifying agree otherwise, in writing.

APPENDIX C

Wage Chart 2012 - 2013

APPENDIX D
WAGE CHART 2013 - 2014

APPENDIX E

Wage Chart 2014 - 2015

APPENDIX F
WAGE CHART 2015 - 2016

APPENDIX G
WAGE CHART 2016 - 2017

APPENDIX H
WAGE CHART 2017 - 2018

APPENDIX I

NIAGARA COUNTY COMMUNITY COLLEGE

WAIVER OF HEALTH INSURANCE

- A. In accordance with Article 13.8 of the agreement between Niagara County Community College and the Educational Support Personnel Association, I, _____, hereby waive and/or withdraw from participating in the Health Plan Coverage offered by N.C.C.C. effective _____, 20____, and request payment as provided in the Agreement. I (am) (am not) currently participating in a health plan offered by N.C.C.C.
- B. I am eligible for (place initials opposite appropriate coverage):
1. Individual Health Plan Coverage
 2. Family Health Coverage
- C. I have health insurance through my spouse's employment, other employment of myself or a private insurance plan.

Name of Plan _____

Group Number _____

- D. Waiver for Less Than Full Year:

If I drop health insurance before the 1st of any month, I will be credited with a full month for purposes of the waiver beginning with the next full month following notification. I will thereafter receive 1/12th of the appropriate waiver sum for each full month I waive health insurance. Payments shall be made on or about May 1st of each year.

This waiver will remain in effect until a change is requested, in writing, or my full time appointment is terminated.

Date

Signature

MEMORANDUMS
OF
UNDERSTANDING