

1996 MASTER AGREEMENT
BETWEEN THE
UNITED STATES MARSHALS SERVICE
AND THE
AMERICAN FEDERATION OF
GOVERNMENT
EMPLOYEES, AFL-CIO
INTERNATIONAL COUNCIL OF
U.S. MARSHALS SERVICE LOCALS, C-210

ARTICLE 39

DISCIPLINARY ACTIONS

Section 1. Weingarten Protection

An employee can be represented at any examination of the employee in the unit by a representative of the Employer in connection with an investigation if;

- a. the employee reasonably believes that the examination may result in disciplinary action against the employee; and;
- b. the employee requests representation.

Section 2. Procedures for Taking Investigative Statements -

Prior to taking an investigative statement from an employee in an administrative investigation against whom an allegation of misconduct has been made and the employee reasonable believes may result in discipline, the Employer will follow the following procedures:

a. In matters where the allegations would result in a penalty of 14 days or less and the investigation is conducted at the district or local office level the following procedures apply:

1. The Employer will notify the employee that it wishes to take a statement from the employee.
2. Upon request, the subject employee will be reasonable official time to exercise his/her rights and to contact the Union representative for advice.
3. **If the employee desires Union representation, he/she has one work day to advise the Employer of this request.**
4. **If such a request is made, the employee has another two days to secure a representative.**
5. **If the employee is unable to obtain a representative within the three days (72 hours,) time period, then the**

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Employer is free to take a statement.

6. If the employee does not wish to have a representative

or fails to inform the Employer of his/her desire to have a representative within one work day, then the Employer may take the statement anytime at the Employer's convenience.

b. In matters where the allegations would result in a penalty grater than 14 days, demotion or removal and the investigation is conducted by an official of the Office of Inspections the following procedures apply:

1. The Employer will notify the employee that it wishes to take a statement from the employee.

2. Upon request the subject employee will be provided reasonable official time to exercise his/her rights and to contact the Union representative for advice.

3. If the employee desires Union representation, he/she has three work days (72 hours) to secure a representative.

4. If the employee is unable to obtain a representative within the three days (72 hours,) time period, then the Employer is free to take a statement.

5. This provision may be extended upon request.

c. In matters of exigent circumstances when the delay in taking a statement will prejudice the investigative process and or critical security needs require immediate collection of information for the protection of life and property employees will be required to provide the information as soon as possible not to exceed one business day. Employees are still entitled to representative and must secure a representative within one business day.

Section 3.

Employee and union representatives will provided reasonable Official time to meet with and advise employees subject to disciplinary investigations.

Section 4.

When the Employer conducts an interview of an employee while conducting an administrative investigation, the Employer will notify the employee of the charges and inform him/her that the questions must be answered. Failure of an employee to answer work related questions in an administrative investigation may result in disciplinary action.

Section 5.

Disciplinary interviews will normally be held during regular hours of the basic work week. An employee is entitled to premium pay as provided by law and regulation if the disciplinary interviews are conducted outside normal duty hours.

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Section 6.

The parties agree to cooperative toward the development of programs and polices which contribute to the prevention of misconduct and subsequent disciplinary actions. Disciplinary actions if imposed should be consistent with principles of like penalties for like offenses.

Section 7.

The Employer will take reasonable steps to ensure the safeguarding of internal investigative files. Each file distributed to local management officials will include a warning limiting the release of the contents of the investigative file to those officials with a need for access to the information. After local district management review of the investigative file, the copy will be returned to the Office of Inspections.

Section 8.

Upon receipt of a written request by the Office of Inspections from an interviewee, a copy of the interview statement will be provided to an employee when the investigation is completed. Employees may also file for a copy of the investigation under provisions of the Freedom of Information Act (FOIA).

Section 9.

If the allegations involve criminal conduct, and the Marshals Service is conducting an investigation, the employee may be represented by a Union representative. It is also understood by the parties that subjects of the same investigation cannot represent each other during an investigative interview.

Section 10.

The Employer shall determine when the need arises for adverse actions. An employee will be subject to adverse action for such cause as will promote the efficiency of the Service.

Section 11.

Adverse actions include removals, suspensions, reduction in pay or grade, and furloughs of thirty (30) days or less for employees serving in bargaining unit positions in the competitive service who have completed a one year probationary period in a permanent position. This Article does not apply to excepted service employees, employees on temporary appointments, or employees in the bargaining unit serving a probationary period.

Section 12.

It is understood by the parties that the Employer has the right to counsel employees and to direct the work force and manage office operations. There is no right to representation during these counseling sessions. The purpose of counseling is for management to provide feedback, both positive and negative, to an employee. The purpose of counseling is not to intimidate or harass employees. If the employee feels that the counseling session may result in disciplinary action, he/she should refer to his/her rights in Section 1 of this Article.

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Section 13.

In those cases where discipline becomes necessary, it should, to the extent possible, have a constructive effect. Discipline is taken by management to correct offending employees and to maintain good order and morale among all employees.

Section 14.

Employees subject to discipline are entitled to the following as provided law and DOJ Orders.:

The right to be advised in writing of the allegations and charges with sufficient specificity and to receive a copy of the Employer investigation file and statements used in preparing the disciplinary proposal so that the employee can to make a reasoned response to the allegations.

The right for administrative time not to exceed 8 hours to prepare a written response and the right to submit an oral or written response on administrative time without charge to leave to the allegations or charges.

The right to a representative of his/her choice provided that such representative is not a subject to the investigation which may result in a conflict of interest.

The right to grieve and appeal any discipline action through appropriate administrative bodies.

The Employee acknowledgement of discipline denotes receipt of and not agreement with the discipline letter. The employee is not required to sign a discipline letter.

Section 15.

a. The procedures set forth in the United States Marshals Service Manual, DOJ Order, 5 CFR Section 752, and law, on adverse actions and performance based adverse actions and any future changes thereto, will be used to process adverse actions against employees covered by this Agreement. The normal reply periods set forth in the Manual and Order for taking an adverse action will be utilized by the parties. It is understood by the parties that reasonable requests for extensions to reply to proposed adverse actions can be requested and normally will be granted except in cases involving the crime provisions, in which case the employee will only be given seven (7) days to respond to a proposal.

b. When a disciplinary action of any type is proposed against an employee, the notice of the proposed action will have attached to it the evidence, including statements, documents, affidavits, and investigative reports relied upon to support the proposed action.

c. Disciplinary and adverse actions will be taken consistent with the DOJ-USMS Table of Offenses and Penalties, as appropriate. Disciplinary actions are taken for the such cause to promote the efficiency of the Service and will not be taken in a manner which discriminates against an employee by reason of race, color creed, national origin or sex or handicapping condition, The Table of Offenses appears in this agreement for information purposes only and is not intended to be all inclusive. Reckoning periods for each offense will run from the date the Employer becomes aware of the offense. The reckoning period is defined as that



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period of time during which a second or third offense of the same nature as an earlier offense, will result in more severe disciplinary action against an employee. The Employer reserves the right to change the Table of Offenses and Penalties at any time, with notification to the Union as required by law.

Section 16.

Prior to the termination of a probationary employee, the Employer will follow procedures set forth in 5 CFR. 315.804 and the employee will be advised of any appeal rights (EEO-MSPB) as provided by law and regulation.

Section 17.

When the employee does not elect to have a representative of the Union represent him or her and unless not permitted by the Merit Systems Protection Board, the representative of the Union can serve as an observer at a disciplinary or adverse action hearing and will not be on official time.

Section 18.

Making a statement or statements about fellow employees or officials with knowledge of falseness of the statements or with reckless disregard of the truth, subjects the employee to adverse action.

Section 19.

Letters of reprimand shall be dated and placed in an employee's Official Personnel Folder for up to one (1) year.

Section 20. Expedited Grievances.

Grievances concerning [letters of caution], reprimands, suspensions, demotions, and removals will be filed at Step Three (3) of the NGP procedure within thirty (30) days of receipt of the action. Priority will be given to processing grievances concerning discipline through arbitration.

Section 21.

Upon request, in accordance with the DOJ Order on Discipline, an employee and his employee representative will be given official time to review the file and present a response to the proposed action. Official time will be governed by Article 10 of the Master Agreement.

Section 22.

Employees who are the subject of investigations who are found to have acted appropriately and are cleared of all charges will receive a Letter of Clearance in a timely manner.

Section 23.



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Employees who are subject to removal for disciplinary reasons may request to retire prior to a final decision being made on the removal charge.

Section 24.

The Employer will make reasonable efforts to verify anonymous complaints before taking disciplinary action. Employees making false complaints against other employees are subject to disciplinary action.

Section 25.

Upon request, The Employer agrees to provide to the Union, in accordance with Privacy Act and other laws, regulations and this Agreement, statistical information and reports on the USMS discipline program to include proposed actions, final decisions and locations of employees subject to disciplinary actions.

Section 26.

Discussion with employees regarding conduct or corrective measures will, to the extent possible, be conducted in private to avoid personal embarrassment to the affected employee.

Section 27.

If an employee files a grievance to the Employer, the Employer will give a copy of the final grievance decision and appropriate materials to the employee and a copy to the employee representative.

Section 28.

Disciplinary actions will be administered as discreetly as possible to ensure appropriate privacy of the employee subject to discipline. Disciplinary actions will be processed within as reasonable time as possible.

Section 29.

The parties agree that the union may request expedited arbitration appeal for a disciplinary action involving the removal of a bargaining unit employee for reasons of misconduct, and/or unsatisfactory performance and in any case involving suspension for more than 14 days. However any request must be made within 30 days of the decision letter imposing the discipline. If the Employer concurs with such request, the grievance process may be waived and the Union has may proceed immediately to arbitration.

*****(USMS/DOJ TABLE OF PENALTIES)**

ARTICLE 40

MERIT PROMOTION

Section 1.



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The objective of this Article is to assure that the USMS is staffed by the best qualified candidates available and to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities. To this end, this Article is designed:

- a. To bring to the attention of management on a timely basis qualified candidates from whom to choose;
- b. To ensure that merit promotions principles are applied in a consistent manner with equity to all bargaining unit employees without regard to political, religious or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying physical or mental handicap, or age, and shall be based solely on job-related criteria.
- c. To give employees an opportunity to receive fair and appropriate consideration for higher level jobs;
- d. It is agreed that the Employer will utilize the skills and talents of its employees as well as those outside applicants toward attaining a mix of employee representatives of all segments of society.
- e. To assure the maximum utilization of employees;
- f. Promotions will be made only on the basis of merit and qualifications.
- g. To provide an incentive for employees to develop their skills, knowledge, and abilities;
- h. To provide attractive career opportunities for employees;
- i. To afford required integrity of the agency Merit Promotion System, in accordance with appropriate law and regulation.

Section 2.

The Employer agrees to give primary consideration to selecting internal applicants for positions covered by this plan. Promotions shall be made on the basis of merit and qualifications. Non-merit promotion factors will not enter into any part of the promotion process. No discrimination shall be exercised because of race, color, creed, national origin, sex, physical handicap, marital status, age, religious affiliation, or membership/nonmembership in an employee organization.

Section 3.

The following personnel actions are covered by these procedures in the competitive service for employees of the bargaining unit:

- a. Promotions to unit positions through GS-14;
- b. Filling a unit position by transfer or reinstatement to a higher-grade position than the candidate's last position except when RPL procedures apply.



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- c. Filling a unit position with known promotion potential by reassignment. Positions with known promotion potential are those from which career promotions are authorized.
- d. Selection for training when the training will increase the employee's promotion potential, i.e., the employee is not eligible for promotion unless he has completed the training.

Section 4. Exception to Competitive Procedures

a. Appointments to entry level positions;

b. Career promotion is the promotion of an employee in any of the following situations without competition under this Article.

(1) Career-ladder promotion. An employee may be successively promoted until reaching the highest non-supervisory position in the career-ladder if all the following circumstances are present:

(a). The employee was initially selected from a Civil Service register or by competitive merit procedures.

(b). The fact that the initial selection could lead to promotion to specified positions in the career-ladder without further competition was made known to all potential candidates in the USMS.

(c). The employee is one of a group in which all employees are given the necessary experience to be promoted as they meet the qualification requirement and demonstrated ability to perform at the higher level, and if there is enough work at the full performance level for all employees in the group.

(2). Promotion of employees from apprentice positions, trainee positions, understudy positions, and positions filled at a grade below the established or anticipated grade when the initial position was filled through competitive procedures.

(3). Promotion of employees who satisfactorily complete training under an OPM approved training agreement or executive development agreement, if the agreement provides for such promotion and if the employee was chosen under competitive promotion procedures or appointment from Civil Service register.

(4). Promotion of employees detailed to a higher grade position or one with known promotion potential for the purpose of training or evaluation, if competitive procedures were used and if the fact that the detail could lead to promotion was made known to all employees.

(5). The employee's position is reconstituted in a higher grade because of the accretion of additional duties and responsibilities not the result of planned action.

(6). Promotion to positions upgraded without significant change in duties or responsibilities on the basis of new position classification standards or to correct an error in the classification of the position.

(7). Repromotion of an employee to grades or positions from which demoted involuntarily



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without personal cause, that is, without misconduct on the part of the employee and not at the employee's request. Consideration of an employee entitled to special consideration for Repromotion must precede efforts to fill the vacancy by other means (including competitive promotion procedures).

(8). Promotion during Reduction in Force when special factors (explained in the Federal Personnel Manual, Chapter 335), related to regulatory pay fixing practices exist.

(9). Temporary promotion to a higher-grade for 120 days or less.

(10). Promotion after failure to receive proper consideration. If it is found that an employee did not receive proper consideration in a promotion action and the erroneous promotion is allowed to stand, the employee must be considered for the next appropriate vacancy to make up for the lost consideration. The employee may be selected for promotion to this vacancy in competition with others entitled to the same considerations, as an exception to competitive merit placement promotion procedures. An employee is entitled to only one consideration under this procedure.

(11). Automatic consideration of certain employees. Qualified employees in the following categories will be accorded automatic consideration the Office of Human Resources in filing vacant positions.

(a). Employees who have been, or are about to be declared surplus because of a reduction in force.

(b). Current employees who have been demoted through no personal cause.

(c). Employees absent on extended military duty who have restoration rights.

(d). Employees temporarily absent on detail, on leave, at training courses, in the military service, for service in public international organizations, or on extended official travel. Employees in the above categories are responsible for informing the Office of Human Resources of their availability for consideration during their absence.

If an employee is unable to submit a written notice as provided above, he may contact his supervisor and request him to submit a written request for consideration on his behalf. Upon receiving the employee's request, the supervisor will submit a written notice to the Office of Human Resources indicating those positions for which the employee wishes consideration.

Section 5.

In considering an employee for promotion under this section, the selecting official may review the employee's Official Personnel Folder, application forms under the present Merit promotion Announcement and supervisory appraisal.

Section 6. Vacancy Announcements

a. Vacancy announcements will contain, as a minimum, the following:

(1). Title, series, and grade of position;



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- (2). Geographic location of the vacancy;
- (3). The minimum area of consideration;
- (4). The duties of the positions; the minimum qualifications required, including selective placement factors, if any; and a statement indicating the evaluation methods to be used. If the position requires more than occasional travel, a statement of the amount of travel involved will be included in the announcement;
- (5). The opening and closing date for filing applications, the address of the Personnel Specialist to whom applications should be sent, and the application forms required;
- (6). A statement of equal employment opportunity;
- (7). Identification number of the announcement and issue date;
- (8). A statement that the position has known promotion potential if such is the case;
- (9). A statement as to whether relocation expenses will be paid by the Employer.
- (10). Drug testing requirements.

b. Vacancy Announcements will be open for at least ten days but not more than thirty calendar days for all positions.

c. Vacancy announcements will be posted on the Employer's bulletin boards. Two copies will be furnished to the Union. Additional copies will be available in the office which issued the announcements.

Section 7.

The determination of basic eligibility is the responsibility of the Office of Human Resources. The minimum qualification standards used shall be those prescribed by the Office of Personnel Management in Handbook X-118 in Single-Agency Qualification Standards, or in appropriate examination announcements, plus any special placement factors which are jointly determined by the selecting official and the Office of Human Resources to be essential to successful performance in the position being filled. An application may be accepted from a candidate who has not yet satisfied the time-in-grade or the qualification requirements for length of experience, provided that the applicant will fully meet the requirements by the time action is effected (normally thirty days). Any applicant not found qualified will be notified of the disqualification.

Section 8.

Eligible candidates will be evaluated and rated usually by the Personnel Officer, or his designee, using the Rating and Promotion Panels System as he may designate. The Personnel Officer will also insure that the Merit Promotion Policy Guidelines are followed to identify the best qualified candidate(s).

Subject to law and DOJ regulations, upon request, the Union will be permitted to review the

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promotions documents submitted to the selecting officials, prior to the announcement of the selection(s).

Section 9.

In order to identify the best qualified candidates, each eligible

candidate will be evaluated and rated based on applications, supervisor's appraisals. If the area of consideration is expanded and includes consideration of voluntary applicants from outside the USMS, they will be evaluated by the same methods and criteria in accordance with governing regulations.

- a. The rating official(s) will be given appropriate instructions concerning his/her responsibilities, the evaluation criteria for meaningful ranking of eligibles, the supervisory appraisals, and the OPFs of employee eligibles, as well as any other materials which may be useful in evaluation of eligible.
- b. The rating official(s) is responsible for evaluating all competitive eligibles by reviewing and rating pertinent qualifications and supervisory appraisals against the evaluation criteria, ranking the candidate in numerical order; identifying any highly qualified candidates; and identifying best qualified candidates to be certified to the selecting officer. Non-USMS candidates are evaluated and ranked by methods comparable to those used for USMS employees.

Section 10.

The parties also agree that employees will be provided information about the Merit Promotion Program. A discussion of the Merit Promotion Program will be incorporated into the orientation of new employees. In addition, continuing publicity shall be given in USMS internal communication publications. As a minimum, the following shall be made available to employees:

- a. Copies of the promotion plan;
- b. Career information indicating short and long range career opportunities. Supervisors shall discuss employee appraisal records with their subordinates and counsel them concerning their promotability and career development;
- c. Information about the qualification requirements, evaluation techniques, and methods used in selecting candidates for promotion to positions in which they are interested.

Section 11.

The selecting official may make the selection from any of the candidates on the Promotion Certificate for each position announced. If one candidate is interviewed, then all candidates on the Promotion Certificate and within the commuting area must be interviewed.

Section 12.

Candidates within the commuting area may be interviewed at the discretion of the selecting

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official. If one candidate is interviewed, then all candidates on the Promotion Certificate and within the commuting area must be interviewed.

Section 13.

Promotion records, ranking schedules, promotion certificates, and correspondence or documents pertaining to the ranking of competitors will be maintained by the Office of Human Resources in accordance with the Federal records retention schedule.

Section 14.

Periodically, the Employer will conduct reviews of the operation of the Merit Promotion Plan. The Union will be notified, in writing, that such a review will take place and will be provided at least 30 days to submit Union comments. Within a reasonable time after completion of the report, the Employer will discuss the conclusions of the report relating to the Merit Promotion Plan with the Union.

Section 15.

The Employer will notify the Union of the names of selectees promptly after the effective date of the selection.

Section 16.

The Employer agrees that final ratings of record will only be completed by the supervisors who have served in such position for more than 90 days as provided by law and regulation. The rating of record for employees subject to multiple supervision may encompass the views of all supervisors if possible. In the event that an employee is transferred from one supervisor to another during the rating period, the rating period may be extended such to ensure that the employee is supervised by the rating official for 90 days as required by law and regulation. The final rating may include the employees entire performance over the rating year.

Section 17.

Confidentiality - Promotion appraisals are confidential documents and may be reviewed only for official purposes by employees themselves, by his/her designated representative, or by an appropriate official of the USMS, other appropriate Government official, or Union officials designated by the employee.

Section 18.

Release of employee after Selection - In most cases, in-service placement actions will be made effective at the beginning of the second pay period following notification of selection. The gaining supervisor will coordinate the specific reporting date with the losing supervisor. If workload exigencies exist, the supervisors may mutually agree to allow the employee to remain in the current position for up to 30 days from the effective date of the action providing this does not create a personal hardship to the employee.

Section 19.



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When filling a position through merit promotion, a supervisor who is to make the final selection shall not state that he wants to promote a particular candidate or submit a name request for a particular candidate.

Section 20.

Employees will not be detailed to a higher graded position for more than 120 days unless competitive procedures outlined in Article 33 are utilized to staff the position on a temporary basis.

Section 21.

Failure to accept an offer - Candidates for positions covered by this plan, who decline an offered position, will have their names removed from consideration for the graded series and type for the remainder of the current open season and the following open season. Removal from a list will be restricted to the same position type only. A selectee has ten workdays (10) in which to decline in writing an offered position without being removed from a Merit Promotion list. There will be no penalty to any candidate for removing his/her name from a list prior to a selection being made.

Section 22.

Upon completion of the selection process, the promotion file will be made available, subject to the requirements of the law, to the Union representative, when requested, as part of an investigation to determine whether or not to file a grievance or to process a grievance concerning the competitive procedures of that particular vacancy.

Section 23.

Non-selection for promotion from a group or properly ranked and certified candidate is not a grievance. Other merit promotion-related complaints can be resolved through the negotiated grievance procedure such as rating, ranking procedures, posting, non-selection, etc.

ARTICLE 41

AWARDS

Section 1.

The Employer agrees that awards and incentive awards will be administered on a fair and equitable basis, without prejudice or favoritism being an influential factor in the selection of awardee.

Awards are to recognize superior performance and achievement of employees

Section 2.

USMS awards include Time off Awards, On the Spot awards, special achievement Awards-special Act or service awards and Quality Step increases (QSI's). QSI and cash awards may be used to reward superior performance using the guidelines set forth in the Performance



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Management System. Employees are also eligible for monetary and non-monetary awards for suggestions, inventions, special acts of service or heroism under the law and regulations.

Section 3.

The Employer agrees that the Union will be afforded the opportunity to have a representative participate on any established awards or incentive awards committee for all awards applicable to bargaining unit employees that require committee recommendation.

Section 4.

Generally employees will not receive more than a total of four awards per calendar year for any combination of the following categories: Time off Awards, On the Spot awards, special achievement Awards- special Act or service wards and Quality Step increases (QSI's).

ARTICLE 42

DURATION OF AGREEMENT

Section 1.

This NMA will remain in full force and effect three years from the date it has been signed by the National President of the AFGE, the Director of the USMS and reviewed by the DOJ. Either party may give written notice to the other, not more than 90 days nor less than 60 days, prior to the expiration date for the purpose of renegotiating or continuing this NMA. The present NMA is automatically extended and will remain in full force and effect during the renegotiation of said NMA and until such time as an NMA is approved, except that any permissive rights that were waived by either party in this NMA shall terminate after proper notice is given and the other party is given the opportunity to negotiate on the impact of the termination as required by law.

Section 2.

The parties agree that there will not be a reopening of the NMA during the life of this NMA unless the NMA must be changed to comply with Agency policies and regulations, regulations of other appropriate authorities, the FSLMRS and other applicable laws.

Section 3.

This NMA was approved and signed by the parties on ----- and is hereby in effect.

FOR THE UNITED STATES MARSHALS FOR THE AMERICAN FEDERATION SERVICE, DEPARTMENT OF JUSTICE OF GOVERNMENT EMPLOYEES,

EDUARDO GONZALEZ
DIRECTOR, U.S. MARSHALS SERVICE
NATIONAL PRESIDENT

JOHN N. STURDIVANT
AMERICAN FEDERATION OF
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THOMAS MULHERN
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