

CONTRACT

This Agreement is made and entered into this 1st day of December, 1993, by and between NEW YORK ASSOCIATION FOR NEW AMERICANS, INC. (NYANA), located at 17 Battery Place, New York, New York, 10004 (hereinafter referred to as the "Employer"), and Local 2110, UAW, AFL-CIO, located at 71 Fifth Avenue, Suite 6A, New York, New York (hereinafter referred to as the "Union").

WHEREAS, it is the intent and purpose of this Agreement to promote and improve labor relations and provide for orderly collective bargaining, to set forth a basic understanding governing the rates of pay, hours of work and conditions of employment to be observed by and between both parties hereto, to maintain harmonious relations between the Union and the Employer and the employees covered herein, to secure a prompt and equitable disposition of grievances, to prevent strikes and lockouts, and to promote the common welfare of the Employer and its employees.

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements and benefits herein contained, the parties hereby agree as follows:

Recognition:

1. The Employer recognizes the Union as the exclusive bargaining agent for the unit certified by the National Labor Relations Board in Case No. 2-RC-21175 including all teachers employed by the Employer at its offices at 17 Battery Place and 111 Fifth Avenue facilities. All other employees including trainers, shift supervisors, the Assistant ESL Director, the ESL Director and supervisors and guards as defined in the National Labor Relations Act shall be excluded.

Union Security:

1. All Employees covered by this Agreement who have previously joined and are members of the Union on the date of the ratification of the Agreement by the Union, or who become members thereafter, shall maintain their membership in the Union as a condition of continued employment. All Employees covered by this Agreement who have not previously joined the Union shall do so within thirty days of the ratification of the Agreement as a condition of continued employment. All Employees covered by this Agreement who are employed by the Employer after the ratification of this Agreement shall join the Union within thirty days of their date of hire as a condition of continued employment.

2. For purposes of this Article, an Employee shall be considered a member of the Union if s/he tenders her/his initiation fee and periodic dues uniformly required as a condition of membership.

3. An Employee who has failed to maintain membership or to tender service charges as required by this Article shall, within fourteen (14) calendar days following receipt of a written demand from the Union requesting her/his discharge, be terminated if, during such period, the required dues and initiation fee have not been tendered.

4. Upon written notice from the Union, the Employer will deduct all Union membership dues as provided for in the authorization form signed by the Employee.

5. The Employer will notify the Union promptly of any revocation of such authorization received by it.

6. It is specifically agreed the Employer assumes no obligation financial or otherwise arising out of the provisions of this article and the Union agrees that it will indemnify and hold

the Employer harmless from any claims, actions, or proceedings by any Employee or any recovery of damages sustained by the Employer by reason of any action taken under this article.

Management Rights:

The Union agrees that the management of the teaching programs and the direction of the work force shall be in the sole discretion and is the sole responsibility of the Employer. All management rights except as specifically limited by an express written provision of the Agreement are reserved to the Employer including, but not limited to, the right to plan, direct and control operations and educational methodology, to determine qualification of staff; to determine the number of employees; to assign work; to schedule hours and days of work to hire or transfer Employees; to discipline or discharge for just cause; to lay off Employees because of lack of work or other legitimate reasons; to promulgate reasonable rules and regulations; to require employees to observe the Employer's reasonable rules and regulations; to transfer, relocate, contract out, curtail, suspend, abandon, cease, or expand any or all teaching programs; and to determine whether, and the methods and means by which teaching programs are to be carried out, expanded, contracted, reduced or terminated in whole or in part. None of these rights shall be exercised in an arbitrary or capricious manner.

Subcontracting:

1. The Employer has the right to subcontract bargaining unit work subject to the following conditions:

2. The Employer will notify the Union at least 30 days in advance of its intention to subcontract ~~any of its teaching operations.~~

3. The Union and Employer will meet prior to implementation if requested by the Union

DHD
WZ

to discuss the decision and impact of the subcontracting.

4. There will be no lay-offs during a cycle resulting from subcontracting.
5. If post-cycle lay-offs occur as a result of subcontracting, Employees will receive **contractual severance pay** at twice the regular rate.
6. The decision to subcontract will not be arbitrary or capricious.

Hiring:

1. New Employees of the Employer shall be considered probationary Employees until the completion of 600 teaching hours, except Employees hired prior to the date of ratification of this agreement shall serve a probationary period of one cycle from their date of hire].

2. An Employee's seniority shall be terminated by:

(a) resignation or retirement except that an Employee who has worked at least 1500 paid hours within a two year period and is rehired within one year of her/his last date of employment will not be deemed a new hire for purposes of benefit accruals and shall be reemployed at his/her prior salary:

(b) discharge for just cause;

(c) overstaying an authorized leave of absence;

(d) failure to apply for re-employment within statutory limitations after separation from military service;

(e) failure to respond to an offer of recall from layoff within seven days after notification by registered mail, return receipt requested and with a copy to the Union. Employees shall be obligated to furnish the telephone number and address to which such notices are to be directed.

Seniority:

1. **Accrual:** Employees, upon the satisfactory completion of **their** probationary period shall accrue seniority retroactive to their date of hire.

2. **Layoff and Recall:** In the event of a layoff, employees with less than 600 hours shall be laid off first without regard to their individual dates of hire. Employees with 600 or more teaching hours shall be laid off in accordance with their seniority (least senior first) provided that, with regard to non-resettlement classes, there is not a difference in qualifications. Employees who had accrued 600 or more teaching hours at the time of their layoff shall be recalled in the order of their seniority. Laid off Employees shall retain recall rights for a period of one year from the date of their layoff or until they refuse an offer of work, whichever is sooner.

3. **Severance Pay:** Effective on the date of ratification, laid off Employees **who are permanently laid-off or are laid-off for more than 30 days** shall be entitled to one week's pay, at the rate they earned at the time of layoff, for every 750 hours worked to a maximum of four (4) weeks. **Severance pay shall be paid only once unless the employee works additional time to again become eligible.**

4. **Preference for Vacancies:**

(a) For resettlement programs, non-probationary Employees shall have a preference for additional classes over new hires.

(b) For non-resettlement programs, non-probationary Employees shall have a preference over non-incumbents in teaching such programs provided that non-incumbents are not appreciably more qualified.

5. Posting: Non-resettlement vacancies shall be posted for a minimum of one (1) week. The posting shall include the anticipated date the class is to begin, the hours or shift, a description of the class, the location, and qualifications necessary. Incumbents shall be required only to submit an in-house mini-application. If a class is subsequently canceled or postponed, the selected teacher must wait for the first available opening in a resettlement program. Where two or more Employees are affected, the Employee whose last class ended earliest, will be placed first.

Wages:

1. The wage progression scales currently in existence shall be continued for those Employees who were hired on or before November 15, 1993 for the period May 1, 1993 through April 30, 1995.

2. Employees hired after November 15, 1993 shall be subject to the following wage progression:

a. **minimum** new hire rate: \$11 per hour

b. after completion of first cycle: \$13.20 per hour

c. first year anniversary and completion of 600 hours of teaching during year:
\$14.40 per hour

d. second year anniversary and completion of 600 teaching hours during year:
\$15.60 per hour

e. third year anniversary and completion of 600 teaching hours during year:
\$16.80 per hour

f. fourth year anniversary and completion of 600 teaching hours during year:
\$18.00 per hour

g. **an employee must have worked at least 600 teaching hours in a year to have completed one anniversary year.**

3. Paid leave shall count as teaching hours.

4. Employees who were capped on the wage progression scale prior to May 1, 1993 will receive a 2% wage increase retroactive to May 1, 1993.

5. All Employees on the payroll as of May 1, 1994, May 1, 1995 and May 1, 1996 shall

receive a wage increase of 2.25% on each of those dates, except those Employees who are still on the wage progression scale specified in paragraph 2 above, and have not yet reached the maximum rate.

6. Employees hired at a step other than the new hire rate on the wage progression scale in paragraph two will receive increases on their yearly anniversary dates relative to their rates of hire.

7. Employees who were hired on or before November 15, 1993 and as of May 1, 1995 are receiving less than the hourly rates specified in paragraph 2 above shall receive either the wage progression scale in paragraph 2 or the May 1, 1995 and May 1, 1996 wage increases, whichever is greater.

8. An Employee's hourly rate shall be based upon classroom time except for VESL programs where employees shall receive a 15% differential on their hourly rate of pay. Employees who taught VESL at any time prior to July 1, 1993 shall continue to receive paid prep time as in the past rather than the 15% differential.

9. The Employer shall continue to reimburse employees for public transportation on the same basis as was in existence on the date of the ratification.

Hours:

1. Resettlement shifts shall not be overlapped.
2. In the event of any change in the start or end time of shifts in the resettlement program, the Employer shall provide 21 days advance notice to Employees and the Union per session.

DHA / *WCC* 3. In no event, shall a resettlement class be less than two hours *PER SESSION.*

4. In the event of a reduction in **the number of hours per class**, incumbents will retain pre-reduction accrual rates toward benefit eligibility for up to one year.

5. In the event **the Employer reduces the number of hours per class**, incumbents shall be entitled to additional shifts to a maximum of three on the basis of seniority provided the teacher has taught **at the level of the additional class**.

6. In the event that class session time is increased, the session rate will be increased proportionately.

Health benefits:

1. The Employer shall provide the Employees with a choice of health care benefit plans effective January 1, 1994, i.e., HIP, SANUS, or Local 2110 GHI plan. To be eligible for health care coverage, the Employee must have worked at least 600 hours **in a continuous twelve month period** commencing as of January 1, 1993 or from date of hire, whichever is later. The Employer shall pay 80% of the cost of the monthly premium provided the Employee has taught two shifts as of the last work day in the preceding month. *DHP* other than as a sub. The Employer shall pay 35% of the monthly premium, provided the Employee has taught one shift as of the last work day in the preceding month. *DHP* other than as a sub. In the event the employee regularly teaches two shifts but on the last work day in the preceding month was only teaching one shift, the Employee shall be entitled to the Employer's 80% contribution provided the Employee has applied to continue to teach two shifts, not more than thirty days has elapsed since teaching two shifts, and the second shift is currently unavailable. The Employee must pay the balance of the insurance premium to maintain insurance coverage, which the Employer shall deduct from the Employee's paycheck. The Employee's deduction may be made, **at the option of the employee**, from pre-tax dollars

consistent with the Employer's flexible spending account policy. Employees shall have the option, in lieu of health benefits, of receiving a bonus of \$750 provided the Employee has accrued 750 paid hours in that calendar year and is still employed as of December 31 and provided the Employee has notified the Employer by January 1 of each year or upon eligibility ~~of her/his opt-out.~~ *for health care coverage.*

2. The Employer shall pay its pro rata share of increases on the insurance premiums for HIP and SANUS up to the medical cost of living index for the prior year. Any additional premium increases above the medical cost of living index must be paid entirely by the Employee. With respect to the 2110 GHI plan, in addition to the above, the Employer will assume the cost of any increases in the insurance premium up to the savings against the total premium costs cumulative for two years.

Vacation:

1. Employees shall accrue vacation time based upon the following accrual: first two years of employment: 1 hour of vacation time for each 50 hours of paid time; third year of employment and after: 1.5 hours for each 40 hours of paid time. A year of employment is defined as 48 weeks of paid time of at least 12 paid hours per week.

2. Vacation time cannot be taken until after successful completion of probation, and may not be accumulated from year to year, except vacation not taken in the calendar year in which it is earned may be carried over until June 30 of the following year.

3. The Employer will schedule vacations in accordance with its operational requirements. Insofar as possible the Employer will try to honor the vacation requests of the Employee. An Employee leaving for vacation must obtain a substitute teacher acceptable to the Employer.

Vacation time must be taken in entire class segments.

4. An Employee who gives two weeks notice of resignation or who is terminated shall be entitled to payment for unused vacation time accrued at the time of the resignation or termination except that an Employee terminated for gross misconduct shall not be entitled to payment for unused vacation time.

5. Provided the Employer notifies the Union by January 15 of each year, NYANA may close the school for up to one week each calendar year in a holiday week. Employees shall have the option of using their accrued vacation time during this period or taking unpaid leave.

Sick days:

1. Employees shall accrue 2.5 hours of paid sick leave for each 130 hours worked to a maximum of 100 hours.

2. The Employer shall pay the Employee out of the Employee's earned sick leave bank up to the Employee's maximum available amount. It is understood that sick days shall be taken only for bona fide illness or injury. The Employees agree not to abuse their sick leave privileges.

3. Sick leave shall be allowed only when Employees are ill on days during which they are scheduled to work.

4. To be eligible for paid sick leave, the Employee must notify her/his supervisor at least one hour before the start of shift one and two hours before the start of shifts two, three and four.

Holidays:

1. Employees shall be paid for the following holidays at their regular rate for a normal work day: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, **Independence Day**, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day, all school closings due to the observance of religious holidays by the Employer.

2. Any legal holidays which fall on a Saturday shall be observed on the preceding Friday and any legal holidays which fall on a Sunday shall be observed on the following Monday.

3. In order to qualify for holiday pay, the Employee must work the regularly scheduled work day before and after the holiday.

Leaves:

1. Jury duty - The Employer shall grant Employees time off for jury duty in accordance with applicable law. The Employee must notify the Employer of the receipt of a jury duty notice within five (5) days of its delivery. The Employer shall pay up to two weeks pay to Employees serving jury duty. The Employee shall remit to the Employer jury duty pay. Employees shall cooperate with management's request to postpone jury duty.

2. Bereavement - An Employee shall be paid her/his regular rate of pay for up to three consecutive working days in the event of the death of the Employee's mother, father, sister, brother, child, **grandparent**, spouse or domestic partner registered with the city of New York or, if that is not possible, on file with the Employer. At least one of the days must be the funeral.

3. Family/medical leave - The Employer shall comply with the Family and Medical Leave Act of 1993.

4. Other unpaid leaves - Leaves must be with the approval of the Employer which will not be unreasonably denied. Employees must leave at the end of a cycle and at the Employer's discretion, an Employee teaching more than one shift may be required to leave prior to the end of the second teaching assignment. Leaves must be taken in consecutive weeks. There may be no more than one leave of absence in a calendar year. When an Employee returns from a leave of absence, they will be returned to the next available vacant position in the resettlement program or a program in which the employee has previously taught. Leave entitlement is as follows:

Upon completion of 600 hours, up to 12 weeks.

Upon completion of 1200 hours, up to 18 weeks.

Upon completion of 1800 hours, up to 24 weeks.

DD
will
A request for ^{an emergency} leave of absence of five days or less may be granted at the discretion of the Employer at any time.

5. Military Service - Employees who are called for military service or who may elect to volunteer for military service, upon being honorably discharged, shall have reemployment rights in accordance with the provisions of applicable law.

Union Activity and Visitation:

1. The Union may designate from among the Employees covered by this Agreement five stewards and five alternates for the purpose of aiding in the disposition of grievances. The Union shall notify the Employer in writing of the names of the Employees designated and all changes when they occur.

2. Union representatives, not in the employ of the Employer and not to exceed two at

any time, may, upon notification to the Employer, visit the School's premises for the purpose of conferring with staff members on Union business. In no event, shall a Union representative enter a classroom in session, interfere with the operation of the Employer, or interfere with Employees while they are teaching class. Employees shall not engage in any Union activity while they are teaching class.

3. The steward (or alternate steward) shall not leave her/his classroom without **permission from the supervisor or designee.**

4. Stewards shall be entitled to pay for grievance meetings as follows: (a) In the case of grievances arising from the discipline of an Employee, the grievance shall be scheduled during the Employee's shift and the Employee shall be represented by the steward of that shift or a steward from another shift to be designated by the Union; (b) all other grievances may be scheduled off shift. Upon two weeks prior notice, shop stewards or alternates will be relieved from their scheduled class session to attend Union meetings not to exceed four times per year provided the Employee obtains an approved substitute. The Employee shall not be paid for this time.

5. NYANA shall provide a Union bulletin board in each location where the agency is the owner or leaseholder.

6. The Employer shall provide monthly notice to the Union and to a designated steward of all hires, terminations and leaves including name, date of hire, rate of pay, shift, address, telephone number and work location.

Non-Discrimination:

The Employer, the Union and its members covered by this Agreement expressly agree

not to discriminate against any Employee on the basis of race, creed, gender, color, religion, national origin, sexual orientation, age, disability, marital status, veteran status, citizenship status or for Union activities.

No Strike/No Lockout:

1. The Union and the Employees covered by this Agreement agree that neither they nor any officers or agent of the Union will directly or indirectly authorize, assist or encourage or in any way engage in or participate in any strike (or sympathy strike), stoppage of work, sitdown, slowdown, or any other interference with the operations of the Employer. Any Employee who participates in such interference with the Employer's operations may be subject to discipline including discharge.

2. Without limiting any other right, remedy or obligation hereunder, if any Employee or group of Employees violate the provisions of sub-paragraph (a) hereof, the Union immediately upon notice will notify such Employee or Employees that their action is in violation of this Agreement and order them to cease and desist from engaging in such activity. Such notice shall advise Employees that the Employer may discharge them and shall contain a definite direction by the Union to return to work at once.

3. The Employer agrees there shall be no lockout during the term of this Agreement.

Grievance Procedure:

1. In the event of any dispute or difference of opinion as to or arising out of the interpretation or application of any provision of this Agreement (hereinafter known as a "grievance"), an earnest effort shall be made to settle the grievance promptly to the mutual satisfaction of all concerned in accordance with the following procedure:

1st step - No later than ten (10) work days after the date on which the grievance arose or could reasonably have been discovered, the Employee and/or the Union steward shall verbally present the grievance to the shift supervisor involved. The shift supervisor shall try to resolve the matter immediately and, in any event, shall give an answer within 5 work days.

2nd step - Grievances not settled under the first step may, within 10 work days after the date on which the response of the shift supervisor is received, be submitted by the Employee or the Union representative in writing to the ESL Director or designee. The grievance shall contain the basic facts concerning the dispute. The ESL Director shall reply in writing, with copies to all concerned, within 10 work days after receipt of the written grievance.

3rd step - Grievances not settled under the second step may be presented to the Director of Human Resources or designee within 10 work days after the completion of the second step. The Union representative shall request, in writing, a meeting with the Director of Human Resources or designee. The meeting shall be held within 7 work days after the receipt of the request. The Director of Human Resources or designee shall reply in writing within 10 work days after the meeting is held.

4th step - The Employer and/or the Union may demand arbitration with respect to the unresolved grievances in the following manner: The party desiring arbitration shall notify the American Arbitration Association in writing within 15 work days after the conclusion of the third step. A letter to the American Arbitration Association, specifying the claim and requesting arbitration, with a copy to the other party, will be sufficient for this purpose provided, however, that grievances shall be deemed resolved against the grieving party unless the grieving party institutes arbitration with the time limits indicated.

2. The arbitrator selected in accordance with the then existing rules and procedures of the American Arbitration Association for voluntary labor arbitrations shall meet and conduct hearings and render an award as promptly as practicable. The decision of the arbitrator shall be final and binding upon the parties.

3. The arbitrator shall have no authority to add to, subtract from, or modify any of the terms of this Agreement, or to determine the terms of a new or renewal agreement. The authority of the arbitrator shall be limited to the interpretation and application of specific provisions of this Agreement.

4. A grievance which effects a substantial number of Employees or a grievance involving the discharge of an Employee may initially be presented at the third step by the Union representative.

5. Without waiving its statutory rights, a grievance on behalf of the Employer may be presented initially at the third step by notice in writing addressed to the Union at its offices.

6. Grievances arising solely from the content of the evaluation of an Employee may be presented through but not beyond step 3.

7. Failure on the part of the Employer to answer a grievance at any step shall not be deemed acquiescence thereto, and the Union may proceed to the next step.

8. Any disposition of a grievance from which no appeal is taken within the time limits specified herein shall be deemed resolved and shall not thereafter be considered subject to the grievance and arbitration provisions.

9. The fee and expenses of the arbitrator and the American Arbitration Association shall be borne equally by the parties. The party who requests and is granted a postponement of any

arbitration hearing shall be responsible for paying any late fees or administrative fees imposed by the arbitrator and the American Arbitration Association.

10. NYANA must have just cause to discipline or discharge.

11. Copies of all warnings or written discipline shall be sent to the Union, the Employee and to a designated steward.

Personnel Files:

Employees shall be permitted to review their personnel files twice per year on non-work time and when disciplined. An Employee must notify the Director of Human Resources in writing of a request to review his/her personnel file. The Director of Human Resources shall make arrangements for the Employee to review the personnel file within five (5) working days of the request.

Health and Safety:

The Employer shall maintain a healthful and safe workplace in accordance with applicable law.

Professional Issues:

Observations - After probation, there will be a maximum of four unannounced teacher observations per cycle. A teacher may request additional observations by alternate observers. Evaluations must be in writing. The teacher must receive a copy of the evaluation and sign to indicate that they have received it.

Curriculum and Training - Twice per year, four representatives of the teachers will meet with the ESL School designees to discuss teacher recommendations regarding curriculum and training. Such recommendations would not be subject to grievance and arbitration. Each

representative shall be paid up to three hours per meeting. An agenda for the meeting will be established in advance.

Validity, Termination and Modification:

1. In the event that any part of this Agreement or any provision herein contained should be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by any decrees of a court of competent jurisdiction or by reason of any rule or regulation or order of any presently existing or future created federal, state or municipal agency which has jurisdiction over provisions of this Agreement, such invalidation of that part or portion of the Agreement shall not invalidate the remaining portions, and they shall remain in full force and effect.

2. This Agreement constitutes the entire agreement of the parties. All agreements arrived at during the negotiations are set forth in writing herein.

3. Except as provided for in paragraph 1 above, no amendment, change or waiver of any provision of this Agreement shall be effective unless in writing signed by both parties.

4. There shall be no reopening of this Agreement prior to its expiration, without the consent of the parties.

Notice:

Written notice as provided in the Agreement shall be sent to the Union to a designated representative of Local 2110 at its Headquarters, 71 Fifth Avenue, Suite 6A, New York, N.Y. 10003.

Duration:

This Agreement shall become effective May 1, 1993 and shall remain in full force and

effect until 11:59 p.m. April 30, 1997 and shall thereafter automatically be renewed for additional periods of one year unless at least sixty (60) days prior to such expiration date either party serves written notice upon the other that it desires to terminate, amend or modify this Agreement.

IT WITNESS WHEREOF, the Employer and the Union have caused this Agreement to be made and executed by their respective duly authorized representatives this 1st day of December, 1993.

By: Local 2110, UAW



By: New York Association for New Americans, Inc.

