

AGREEMENT

BETWEEN

THE STATE OF NEW MEXICO

AND

**THE COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO, CLC -
STATE EMPLOYEE ALLIANCE**

**July 21, 2009 -
December 31, 2011**

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PREAMBLE

Section 1. Purpose. The Purpose of this Agreement is to provide reasonable terms and conditions of employment for employees covered hereunder and a means of amicable and equitable adjustment of any and all differences or grievances which may arise under the provisions of this Agreement, all of which the parties hereto believe and affirm will inure to the welfare and benefit of the people of the State of New Mexico.

Section 2. Commitment to Citizens of New Mexico. The Union and Employer recognize the mission, goals, and obligations of the State of New Mexico as a provider of services to the citizens of the State through its employees. The best possible services and programs will be provided consistent with available funds. The Employer and the Union agree to uphold the well-being and care of the citizens of New Mexico

AGREEMENT

This Agreement is made and entered into this 21st day of July, 2009 between the State of New Mexico, hereinafter “Employer” or “the State” and the Communications Workers of America, hereinafter referred to as “CWA” or “the Union,” and is applicable to all eligible employees in the collective bargaining unit, described in Article 1, Recognition, of this Agreement that have been certified by the New Mexico Public Employee Labor Relations Board, hereinafter referred to as the “PELRB.”

ARTICLE 1. RECOGNITION

Section 1. Exclusive Representative. The Employer recognizes CWA as the Exclusive representative, as that term is defined in the Public Employee Bargaining Act (hereinafter referred to as the “PEBA”) for employees in the bargaining unit where it has been certified or recognized. The bargaining agents will meet not less than once each quarter to review and update a list of classifications in the bargaining unit. The parties will develop a method of posting the list of classifications for bargaining unit employees.

Section 2. Addendums. Employees not now represented by the Union will be covered by the provisions of this Agreement and any future addendums attached or subsequently attached hereto, while the Union is certified as the exclusive bargaining representative of those employees pursuant to the PEBA.

Section 3. New or Altered Classifications. The Employer may establish new job classifications, or abolish, merge, or change existing classifications of employees covered by this Agreement in accordance with the Personnel Act [Section 10.9.1 et seq. NMSA 1978]. At the time of such action, the Employer shall identify the employees covered by this Agreement to be included in any new or altered job classification and shall identify the old job classification(s) if any, which in whole or in part, are being replaced. Unless it is supervisory, confidential, or managerial status, as defined in the PEBA, any new job classification that is within an appropriate bargaining unit already represented by the Union shall be included.

Consistent with law, the parties shall make reasonable accommodation, where needed, for persons with disabilities.

Section 4. Printing and Distribution of Agreement. The Employer and the Union shall each pay the cost of such printing and accommodation of the Agreement for their respective unit. The Employer shall distribute the Agreement, once received from the Union, to each employee covered by this Agreement, in a timely manner.

The Employer shall provide the Union with documentation confirming distribution of the Agreement.

Section 5. Non-interference. The parties acknowledge that each is free to conduct its affairs and business in the manner which each respectively believes to be in its own best interest subject to the provisions of this Agreement. The parties agree that neither shall interfere with the internal affairs of the other nor with the officials or representatives of the other in the conduct of their internal business affairs and other matters not involving collective bargaining, provided, however, that nothing contained herein shall bar the parties or their members from petitioning their elected political representatives or fully and actively participating in the political process.

ARTICLE 2. UNION RIGHTS

Terms:

Union Staff means Non-State Employees paid by the Union.

Union Officer means a classified state employee elected as President, Executive Vice-President, Secretary, Treasurer, Agency Vice-President or as Regional Vice President.

Steward means a classified state employee authorized by the local to administer the Collective Bargaining Agreement.

Section 1. The Union shall have the right to select sufficient stewards to represent employees covered by this Agreement. The exact number and location of stewards shall be determined by agreement between the parties consistent with the principle set forth above.

Section 2. The Union shall provide the Employer with a written list of the names, addresses, telephone numbers and the agency to which they are employed of the stewards, officers and other Union staff who are authorized to act on behalf of the Union and the extent of their authority every calendar quarter or when additions and/or deletions have occurred

Section 3. The Employer shall allow Union Officers and stewards to attend, on paid status (utilizing the union time code in the time and labor reporting system), meetings agreed to by the parties for purposes of administration of this Agreement including grievance meetings within the parameters set forth in this section's succeeding paragraphs.

Each union officer or steward shall be entitled to use union time to investigate and process grievances, which they are authorized to settle, within the agency to which they are employed, for reasonable periods of time without charge to pay or to leave. Union time must be pre-approved and will not be disapproved except for operational reasons. However, the Employer retains the right to disapprove union time when the union officer or steward is in an overtime status. If disapproval necessitates an extension of time for processing a grievance, the time shall be tolled for the duration of the denial until union time is afforded the union officer or steward to investigate and process the grievance.

Union time shall count as hours worked for purposes of overtime computation but shall not qualify for payment of mileage or per diem unless an employee is otherwise assigned to a per diem status by the Employer.

A union officer or steward shall use union time within assigned work hours to investigate and process grievances in the most efficient and effective manner possible so as to minimize operational impairment.

Time spent investigating and processing grievances outside of assigned work hours shall not be compensated. When a union officer or steward desires to consult with another employee concerning a grievance on work time, both employees shall request and obtain prior permission to do so.

Section 4. The parties shall each designate a centralized point of contact to coordinate the use of time and address any issues related to the use, or allegations of misuse, of time. If there are concerns related to the use or alleged misuse of time, the Employer designee shall provide as much specific information as possible, and any supporting documentation, to the Union designee and the Union shall seek to resolve the concern as expeditiously as possible.

In the event the Employer is not satisfied with the Union's resolution of the issue(s), the Employer may reopen this Section of the Agreement dealing with reasonable time. If no agreement is reached during such negotiations, the Employer may use the impasse resolution procedures provided for in the Public Employee Bargaining Act (PEBA). This paragraph shall not preclude the Employer from taking disciplinary action to address the abuse of time.

Section 5. Union officers and/or union staff shall have reasonable access to visit any Employer agency or worksite as necessary for purposes of administration of this Agreement. Such consultation shall not unreasonably interfere with the operations of the Employer. The Employer may designate a management representative through whom all such visits must be coordinated. If an Employer facility is secured, then reasonable notice shall be given and the Employer shall provide a reasonable place where union staff can talk with an employee in private.

Section 6.

- A. The Employer shall approve reasonable written requests for annual leave, personal day, accrued comp time, and/or leave without pay [hereinafter referred to as "LWOP"] for up to fourteen (14) calendar days or 112 hours annually, one day at a time or consecutively, if requested by union officers or stewards, in order to participate in Union activities.
- B. The Employer shall approve reasonable written requests for annual leave, personal day, accrued comp time, and/or LWOP in excess of fourteen (14) calendar days or 112 hours and less than twelve (12) months for the above purposes and shall assure an employee the right to return to a position of like status and pay, at the same geographic location, unless the agency has a reasonable basis to believe that the employee, upon providing fourteen (14) calendar days notice, cannot be placed in such a position. In such an event the Employer shall grant the leave provided the employee signs a written waiver of his/her right to return.

An employee who signs such a waiver shall be returned to a position of like status and pay, at the same geographic location, upon providing fourteen (14) calendar days notice provided such a position is available. If such a position is not available, the employee will be placed in an available position that is closest to salary range, status, duties, and worksite as possible.

Upon the availability of a position of like status and pay, at the same geographic location, the employee shall be placed in that position.

Approval of request for extension of LWOP status for additional twelve (12) month periods shall not be unreasonably withheld and shall be provided on the same basis as the original request.

- C. Employees returning to state service after LWOP shall receive any general salary increases implemented that they would have been entitled to had they not taken LWOP.
- D. Continuation of State Service/Benefits Taskforce. If the Union is able to determine with the appropriate entities (e.g., DFA, Risk, PERA, etc.) that it is feasible and legal to allow union officers who regularly perform Union duties in excess of 40 hours a pay period to not be penalized by a loss of state benefits and it is allowable for the Union to fully contribute to the employee's Public Employee Retirement account and any other contributions that the employee may risk losing, then by giving written notice of its desire to do so on or before July 1, 2010, the Union may reopen this Article within the Agreement to negotiate those terms.

Section 7. Except at facilities with 24-hour operations, union officers or stewards who are on non-work time, or Union staff, may distribute union literature on Employer facility grounds in public areas, in non-public non-work areas, and in work areas where the distribution does not interfere with Employer operations or present a security or confidentiality breach. At facilities with 24 hour operations, employee officials who are on non-work time, or Union staff, may distribute union literature in public areas and in non-public non-work areas, but not in work areas (due to security, safety, privacy, and confidentiality concerns) except the Union shall have the right to place literature in areas adjacent to where pay checks are initially distributed so that employees may take a copy of the literature.

Distribution of literature at worksites by either the Employer or the Union shall not include materials of a defamatory or obscene nature or personal criticism of any individual or partisan/political materials.

Section 8. The Union shall have exclusive use of separate bulletin boards of an equal size near every bulletin board used by the Employer to give information to employees. The Union will provide the bulletin board and the Employer will install it unless the Employer agrees to allow the Union to use existing bulletin board space.

Postings on Union bulletin boards shall be confined to internal union business, including notices and announcements of meetings, news items, and labor-management news, but shall not include materials of a defamatory or obscene nature or personal criticism of any individual or partisan/political material.

The Employer shall not authorize the posting of notices critical of the Union or its representatives on the Employer's official bulletin boards.

Section 9. Within one-hundred-eighty (180) days of the effective date of this Agreement, the Union will be afforded up to two (2) hours of work time to jointly participate with management in agency meetings, in order to present and explain this Agreement to employees. As an exception to the above, at those agencies or institutions that have annual in-service training, a presentation may be made during the annual training.

Section 10. Except as limited by law, each employee shall have the right to join and assist the Union freely, without fear of penalty or reprisal, or refrain from doing so, and the Employer and the Union shall assure that each employee shall be protected in the exercise of such right. Allegations concerning violations of these rights shall be filed with the PELRB.

Section 11. Union officers and/or stewards may request the use of state property to hold union meetings. Upon prior notification, the Employer will provide meeting space where feasible. Union meetings conducted on state property will not interrupt agency operations nor will take employees away from their work assignments.

The Employer shall make space available for union officers and/or stewards to have confidential discussions with employees on an as-needed basis subject to availability.

Section 12. Union officers and/or stewards are authorized to make reasonable use of copiers, FAX machines, telephones, computers (including e-mail, teleconferencing and/or videoconferencing equipment), and other office equipment for purposes of investigating and processing grievances and communicating with the Employer and other Union representatives regarding official labor-management business, provided such use does not interfere with official State business.

Section 13. The Union shall be permitted to use internal State mail systems, including computer/electronic mail, for bargaining unit mailings in accordance with applicable Executive policies. The Union shall give the Employer reasonable notice in advance of any mass mailings.

Section 14. The Union will provide each Department with the names and addresses of authorized union officers and/or stewards who will be provided with notice of each orientation meeting held by the Department. The notice will be sent as soon as such meetings are scheduled and will include date, time, and location.

During orientation meetings, the Union will be permitted to give up to a 30 minute presentation, which may include enrollment in supplemental Union benefits and programs. The Union shall participate in the orientation meetings using the same medium as the Employer (e.g., telephone, video conference, face-to-face meeting). In the event an orientation meeting is not held, the Union will be permitted to provide information to be included in the orientation package that the Employer mails to the employee.

Section 15. The Employer shall furnish the Local Union, every calendar quarter, that this Agreement is in effect, two (2) copies of documents containing the employee's name, most recent address of record, telephone number on file, and the information on the official OL (computerized organizational listing) as well as:

- Organizational charts – annually;
- addresses of the physical work location for each agency's operations – semi-annually.

ARTICLE 3. FAIR SHARE

Section 1. Employees who have completed their probationary period and who are not members of the Union shall, as a condition of continuing employment, pay to the Union each pay period a “fair share” payment in an amount certified by the Union (Agency Fee Payer).

In order to become an Agency Fee Payer an employee must declare their objection, in writing to the Union, during the month of May each year of this Agreement. Effective July of each year the Agency Fee Payer will receive a rebate for that portion of dues deducted as non-chargeable expenditures.

The “fair share” payment shall be a percentage of Union membership dues calculated based on United States and New Mexico Statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the bargaining unit, servicing such contract, and representing all such employees in grievances and disciplinary actions.

Section 2. Employees who are required to make “fair share” payments may do so by voluntary payroll deduction authorization, which may be revoked at any time. Authorizations and revocations shall be submitted in writing by the employee to Agency Human Resources offices. Upon receipt the Agency HR offices shall send the Union a copy of such forms. The Employer will forward the monies so deducted to the Union together with a list of bargaining unit employees from whose wages such monies were deducted.

Section 3. Upon written request by the Union, a bargaining unit member who has completed his/her probationary period and who is not complying with the “fair share” provisions of this Article shall be terminated by the Employer, provided that the following actions have occurred:

- A. The Union shall notify the bargaining unit member of the amount of money that he/she is in arrears. The notice shall inform the bargaining unit member of impending discharge if the full amount owed is not paid to the Union within fifteen (15) working days after receipt of the notification. A copy of the notification shall be mailed simultaneously to the State Personnel Director. For the purposes of this Section the date of notification is the date of certified receipt at the member’s last known address, or twenty (20) working days following the postmarked certificate of mailing, whichever is earlier.
- B. The Union shall tender to the State Personnel Director a written request for termination of the bargaining unit member on the basis that the bargaining unit member has not complied with the “fair share” provisions of this Article within the time period specified in A, in that he/she has not paid the arrearage and has not documented that the money is not owed. Upon receipt of such notice the State shall issue to the employee a notice of contemplated action for dismissal and commence the termination process in accordance with the rules of the State Personnel Board.

Section 4. It is specifically agreed that the Employer assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the State harmless from and against any claims, demands, actions, proceedings, or liability arising from deductions made by the State pursuant to the Article, including reasonable attorneys fees incurred. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union; provided that Section 4 shall not be applicable to claims or liabilities or attorney fees incurred solely as a result of a breach by the Employer of its statutory duties or obligations under the United States Constitution.

ARTICLE 4. DEDUCTIONS

Section 1. Dues Deductions.

Section 1a. The Employer will honor voluntary uniform Union membership dues deduction authorizations. The amount of the dues shall be certified in writing and shall not include special assessments, penalties, or fines of any type.

The Employer will begin all voluntary deductions promptly after receiving stamped authorization cards from the Union in a time frame consistent with other employee payroll deductions. Upon receipt, the Agency HR offices will file authorization cards in the employee file. Authorizations and revocations shall be submitted in writing by the employee to Agency HR offices. Upon receipt the Agency HR offices shall send the Union a copy of such forms.

Section 1b. If an employee has insufficient earnings for the pay period, no dues or other deduction will be made for that employee for that pay period.

The Employer shall provide the Union with a list of the names of each of the employees from whom the Employer is making deductions under this Article and the amount deducted. This listing may be made available in an electronic format.

The Union shall certify to the Employer, in writing, by a duly authorized officer, the amount per pay period to be deducted for Union membership dues under deduction authorizations

Section 1c. The duty of the Employer to honor membership dues deduction authorizations shall continue until the employee instructs the Employer and the Union in writing to end such deduction, as long as such employee instruction to end dues deduction is made during the first two (2) full calendar weeks of December of any year that this Agreement is in effect.

Section 1d. It is specifically agreed that the State assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the State harmless from and against any claims, actions, or proceedings arising from deductions made by the State pursuant to this Article. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

Section 2. CWA-COPE

Section 2a. The Employer shall also honor separate additional voluntary deduction authorizations for the Union's Political Action Committee (CWA-COPE). The standard form to be used following the execution of this Agreement authorizing dues deduction and authorizing CWA-COPE deduction shall be attached as Appendix B to this Agreement.

Section 2b. All money deducted from wages under this Article shall be remitted to the Union and Union's Political Action Committee (CWA-COPE) promptly after the payday covering the pay period of deduction.

Section 2c. An employee shall specify the amount, if any, of additional authorizations for the CWA-COPE program.

Section 2d. An employee may terminate deductions for the Union's Political Action Committee (CWA-COPE) at any time.

Section 2e. All funds collected and distributed to the Union as dues deductions shall not be co-mingled with any funds collected and distributed to the Union as CWA-COPE deductions.

ARTICLE 5. MANAGEMENT RIGHTS

Section 1. Except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions, the sole and exclusive rights of management shall include the following:

- A. direct the work of, hire, promote, assign, evaluate, transfer, demote, suspend, dismiss or otherwise discipline employees;
- B. determine qualifications for employment and the nature and content of personnel examinations;
- C. take actions as may be necessary to carry out the mission of the State in emergencies;
- D. determine the size and composition of the work force;
- E. formulate financial and accounting procedures;
- F. make technological or service improvements and change production methods;
- G. relieve an employee from duties because of lack of work or other legitimate reason;
- H. determine methods, means, and personnel by which the Employer's operations are to be conducted;
- I. determine the location and operation of its organization;
- J. provide reasonable rules and regulations governing the conduct of employees;
- K. provide reasonable standards and rules for employees' safety; and
- L. determine scheduling.

Section 2. Prior to implementing any change in existing terms or conditions of employment relating to items I, J, K, or L of Section 1 above, the Employer shall provide the Union with reasonable notice under the circumstances of such contemplated action and, if requested to do so, shall bargain with the Union in good faith to impasse, prior to implementing such changes.

Section 3. Agencies may maintain policies and procedures that contain provisions that are more generous to employees than those within this Agreement.

ARTICLE 6. NON-DISCRIMINATION

Section 1. No employee shall be discriminated against by reasons of Union membership or non-membership or activities on behalf or in opposition to the Union.

Section 2. The Employer will provide each worksite location with a current paper copy of the Agency's current internal policies and procedures, unless an alternative to paper copies is mutually agreed upon by the Agency Labor-Management Committee. The specific worksite location of the paper copy will be mutually determined by the Agency Labor-Management Committee. If no Agency Labor-Management Committee exists, the decision on how copies will be provided at the specific worksite will be made at the Statewide Labor-Management Committee.

Section 3. All written personnel policies and procedures within an Agency shall be administered and applied consistently. Accommodations required by law shall not be questioned, challenged, or grieved.

Section 4. With the exception of personnel policies and procedures dealing with compliance with the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Age Discrimination and Employment Act (ADEA), the Family and Medical Leave Act (FMLA), the Equal Pay Act (EPA), and all other applicable federal and state equal employment opportunity laws and regulations, alleged violations of this Article may be grieved in accordance with the Grievance and Arbitration Procedure.

ARTICLE 7. PRE-DISCIPLINARY INVESTIGATIONS AND WRITTEN REPRIMANDS

Section 1. Whenever the Employer conducts an investigatory interview with an employee which the employee reasonably believes could result in discipline, the employee shall have the right to request a representative of their choosing to be present at the investigatory interview.

Except under extenuating circumstances, the employee may reschedule the meeting for another reasonable time in order to secure representation during the interview.

Employees shall have the following rights in addition to those rights established by the State Personnel Board (SPB) rules:

- A. At any meeting where the Employer is investigating any employee for possible disciplinary actions, the Employer shall:
 - 1. notify the employee at the outset of the meeting that the employee is being investigated for possible disciplinary action;
 - 2. on request, allow the employee the opportunity for Union representation; and
 - 3. if the Employer elects to proceed with the interview, provide the employee with a reasonable amount of time to confer with his/her representative.
- B. The Employer may not make a verbatim record of such interview unless it notifies the employee at the outset of the meeting of its intention to do so. If the Employer does elect to make a verbatim record of the meeting, the employee shall be provided with a true and correct copy of the record. In addition, if the Employer is recording the meeting, the employee may also record the meeting provided that the meeting will not be unduly delayed while the employee obtains a recording device.
- C. An employee may refuse to answer questions of a superior that probe possible criminal conduct until the employee has obtained legal advice and/or counsel. The employee shall be given a reasonable period of time to secure counsel.
- D. In all cases, the confidentiality of the disciplinary process shall be maintained by the Employer and its representatives as required by law, SPB Rules and this Agreement.

Section 2. When the Employer receives a complaint against an employee covered herein, the Employer shall provide the employee with the opportunity to respond to the complaint. The employee shall not respond directly to the complainant unless directed to do so by the immediate supervisor.

Section 3. If an Employer representative needs to talk to an employee concerning a matter of performance or behavior, reasonable efforts shall be made to hold the meeting in private.

Section 4. Written reprimands may be grieved in accordance with the Grievance Procedure through Step 3, Agency Level.

ARTICLE 8. DISCIPLINE AND DISCHARGE

Section 1. Discipline.

The primary purpose of discipline is to correct performance or behavior that is below acceptable standards, or contrary to the Employer's legitimate interests, in a constructive manner that promotes employee responsibility.

Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

Agencies shall utilize alternative methods to resolve conflicts or improper employee performance or behavior whenever appropriate.

Section 2. Just Cause.

An employee who has completed the probationary period required by SPB Rules may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the agency.

Just cause includes, but is not limited to: inefficiency; incompetence; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in SPB Rules; failure to comply with any provisions of SPB Rules; falsifying official records and/or documents (NMSA 1978, Section 10-9-22 (1953)); failure to pay fair share fees in accordance with the procedures and requirements of this Agreement; or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act, NMSA 1978, Sections 28-2-1 to 28-2-6 (1974) apply.

Section 3. Time Limits. Except for disciplinary actions related to performance which are governed by Article 18, and/or cases where outside agencies or divisions are involved in the investigation, the Employer may impose any disciplinary action or issue a notice of contemplated action no later than forty-five (45) calendar days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time.

Section 4. Appeals. Reprimands may be grieved through Step 3 (Agency Level) of the negotiated grievance procedure. If the Union or employee is dissatisfied with the response at Step 3, the Step 3 decision may be appealed within ten (10) calendar days to the Director of the State Personnel Office or his/her designee.

At his/her option the Director or designee may meet with the agency representative, the employee and his/her representative or conduct a paper review of the agency decision. In any event, the Director or designee shall issue a final and binding decision of the appeal within twenty-one (21) calendar days.

ARTICLE 9. GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Scope.

- A. Allegations of violation, misapplication, or misinterpretation of this Agreement, except for Preamble and Agreement, shall be subject to this negotiated grievance procedure. For purposes of this Article, “day” means calendar day unless otherwise specified. In the event the day an action or response is due is a Saturday, Sunday, or legal Holiday (as defined by the State Personnel Board–SPB), the action or response shall be due the following workday.
- B. Allegations of violation, misapplication, or misinterpretation of applicable SPB regulation may be grieved through Step 3 (Agency Level) of this negotiated procedure. If the matter is not satisfactorily resolved at Step 3, the Union or the employee may appeal to the State Personnel Director within thirty (30) days of the Step 3 response in accordance with applicable regulations of the SPB.
- C. In accordance with the Personnel Act NMSA 10-9-18, an employee who has completed the probationary period and has been dismissed, demoted or suspended has the right to an appeal. The employee may have the appeal decided by the State Personnel Board in accordance with SPB Regulations or may make an irrevocable election to have the appeal decided by an Arbitrator, but not both. No later than 30 calendar days from the effective date of the dismissal, demotion or suspension, a notice of appeal and irrevocable election must be made in writing and filed with the State Personnel Director. The notice must indicate whether the employee is choosing to have the State Personnel Board or an Arbitrator decide the appeal and must be accompanied with a copy of the final action.
- An appeal indicating that an irrevocable election for SPB Hearing has been made will proceed in accordance with SPB regulations. An appeal indicating that an irrevocable election for Arbitration has been made will proceed in accordance with Appendix A.
- D. The parties agree that this Section shall not be used by either party as a waiver, or concession of position, as to the interpretation of the PEBA.
- E. Whenever alternative methods are agreed to as part of the grievance process, and the alternative method so allows and the grievant so requests, the advocate for either party will be provided with an opportunity to be present but will not impede the process. The mediation is strictly confidential and any documents prepared for the mediator, mediation discussions, records or documentation of the mediation draft resolution, and any unsigned mediated Agreements shall not be placed in the employee’s personnel file, used in or admissible in any investigation, grievance, complaint, arbitration, or administrative proceeding.

The parties shall also be provided with copies of relevant documents and an opportunity to make its views known, as long as the presentation of the advocates’ views does not impede the process. Any adjustments reached will be consistent with the terms of this Agreement.

Section 2. Grievances may be filed on behalf of an individual aggrieved employee or group of employees covered by this Agreement or by the Union.

Section 3. An individual employee may present a grievance under the provisions of this Article and have it adjusted without the intervention of the Union so long as:

- A. The adjustment is consistent with the terms of the Agreement; and
- B. The Union is provided with the opportunity to be present during the grievance meetings, is provided copies of grievance documents, and is provided an opportunity to make its views known. An employee may not retain outside representation under this grievance procedure without the advance approval of the Union. An individual employee may not invoke arbitration under this Article.

Section 4. Steps in the Grievance Procedure. Employees should attempt to resolve any problem with their immediate supervisor before filing a formal grievance under the procedures established in this Article. Informal resolution of grievances prior to Step 1 shall not be binding upon the parties as past practice or interpretation of this Agreement.

The parties shall use this grievance procedure in an attempt to resolve issues at the lowest possible level. The parties agree that voluntary face to face meetings can be an effective way to reach resolution. By mutual agreement, meetings to resolve grievances may be conducted telephonically and/or by video-conferencing.

The parties agree, unless otherwise protected by law, to make available, upon written request, all necessary documents that will assist the parties in resolving their dispute. The requested documents shall be provided within a reasonable time after the request and prior to any subsequent meeting or hearing.

The Agency shall identify, in writing, the Employer representative(s) who shall, under the terms of this Agreement, be the recipient at Step 2 and Step 3 of the grievance procedure.

Step 1. Immediate Supervisor Level. Grievances must be initiated by presenting a written grievance to the grievant's immediate supervisor promptly and no later thirty (30) calendar days after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged grievance.

The Union or grievant shall submit the grievance to the immediate supervisor in writing and shall set forth:

- A. the employee's name, job title, and worksite;
- B. the name, address, and telephone of the Union representative, if any;
- C. the Article(s) of this Agreement alleged to have been violated;
- D. a description of the alleged violation;
- E. the relief requested;

F. the signature of the grievant or of the Union representative.

The immediate supervisor shall respond in writing within ten (10) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 2 by filing with the Secondary Supervisor Grievance Representative [hereinafter referred to as “SGR”], who shall be identified by the Employer in Step 1 of this process, within ten (10) calendar days of the time for response of the immediate supervisor. In the event that there is no response from the immediate supervisor, the designation of the SGR shall be made by the Agency Grievance Representative [hereinafter referred to as “AGR”].

Step 2. Secondary Supervisor Level. The Union or grievant shall submit the grievance to the SGR in each Agency or Department in writing. The SGR is a person designated by the Employer, under the terms of this Agreement, to be the recipient of Step 2 grievances on behalf of the Employer in each Agency or Department. The SGR shall respond in writing within ten (10) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 3 by filing with the AGR within ten (10) calendar days of the time for response of the SGR.

Step 3. Agency Level. The Union or grievant shall submit the grievance to the AGR in each Agency or Department in writing. The AGR is a person designated by the Employer, under the terms of this Agreement, to be the recipient of Step 3 grievances on behalf of the Employer in each Agency or Department. If no AGR has been designated, then the top administrative official of the Agency or Department shall be considered the AGR. The AGR shall respond in writing within fourteen (14) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to arbitration by the Union but not by the individual grievant.

Section 5. Grievance Arbitration. The Union may invoke arbitration by serving a written demand for arbitration upon the Employer within thirty (30) calendar days from the time for response of the AGR. Within seven (7) calendar days of the written demand for arbitration, the Union shall make a request for a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), unless the parties within such time period can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. Within seven (7) calendar days of the receipt of a list of arbitrators by both parties or agreement to an alternative panel, the parties will meet to select the arbitrator.

The selection shall be made by the Union and the Employer alternately eliminating names. The last name remaining shall be the arbitrator. The parties shall flip a coin to determine who shall strike the first name.

Each party shall pay one-half of the cost of obtaining the panel of arbitrators from FMCS, except that the Employer may elect not to pay one-half of the cost of obtaining a panel of arbitrators on the condition that it strikes the first name from the panel of arbitrators.

The decision of the arbitrator shall be based upon the facts established by the testimony and documents presented in the case. The arbitrator shall have no power to add to, subtract from, alter, or modify any of the terms of the Agreement, but may give appropriate interpretation or application to such terms and provide appropriate relief.

The arbitrator shall not have authority to make an award that includes a fine or other punitive damages or award of attorneys' fees.

Each party shall pay one-half of the arbitrator's fees and expenses. The arbitrator's decision shall be final and binding on the parties' subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.

Section 6. Miscellaneous.

- A. Tape recorders or other electronic recording devices shall not be used by any party participating in the grievance, except by mutual written agreement of the parties. This provision shall not apply to grievance arbitration hearings.
- B. Any of the time limits or steps set out in this Article may be extended, waived, or otherwise modified by written agreement of the parties.
- C. If the Employer fails to respond within the designated time limits, with the exception of Appendix A, the grievance shall be deemed denied and the Union may advance the grievance to the next step in accordance with the procedures set forth in this Article.
- D. The issue of non-grievability may be properly raised at any step of the grievance procedure. The arbitrator shall decide all issues regarding the grievability of grievances.
- E. Grievances may be withdrawn by the Union or the grievant at any step of the grievance procedure without prejudice except as to objections to timeliness.
- F. The arbitration procedure set forth in this Article shall not apply to events that occur before the effective date of this Agreement.
- G. The two parties to this Agreement may be represented by counsel at any step of the Grievance and Arbitration procedure.
- H. Court reporters are permitted in arbitration. The cost will be borne by the party requesting the reporter. If the other party requests a copy of the transcript, the parties agree to each pay one-half the cost of the court reporter services and transcripts.

Section 7. Decision. The parties hereby request that the arbitrator provide a decision within sixty (60) calendar days of the date on which a hearing is closed.

ARTICLE 10. SENIORITY

The following definitions shall apply to all applications of seniority under this Agreement.

- A. “State Seniority” means the length of continuous service in a career or term position (including probationary period) within the Executive Branch of State Government.
- B. “Agency Seniority” means the length of continuous service in a career or term position (including probationary period) in an employee’s current agency.

Where two (2) or more employees have the same seniority dates for determining job rights, then seniority shall be based on the highest number of the last four digits of the employee’s social security numbers, with the highest number being 9999 and the lowest number 0000.

Except as otherwise provided by applicable law, seniority shall be broken under the following circumstances:

1. if the employee quits, resigns, or retires;
2. if the employee is dismissed and the dismissal is not reversed through applicable appeal procedures;
3. if the employee fails to return from authorized leave;
4. if the employee fails to respond to a recall from layoff; or
5. if the employee is on layoff status for more than six (6) months.

ARTICLE 11. LABOR-MANAGEMENT COMMITTEES

Section 1. Statewide Labor-Management Committee. The parties shall establish a Labor-Management Committee [hereinafter referred to as “LMC”], which shall be a standing committee for the duration of this Agreement.

The LMC shall meet at least every other month at a mutually agreed upon time and place on paid status for all members. The Union and the Employer shall each appoint one co-chairperson and one member from each agency at which the Union represents employees unless mutually agreed to the contrary.

The LMC shall be free to address, without restriction, any topic of mutual interest or concern that affects working conditions of bargaining unit employees. It is understood and agreed that while the parties shall not be restricted in the topics to be addressed other than set forth above, neither the discussions, nor the outcome thereof shall be considered or treated as constituting a binding agreement between the parties unless reduced to writing, specifically identified in the body thereof as constituting such an agreement, and signed and dated by the authorized representatives of the parties respectively.

Section 2. Agency Labor-Management Committee. In addition to the LMC established in Section 1 above, the parties shall meet at the agency or sub-agency level to discuss matters unique to that agency or sub-agency. If either party fails to meet, the affected party may petition the statewide LMC to facilitate discussions of agency and sub-agency matters, by the parties, at that respective level.

Section 3. Group Benefits Committee. At his earliest convenience and in accordance with statute the Governor shall appoint two (2) employees, nominated by the Union, to serve on the Group Benefits Committee. The Union shall designate one (1) of the employees as the attending member and one (1) of the employees as an alternate. The employee designated as an alternate may also attend the meetings.

Section 4. Classification Reviews/Studies. The Employer shall direct the State Personnel Director to include the appropriate representation as designated by the Union to serve as subject matter experts in any classification review/study being conducted which includes positions in the bargaining unit and is anticipated to result in:

- Creation, modification and/or deletion of job classifications;
- Grouping of job classification by job family or occupational group;
- Describing or altering the duties, knowledge, skills or abilities within job classifications.

Section 5. Job Evaluation Committee. The Employer shall direct the State Personnel Director to include representation designated by the Union in any job evaluation committee established with regard to positions in the bargaining unit. The Union shall be entitled to select five (5) representatives who are State employees and who shall be trained and eligible to serve on job evaluation committees. The Union shall designate two (2) of the five, as regular members and the remaining three (3) shall act as alternates. If the SPO Director does not include the designated Union representation on a job evaluation committee established with regard to positions in the bargaining unit, the Union may, at its option renegotiate this Section of this Article.

Section 6. The Union shall have the right to identify and propose to the State Personnel Director the review and/or study of job classifications and/or positions in relation to Section 4 and 5 of this Article. The Employer shall direct the State Personnel Director to consider the Union's request in the same manner and conditions as the requests identified by the Employer in accordance with applicable SPB rules and regulations.

Section 7. Labor-Management Task Force on Pay Equity. The parties shall convene a Labor-Management Task Force to study issues connected with pay equity. The task force shall consist of representatives from exclusive representative Unions and the State. Task force recommendations will be forwarded to the Governor for consideration and action.

Section 8. Commuter Committee. The Employee Benefits Committee established by the Labor-Management Committee will conduct a study related to the plausibility of providing Rail Runner passes.

ARTICLE 12. HOURS OF WORK AND SCHEDULES

Section 1. Work Week. For purposes of this Agreement, the work week will be a calendar week beginning at 12:01 a.m. Saturday and ending 12:00 midnight the following Friday. A full-time employee's normal work week will consist of forty (40) hours per week, except as otherwise allowed for by law. This shall not be a guarantee of any minimum number of hours worked. No regular work shift shall be split into more than two (2) segments with an unpaid break of greater than one (1) hour.

Section 2. The Employer may change a work week schedule (e.g., from five [5] days of eight [8] hours to four [4] days of ten [10] hours) that exists at a particular worksite as of the effective date of this Agreement in accordance with its Management Rights (Article 5 of this Agreement).

Section 3. Alternative Work Schedules (formerly referred to as flextime). Alternative work schedule means an approved schedule for an employee that deviates from the work week described in Section 1, Section 2, or a schedule that deviates from a worksite's normal schedule.

Section 4. An employee may apply for a schedule that deviates from a worksite's normally scheduled work hours and workdays (hereinafter referred to as an alternative work schedule). The Employer shall not unreasonably deny or rescind an employee's requested alternative work schedule. Performance deficiency associated with an alternative work schedule may be grounds for denial or rescission.

Section 5. Part-Time Employees. Part-time employees shall be entitled to all of the provisions identified in this Article based on their hours worked.

Section 6. If an employee's application for an alternative work schedule cannot be approved because another employee is also requesting or is on the same or similar schedule which precludes the same alternative work schedule accommodation, then agency seniority shall be the determining factor as to which employee shall be granted or maintained on their requested alternative work schedule.

Section 7. When an employee requests an alternative work schedule the Employer shall approve or deny, in writing, the employee's request within fourteen (14) calendar days.

Section 8. Prior to rescinding the alternative work schedule, the Employer shall provide the Employee with no less than fourteen (14) calendar days notice in writing.

Section 9. The Employer shall propose and support a change in SPB Rules to accommodate an employee's waiver of the shift differential when an employee requests an alternative work schedule that has work hours that begin before 7:00 a.m. or end after 6:00 pm.

Section 10. Twenty-Four Hour or Seven Day Facility Scheduling. For employees who perform shift work at facilities with 7-day or 24-hour operations, the Employer shall post employees' work shift schedules at least seven (7) calendar days prior to the beginning of a new or revised schedule.

Section 11. Employer Schedule Changes. Changes in employee schedules may be made only to meet the legitimate and unanticipated operational and budgetary needs of the worksite; provided, however, no changes to schedules will be made to avoid the payment of overtime or accrual of compensatory time.

Section 12. Breaks. The Employer shall provide employees a reasonable number of rest periods during the work day. The Employer shall provide employees with either a paid or unpaid meal period during the work day.

Section 13. Make-Up Time. When an employee is occasionally late for work and has called in or made a reasonable attempt to do so, the Employer, if possible, shall allow them to make-up up to one (1) hour of lost work time within the same work week.

Section 14. Worksite Accommodation. Where practicable, at the employee's request, the Employer will provide reasonable alternative worksite accommodation due to a temporary medical condition.

Section 15. Job Sharing. Employees may share the same job position and the Employer shall approve reasonable job sharing provisions proposed by employees wishing to share a job.

Section 16. The Employer recognizes that the Union has a continuing interest in telework/telecommuting and its impact on the bargaining unit. Accordingly, by giving written notice of its desire to do so, the Union may request that the parties meet in November 2009 to discuss the impact of telework/telecommuting on the bargaining unit. Following such discussions, the Union may reopen this Article for purposes of negotiating changes relevant to telework/telecommuting. The Employer shall bargain with the Union in good faith to impasse.

ARTICLE 13. OVERTIME AND COMPENSATORY TIME

Section 1. Overtime. The Employer shall compensate FLSA non-exempt employees at the rate of one and one-half (1-½) times the employee's regular hourly rate of pay for hours worked in excess of forty (40) hours during the employee's designated work week (hereinafter referred to as "overtime pay").

Section 2. Exclusions from Overtime Calculations. With the exception of vacation, holiday pay and administrative leave for voting, hours paid for but not worked and all other pay excludable from "regular rate" for purposes of calculating overtime under Section 7(e) of the Fair Labor Standards Act shall not be considered in computing overtime.

Section 3. Compensatory Time for Non-Exempt Employees. FLSA non-exempt employees may accrue up to two-hundred forty (240) hours of compensatory time off (hereinafter referred to as "comp time") at the rate of one and one-half (1-½) hours for each hour of time worked where such time worked would otherwise be compensated by overtime pay.

Overtime will be paid in cash or compensatory time at the employee's election; unless the employee is informed at the time the overtime is assigned that only comp time is being offered.

When only comp time is offered, the employee may refuse the overtime assignment without penalty. The date to be taken as comp time off shall be scheduled by agreement between the supervisor and the employee, and supervisory approval for the use of comp time will be granted in a fair and equitable manner.

All unused comp time will be paid upon an employee leaving the Agency or a Department, Division, or other subgroup which has an individual budget, or upon death, to the employee's estate, at the final regular rate received by the employee.

Section 4. Compensatory Time for Exempt Employees. FLSA exempt employees may accrue up one hundred twenty (120) hours of comp time at the rate of one (1) hour for each hour of time worked in excess of forty (40) hours during the employee's designated work week, except supervisory nurses providing direct care will accrue comp time at the rate of time and one-half.

Agencies may, at their discretion, offer cash overtime payments. The date to be taken as comp time shall be scheduled by agreement between the supervisor and the employee, and supervisory approval for the use of comp time will be granted in a fair and equitable manner. Unused comp time may be paid upon an employee's leaving the Agency or a Department, Division, or other subgroup which has an individual budget, or upon death, if an agency's policy so allows. Payment of unused comp time is subject to budget availability.

Section 5. Overtime Scheduling. If overtime is required that is a continuation of a particular employee's job assignment, that particular employee shall perform the overtime that is required. If overtime is required that is not a continuation of any particular employee's job assignment, the

supervisor shall first offer overtime to the employees under his/her supervision who are qualified to perform the necessary tasks.

If more than one qualified employee volunteers to work overtime, the supervisor shall assign overtime based on Agency seniority within the work group that he/she supervises and rotate overtime assignments in a fair and equitable manner.

If no volunteers are available, then the supervisor will designate employees capable and qualified to perform the work based on reverse Agency seniority and mandatory overtime shall be rotated in a fair and equitable manner. The Employer shall have the right to require employees to work overtime consistent with this Section.

ARTICLE 14. AGENCY FURLOUGH AND REDUCTION IN FORCE PLANS

In the event an Agency contemplates a furlough or reduction in force, the Agency shall notify and meet with the Union to discuss the furlough or reduction-in-force plan not less than thirty (30) days prior to submitting its furlough or reduction in force plans to the State Personnel Board.

ARTICLE 15. FILLING OF VACANCIES

Section 1. Advertising. The Employer shall advertise all bargaining unit job vacancies which the Employer intends to fill in a reasonable manner, including posting a notice on designated bulletin boards at the location where the vacancy exists, for a period of at least ten (10) calendar days, unless SPB rules authorize the Employer to fill the position without prior advertising. If multiple applicants are equally qualified, then Agency seniority shall govern the applicant selection for vacancies within the bargaining unit covered by this Agreement. If Agency Seniority does not break the tie, then State seniority shall govern the applicant selection.

Section 2. Qualifications. Job Related Qualification Standards (JRQS) or other equivalent qualification, established for a position shall be approved by the State Personnel Office (SPO) prior to recruitment. JRQS and/or other equivalent qualifications, shall consist only of job related education, experiences, licensure, certification registration, and/or legal requirements that are:

- A. appropriate to the occupation and job duties of the position;
- B. necessary for successful performance of the essential duties of the position; and
- C. not designed to unduly restrict competition.

Section 3. Transfers. The Employer may not involuntarily transfer an employee to a post of duty that is more than thirty-five (35) miles from his/her current post of duty.

Employees with satisfactory annual evaluations wishing to transfer within an Agency to a vacant position of the same job description as their current position may make a request for transfer. The Employer will duly consider the request and will not unreasonably deny the request unless granting of the request creates a negative operational impact or conflict.

Section 4. Notification. In-house candidates not selected for a position shall be given written notice of their non-selection in a timely manner prior to the successful candidate's first day on the job.

ARTICLE 16. PERSONNEL RECORDS

Section 1. Maintenance of Records.

- A. The Employer shall maintain all records concerning an employee under secure conditions. The Employer shall maintain at least two official sets of records concerning an employee (hereinafter referred to as “personnel records”). One set shall be kept at the SPO and up to two (2) sets at the Agency where the employee is employed. Both sets of records may contain “confidential” documents, as defined in this Article.
- B. Any confidential documents maintained at the SPO shall also be maintained at the Agency. An employee shall have a right of access to any document filed in either set of their official personnel records after such document is filed. Employees may respond in writing to any matter contained in their file, and the responses shall be included at the employee’s request.
- C. Nothing in this section shall require duplicate sets of records to be maintained at both the Agency and the SPO.
- D. With the exception of files on conduct or performance maintained by an employee’s immediate supervisor in accordance with subsection E below or confidential investigatory files in accordance with subsection F below, all other files maintained by the Employer and its managers which contain performance or conduct information specific to an employee shall be made available by inspection and copy by the employee upon request.
- E. Personal records or files maintained by an employee’s immediate supervisor shall not be considered an official State record but shall be considered as an extension of the supervisor’s memory. If maintained, such records or files shall be disclosed in accordance with the following:
 - 1. Except as modified below, the supervisor may, but is not required to disclose the records to the employee upon request;
 - 2. The supervisor is required to disclose such records to the employee if the supervisor takes a tangible employment action based in part on the information in the records to achieve corrective action;
 - 3. The supervisor may not disclose the records, or any portion thereof, to any other party unless also disclosed to the employee;
 - 4. The supervisor may not transfer custody or copy the records, or any portion thereof, to any other party;
 - 5. The supervisor shall maintain only timely and relevant material.
- F. Records of confidential investigations that do not result in an adverse employment action shall only be disclosed by an Agency pursuant to a court order or lawful subpoena that has been obtained as part of an official investigation or as part of litigation. Such records shall only be accessible to the General Counsel, executive management, or those authorized to conduct investigations on the behalf of the agency on a need to know basis.

G. Employees who are the subject of a confidential investigation may pursue remedies exclusive of this contract for unauthorized disclosure of records of the investigation but shall have no remedy under this contract for unauthorized disclosure.

Section 2. Confidentiality of Records. In accordance with applicable SPB regulations, the following documents shall be regarded as confidential:

- A. Any documents pertaining to an employee's physical and/or mental examinations and/or medical treatment;
- B. Any documents maintained for purposes of the Americans with Disabilities Act;
- C. Letters of reference concerning employment, licensing, or permits;
- D. Any documents containing statements of opinion about an employee;
- E. Documents concerning alleged or proven infractions and disciplinary actions;
- F. Performance appraisal and/or evaluations whether formal or not; opinions as to whether an employee should be re-employed;
- G. College transcripts;
- H. Military discharge, if other than honorable;
- I. Information on the race, color, religion, national origin, ancestry, political affiliation, sexual orientation, or disability of an employee; and
- J. Laboratory reports or test results concerning an employee.

Confidential documents are not subject to inspection by the general public without written permission of the employee whom they concern or pursuant to a lawful subpoena.

The Employer will make such confidential documents available to the Union, with the prior written consent of the employee, if necessary, for and relevant to a grievance pursuant to the Grievance and Arbitration provisions, herein. The Union agrees to maintain the confidentiality of such material to the greatest extent possible while pursuing the grievance.

The Employer shall not provide references or disclose any information from confidential documents or the documents themselves, by any means of communication, to any person or organization, except with the prior written consent of the employee to whom the employment reference and document disclosure pertains.

Grievances over allegations of violation, misapplication, and misinterpretation of this Section shall be filed in accordance with Section 1(B) of the Grievance and Arbitration Article of this Agreement.

Section 3. Limitations on Content of Records. The Employer shall not maintain in an employee's personnel records any documents critical of any employee which have not resulted in discipline when investigation of any such materials is not on-going or has ceased. Nothing contained herein shall require the removal of an employee's formal performance evaluations, so long as the employee has had the opportunity to submit rebuttal statements or documents if he or she has disagreed with any part of an evaluation.

Confidential and other documents may be removed from an employee's personnel record as part of a grievance settlement agreement or arbitration award.

When documents are removed from an employee's personnel record pursuant to this Article, they shall not be considered in connection with any future personnel action involving the affected employee.

The Employer shall allow an employee to inspect his or her personnel records. Upon request, an employee will be provided with copies of any documents in his or her personnel records at the Employer's expense if the employee is facing disciplinary charges; or by reimbursing the cost for copying if the employee is not facing disciplinary charges.

Section 4. Removal of Reprimands. One (1) year after an employee has received a letter of reprimand, the employee may request that the letter of reprimand be removed from the employee's personnel file.

If the employee has not committed any further infractions of work rules during the preceding year, the Employer shall not use the reprimand as the basis for further discipline, and shall remove the letter of reprimand from the employee's personnel file and return it to the employee. If such action could subject the Employer to potential liability to third parties, a copy may be retained in a secure location for legal purposes within the agency.

Denial of an employee's request under this Section shall be explained to the employee in writing.

Such explanation shall include an indication of when the Employer may be willing to remove the reprimand, which shall normally be within five (5) years of the date of issuance. In cases of denial, an employee may reinitiate a request for removal at a later date.

ARTICLE 17. PERFORMANCE APPRAISAL

Section 1. Employees shall receive written performance appraisals on an annual basis. The end of year appraisal shall include the final performance rating for the year. The Employer shall provide the employee with a copy of the signed appraisal and a copy will be placed in the employee's personnel file accompanied by any comments and/or statement of objection that the employee may have included and/or attached.

Section 2. Performance criteria shall be specific, attainable, relevant, measurable, and consistent with an employee's duties, responsibilities and relate to his/her job description. Measurement criteria shall be job and outcome related. The criteria shall be provided to an employee in writing at the beginning of the rating period and changed during the period only after review with the employee.

If an employee does not have an opportunity to perform work described by the criteria that criterion will not be considered in the performance appraisal process.

Performance measurement criteria shall be applied fairly, objectively, and equitably. The Employer shall take into account when evaluating an employee's performance, matters outside an employee's controls, such as equipment and resource problems and lack of training. Pre-approved time away from the job including sick leave (not including call in notification), personal days, annual leave, and authorized duty time for Union representational purposes and other authorized activities will not be considered negatively in the application of performance criteria. Appraisals shall fully take into account such approved absences in a measure of timeliness and quantity of work.

Section 3. The employee's supervisor will prepare the annual performance appraisal. Should circumstances exist that prevent the employee's supervisor from preparing or assessing the annual performance appraisal, including the completion of training as required by SPB Rules and Regulations, the second level supervisor shall prepare the appraisal. If the evaluating supervisor is not the direct supervisor, he/she must have actually reviewed the employee's performance. In conjunction with the transfer of an employee or his/her supervisor, the supervisor shall prepare an appraisal of the employee which shall be considered with other appraisals received during the year in order to develop the annual summary rating.

Section 4. When a performance appraisal is established it shall include at least the following:

- A. Performance expectations applicable to the period it is being established for which may be changed only after review with the employee;
- B. Modifications to the employee's job assignments, if any, applicable to the next period which may be changed only after review with the employee; and
- C. Recommendations, if any, for training to enhance the employee's skills.

The Employer may change an employee's end-of-cycle final appraisal only with written justification, which cites the employee's performance criteria and the employee's actual performance.

The Employer will not prescribe a forced distribution of levels for ratings for employees covered by this Agreement.

Section 5. When a new supervisor is assigned to an employee, the two shall meet within 90 days to review and/or modify the existing performance appraisal in order to clarify the assignments and duties of the employee and the expectations of the new supervisor.

ARTICLE 18. PERFORMANCE AND DEVELOPMENT PLANS RELATED TO UNSATISFACTORY EMPLOYEE PERFORMANCE

Section 1. Application. This article applies to an employee who has attained career status.

Section 2. Basis for Action. An Agency may discipline an employee for performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it.

Section 3. Procedures.

- A. When an employee has been placed on notice that he/she has not met his/her performance expectations, and the Employer decides to pursue a performance-based action, the employee's supervisor shall inform the employee that the employee has one-hundred-eighty (180) days from issuance of the rating to improve to an acceptable level. This shall not preclude the Employer from taking performance based disciplinary actions against the employee after thirty (30) days from the beginning of the Performance and Development Plan if the employee exhibits a critical failure to perform, substantially fails to comply with the performance and development plan or exhibits deteriorating performance. The Employer shall create a performance and development plan to identify the following:
1. an identification of the job assignments and performance skills for which performance is unsatisfactory;
 2. a description of what the Employer will do to assist the employee to attain a satisfactory level and a description of what the employee must do to improve the unsatisfactory performance during the one-hundred eighty (180) day performance and development plan period;
 3. a statement as to how often the supervisor and the employee will meet during the one-hundred-eighty (180) day performance and development plan period to provide the employee with coaching and feedback to assist the employee to attain a satisfactory performance level;
 4. a statement indicating that failure to meet the performance and development plan expectations during or at the end of the one-hundred-eighty (180) day period may result in disciplinary action up to and including termination;
 5. at the conclusion of the one hundred-eighty (180) day Performance and Development plan period the Employer will meet with the employee to discuss the final outcome/rating of the employee's performance.
- B. An employee may not receive an overall rating of less than satisfactory on the employee's annual performance appraisal unless the employee has been advised, in writing, that he/she is not meeting performance standards. An employee shall be informed of performance deficiencies that may lead

to a less than satisfactory performance rating within reasonable proximity of when the Employer became aware of the deficiency, but always within thirty days.

- C. If, at the conclusion of the performance and development plan period, the Employer elects to initiate discipline against an employee for unsatisfactory performance; the Employer shall notify the employee, within 45 days, in writing by a Notice of Contemplated Action of the Employer's decision to initiate disciplinary action. The Notice of Contemplated Action shall include:
1. specific documented instances of unsatisfactory performance by the employee on which the action is based;
 2. the specific job assignments/skills involved in each specification of unsatisfactory performance;
 3. a written description of the efforts made by the Employer to assist the employee in improving performance during the performance and development plan period; and
 4. a written explanation of how the Employer provided the employee with a reasonable opportunity to attain satisfactory performance.
- D. If the Employer decides not take action based on unsatisfactory performance, it shall expunge the notices described in this Section from all official records.
- E. If the Employer does not provide the employee a reasonable opportunity to attain satisfactory performance as outlined in the Performance and Development Plan, it may not issue discipline under this article.

Section 4. The Employer shall fully consider a demotion in appropriate circumstances in lieu of termination for unsatisfactory performance.

Section 5. Reprimands may be grieved through Step 3 (Agency Level) of the negotiated grievance procedure. If the Union or employee is dissatisfied with the response at Step 3, the Step 3 decision may be appealed within ten (10) calendar days to the Director of the State Personnel Office or his/her designee. At his/her option the Director or designee may meet with the agency representative, the employee and his/her representative or conduct a paper review of the agency decision. In any event, the Director or designee shall issue a final and binding decision on the appeal within twenty-one (21) calendar days.

ARTICLE 19. HOLIDAYS AND OTHER PAID LEAVE

Section 1. Following the State Personnel Board publishing the dates on which legal holidays shall be observed, a copy of the list will be provided to the Union.

Section 2. Holidays that occur during an employee's sick leave will not be charged to sick leave, and will be recorded and paid as holidays.

Section 3. Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off with pay equal to the employee's normal workday. When an authorized holiday falls on an employee's regularly scheduled workday and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

When an authorized holiday falls on a part-time employee's regularly scheduled workday and the part-time employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

Section 4. In the event the Governor provides an early release (administrative leave) for State employees, notice shall be provided to the Union as soon as practical. Upon notice to the agency, the agency shall provide notice to its employees as soon as practical.

Section 5. In the event the Governor elects to grant general administrative leave for any purpose other than by reason of inclement weather, all employees shall have such leave approved on a fair and equitable basis. Employees required to maintain necessary services and otherwise not able to observe the administrative leave during the time in which it is granted shall be credited with the time.

Section 6. Interview Leave. Current practices regarding the granting of administrative leave for interviews shall be maintained. In addition, employees shall be provided with a reasonable opportunity to flex time work schedule within the work week without charge to leave to permit them to participate in interviews for a job with the State.

Section 7. Religious Observances. Upon fifteen (15) days advanced notice, the Employer shall approve an employee's request for annual leave, personal leave, and/or compensatory time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the work day or work week.

Section 8. Bereavement Leave. Employees shall be granted two (2) days of administrative leave for bereavement of an immediate family member defined as: mother, father, sister, brother, spouse, daughter, son, grandparent, grandchild, step-parent or child, or domestic partner.

ARTICLE 20. ANNUAL AND PERSONAL LEAVE REQUEST

Section 1. At anytime, but no more than one (1) year in advance, employees may request the use of accrued short-term leave (annual leave, compensatory time use, or personal leave). Such request shall be in writing and shall be approved or denied by the Employer as soon as practical after the request is made. If the employee makes the request at least twice as long in advance as the length of the leave requested (e.g., twenty [20] days in advance for ten [10] days of leave), the supervisor shall approve or deny the requested leave within five (5) calendar days upon receipt of the requested leave, or one (1) day prior to the beginning of the leave requested, whichever is sooner. In unanticipated situations, or when the employee is out of the office, an employee may make requests verbally.

Section 2. The Employer may deny leave requests for legitimate operational needs which shall be explained if requested by the employee.

Section 3. The Employer may cancel previously approved leave requests only in the event of a reasonably unforeseen circumstance which requires cancellation of the leave to meet critical operational needs.

Section 4. To the greatest extent possible, leave shall be granted on a first come, first serve basis subject to the legitimate operational needs of the Employer. However, when more than one employee has requested the same annual leave period on the same day, the supervisor shall grant leave based upon the order of State seniority.

Section 5. Accrual Rates. The Employer shall direct the State Personnel Director to work collaboratively with the Employee Benefits Committee (EBC) appointed by the Statewide Labor-Management Committee in order to conduct a study related to an increase in annual leave accrual rates. The study will be completed no later than June 30, 2010. The EBC and the State Personnel Director shall report its findings and recommendations to the Statewide Labor-Management Committee and the State Personnel Board. Should the study's findings show that an increase to annual leave accrual rates is reasonably and economically feasible, the Employer shall propose and support a change in SPB rules to increase said rates.

ARTICLE 21. SICK LEAVE

Section 1. Accrual. Full time employees shall accrue sick leave at the rate of 3.69 hours per biweekly pay period. Part-time employees and employees in a without pay status shall accrue sick leave on a prorated basis.

Section 2. Use. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a relation by blood or marriage within the third degree, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions. The Employer shall not ask the employee to provide information as to his/her diagnosis or condition (or the condition of dependents) except as permitted by applicable law.

Section 3. Procedures. Employees shall contact their supervisor or supervisor's designee at their earliest opportunity and no later than 30 minutes after the scheduled beginning of their workday or in the case of employees assigned to shift work at entities that maintain 24-hour operations two (2) hours prior to the scheduled beginning of their workday. If the supervisor or designee is not available at the designated phone number, the employee shall leave a message for the supervisor or designee in accordance with written instructions issued by the Employer. In the event the employee is incapacitated, a family member may call in on behalf of the employee. A sick leave request will normally be verbal but may be in writing if the employee knows in advance of the necessity for sick leave.

Section 4. Health Care Provider Certification. Employees may be required to provide health care provider certification for the use of paid sick leave only in the following circumstances:

- A. If the sick leave is for more than three (3) consecutive work days. In these instances the Employer has the option of waiving the health care provider certification requirement.
- B. If an employee habitually maintains a low sick leave balance without providing evidence of the need for such relatively high utilization or when the supervisor has a reasonable suspicion that the employee is utilizing sick leave for purposes other than those authorized by Section 2 above. In such circumstances, the Employer shall first counsel the employee that the employee's utilization may lead to a practitioner certification requirement.

If the employee does not show improvement in utilization or does not provide evidence of the need for relatively heavy utilization, the Employer may provide the employee with a written instruction notifying the employee of the requirement of health care provider certification, or other acceptable documentation, for sick leave absences. The certification requirement will be reviewed after six months and if the employee substantially complies with requirements for documentation or uses substantially less sick leave, the certification requirement shall be rescinded.

- C. Employees (and dependants) with chronic health conditions that may reasonably require frequent absences and charges to sick leave, may provide the Employer with an annual certification in order to meet the requirements of this section.

A “health care provider” means a doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) in the state in which the doctor practices or any other person determined to be capable of providing health care services under regulations promulgated under the Family and Medical Leave Act of 1983, 29 U.S.C., Section 201 et seq.

Section 5. Sick Leave Incentive. An employee who is assigned to shift work in a twenty-four hour facility and who does not utilize sick leave for a calendar quarter shall receive credit for eight hours of administrative leave. Those agencies that have sick leave incentive programs in place that are more generous may maintain those programs.

Section 6. Early Return to Work Modified Work Assignments. The Employer shall make reasonable efforts to provide employees covered by this Agreement with opportunities for returning to work on a modified work assignment due to temporary medical restrictions while recovering from non-work related injury or illness. An employee requesting an early return to work in modified duty assignment may request such assignment for a period of up to one (1) year consistent with accompanying medical recommendations. Any medical documentation requested by the Employer shall be confidential with access and use restricted as required by ADA and HIPAA regulations and guidelines. An employee who returns to work on modified work assignment shall be paid no less than their last rate of pay.

Section 7. Accrual Rates. The Employer shall direct the State Personnel Director to work collaboratively with the Employee Benefits Committee (EBC) appointed by the Statewide Labor-Management Committee in order to conduct a study related to an increase in the sick leave accrual rate. The study will be completed no later than June 30, 2010. The EBC and the State Personnel Director shall report its findings and recommendations to the Statewide Labor-Management Committee and the State Personnel Board. Should the study’s findings show that an increase to the sick leave accrual rate is reasonably and economically feasible, the Employer shall propose and support a change in SPB rules to increase said rate.

ARTICLE 22. SICK LEAVE DONATION

Section 1. Sick Leave Donation. An employee (donor) may donate sick leave to another employee (recipient) in the same agency, with approval of the head of the agency, if a medical emergency arises that forces the recipient employee to exhaust all of his or her sick leave, annual leave, compensatory time off, and personal leave day. Upon approval of the donation, the Employer shall transfer the sick leave from the donor employee to the recipient employee as follows:

- A. A donor employee who has accumulated more than six hundred (600) hours of sick leave can transfer the additional amounts over six hundred (600) to the recipient employee.
- B. The donor employee can transfer a maximum of one-hundred twenty (120) hours in any one fiscal year, except that immediately prior to retirement, the donor employee can make a one-time transfer of up to four hundred (400) hours.
- C. The donor employee can transfer only fifty percent (50%) of the monetary value of his or her sick leave. (For example, if the donor employee makes \$13.32 per hour and has accumulated 657 hours of sick leave, he or she can donate \$13.32 per hour times 57 hours times 50%, which equals \$379.62.)
- D. The recipient employee shall be paid the transferred amount of sick leave on the basis of the recipient employee's wage or salary, up to forty (40) hours per week. (For example, if the transferred amount was \$379.62 and the recipient employee's salary was \$8.14 per hour, then the recipient employee can receive 46.64 hours of sick leave over the course of two weeks since \$379.62 divided by \$8.14 per hour equals 46.64 hours.)
- E. Unless the donor employee is retiring, donations will be allowed only on either the pay date immediately following the first full pay period in January or the first full pay period in July.
- F. Donated sick leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the recipient employee separates from the Agency.

The Employer assumes no obligations, except in acting as a remitting agent, arising out of its application of the provisions of the Article, and this Article may not be grieved under the Grievance and Arbitration Procedure. The affected employees, donor and recipient, and the Union agree that they will indemnify and hold the Employer harmless for any liability arising from the transfer of sick leave made by the Employer pursuant to this Article.

Section 2. Donation of Leave Bank Task Force. The Employer and the Union shall convene a multi-agency task force consisting of Management and Union-selected delegates charged with conducting a study related to the creation of a Leave Donation Bank. The task force shall, among other things, examine:

- A means to create a fair and economical system of administration;
- Similar systems in other branches of government, other states or industries;
- Means by which donations of leave to the bank would occur;

- Identification of types of leave eligible for donation to the bank;
- Conversion of leave at the time of retirement for purposes of leave donation;
- Methods and means for withdrawal from the bank;
- Economic and/or fiscal impact;
- Administration and/or management of the bank;
- Technical system(s) capabilities and/or limitations;
- Administrative costs and/or parameters;
- Necessary amendments to state administrative code, statute, or constitution.

The taskforce will consult with labor, human resource, legal, IT and legislative experts. The taskforce will be comprised of three labor and three management employees and allowed up to a total of 240 hours of paid time to complete the study and will present their final recommendation to the Governor for consideration no later than September 15, 2010.

Section 3. In the event of a change in relevant statute regarding the six hundred (600) hours threshold and other conditions associated with this Article, by giving written notice of its desire to do so, either party may reopen this Article for purposes of negotiating changes to this Article as allowed by Article 40, Section 1.

ARTICLE 23. PHYSICAL FITNESS FLEXTIME

The Employer shall permit employees a reasonable opportunity to flex their work schedule within the work week, up to 1.5 hours, to enable them to participate in exercise programs. The physical fitness flextime will be provided exclusive of flextime addressed in Article 12 (Hours of Work and Schedule), Section 4 and Section 13.

ARTICLE 24. JOB CLASSIFICATIONS

Section 1. Position Analysis Questionnaire. Within fourteen (14) calendar days of receipt of an employee's request, the Employer shall provide an employee with a copy of the current document on file that describes and/or supports the employee's individual position assignment.

If the Employer does not already have a current document on file that describes and/or supports the employee's individual position assignment, then the Employer shall provide, within fourteen (14) calendar days, the employee or the Union the appropriate form(s) for a position assignment analysis. This form(s) will be completed by the employee and supervisor within thirty (30) calendar days after receipt of the form(s). Once completed, the form(s) will be filed with the Agency Human Resource Office for placement in the proper position control files.

Section 2. Requesting Position Assignment Review. Any employee covered by this Agreement who believes his or her actual position assignment in the classified service is not assigned to the class that best represents the duties assigned by the Employer and performed by the employee may initiate a request for a review of their position assignment and/or a new position classification assignment through procedures established by the SPO and the Department of Finance and Administration.

The Employer shall direct the State Personnel Director to ensure the procedures referred to in Section 2 are in writing and available to employees and/or the Union.

In addition to the form(s) for a position assignment analysis, the employee and the employee's union officer and/or steward shall be allowed to submit additional information and/or documentation relevant to the employee's current job tasks and/or assignments being performed by the employee.

The Employer shall direct the State Personnel Director to allow the employee and the employee's union officer and/or steward to meet with SPO staff in order to present the case for the review of the position assignment, which may include a desk audit.

The position assignment review process shall begin as soon as the employee submits the request and shall be completed within ninety (90) calendar days, unless unusual circumstances intervene. In the event of a delay, SPO or the Agency Human Resource Office shall inform the employee in writing of the delay.

If the employee's position is subsequently assigned to a different classification, the employee shall be paid the appropriate rate of pay for the new job classification prospectively as provided by SPB rules.

ARTICLE 25. STAFFING AND WORKLOAD STANDARDS

Section 1. Staffing. Upon request, once each calendar year, or more often upon mutual agreement, a Cabinet Secretary or Agency Head shall meet with the Union at a mutually agreed upon time and place to discuss staffing related issues. In anticipation of such a meeting, on written request, the Employer shall provide the Local Union with all relevant staffing related information within the possession or control of the Employer, including information related to the methodology it used to determine staffing levels, that is permissibly released under law.

Section 2. Staffing and Workload Standards. The Employer shall assign workloads to treat employees as equitably as possible. The Employer shall consider the re-distribution of staff or positions among an agency's programs, shifts, or work sites or other means of alleviating excess workload in a timely manner and shall specifically consider hiring additional staff where there are chronic workload problems.

Section 3. Workload Management. The following defenses may be asserted by an employee in response to disciplinary action for failure to complete casework/workload assignments as required:

- A. the worker was unable to complete casework/workload activities on assigned cases because there was not sufficient time available to take actions required by policy and regulations; and/or
- B. the worker was unable to complete caseload/workload assignments in a timely manner because of the actions of others over which the employee has no control.

The employee shall have the burden of establishing these defenses.

ARTICLE 26. CONDITIONS OF APPOINTMENT

Section 1. Term Employees.

- A. Contingent upon legislative authorization, the Employer shall convert all employees in term positions who do not work under a federal grant or program of a designated duration to a perm position. An employee's date of hire and seniority shall reflect his/her date of appointment to the term position.
- B. A term employee shall be notified of vacant career positions in the same classification in the same Agency and the same organizational unit. If the employee applies and meets all published job related qualification standards (JRQS) for the position then the term employee shall be selected. In the event more than one term employee fully meets all published JRQS for the position, Agency seniority (as defined elsewhere herein) shall govern the selection. If Agency seniority does not break the tie then State seniority (as defined elsewhere herein) shall govern the selection. The placement shall be considered as a lateral transfer.
- C. The order of separation for term employees affected by an expiration of appointment due to reduction or loss of funding or when the special project or program ends for the affected term employees, shall be by agency seniority. If funding for the program or the project is resumed within six (6) months, separated term employees shall be offered reemployment in agency seniority order in the same position they held prior to separation.

Section 2. Probationary Period. Unless there is a break in service, once an employee attains career status, he/she shall not be required to serve another probationary period.

ARTICLE 27. PAY

Section 1. General Wage Increases.

- A. Fiscal Year 2010. Recognizing the revenue forecast and impending budgetary shortfalls, in accordance with state statute, the Governor's Budget Recommendation will not include a request for a general wage increase. In the event the legislature appropriates a general wage increase for employees in Fiscal Year 2010, the Employer agrees to implement the legislative appropriation as directed by the legislation.
- B. Fiscal Year 2011. By giving written notice of its desire to do so on or before October 1, 2009, either party may reopen this agreement for purposes of negotiating changes in general wages. In accordance with state statute, the Governor's Budget Recommendation shall include the wage increase negotiated by the parties. Any changes in general wages agreed to shall be subject to legislative appropriation and to impasse resolution procedures mandated by the Public Employee Bargaining Act in effect at the time notice is given. All other terms of this Agreement shall remain in full force and effect. If notice of desire to reopen the Agreement is not given by either party, then the matter will be considered closed for Fiscal Year 2011.
- C. Fiscal Year 2012. By giving written notice of its desire to do so on or before October 1, 2010, either party may reopen this agreement for purposes of negotiating changes in general wages. In accordance with state statute, the Governor's Budget Recommendation shall include the wage increase negotiated by the parties. Any changes in general wages agreed to shall be subject to legislative appropriation and to impasse resolution procedures mandated by the Public Employee Bargaining Act in effect at the time notice is given. All other terms of this Agreement shall remain in full force and effect. If notice of desire to reopen the Agreement is not given by either party, then the matter will be considered closed for Fiscal Year 2012.
- D. Probationary employees entering a bargaining unit position subsequent to the effective date of the general wage increase for that fiscal year, shall receive the general wage increase effective the first full period they obtain career status and enter the bargaining unit provided the employee had not received the general salary increase previously.

Section 2. On-Call Pay. The Employer may assign an employee to on-call status if they are capable and qualified of performing the assignment. The method of assignment and rate of compensation shall be addressed in supplemental bargaining, if appropriate.

Section 3. Call-Back Pay. Employees who are called to report to work on their regular day off or that have been recalled to work after having left the Employer's premise, shall be guaranteed a minimum of two (2) hours of pay for actual hours worked at the applicable straight time or overtime rate. For employees called back to work, paid time shall commence at the time the employee begins travel to report for work and ends at the completion of the call-back assignment. Employees who are currently guaranteed a minimum of pay greater than two (2) hours shall continue to be paid at the greater minimum.

Section 4. Report Pay. An employee who is pre-scheduled to work overtime and reports to duty will be guaranteed two (2) hours overtime pay at the appropriate rate. The Employer shall notify employees as soon as practical prior to their scheduled start time in the event the employee is not required to report for prescheduled overtime.

Section 5. Short Turnaround Pay. Employees who work a non-overtime shift that begins less than twenty-four hours after the start of their previous shift, shall be paid time and one-half for all time worked on the short turnaround shift that occurs within ten (10) hours of the scheduled end of the previous days' shift without regard to any overtime worked. An employee shall not be required to work more than 16 consecutive hours without his or her consent except in an emergency situation.

Section 6. Assignment to a Higher Rated Classification. Employees assigned to perform the duties of a higher rated classification on a temporary basis for ten (10) or more consecutive work days or for more than twenty (20) cumulative days in any calendar year, shall receive the pay applicable to the higher rated classification in an amount not less than five percent (5%) but not to exceed fifteen percent (15%) of the employee's base pay for the entire period of the assignment; provided, employees who, in connection with voluntary participation in supervised training, are assigned to perform duties normally assigned to employees in a higher rated classification, shall not receive the rate of pay applicable to the higher rated classification. Union officers and union stewards may refuse supervisory and managerial duties except in emergency or mission critical situations.

Section 7. Lead Worker Pay. An employee assigned to lead worker duties shall receive the pay applicable to the greater responsibility/accountability in an amount not less than 5% but not to exceed 15% of the employee's base pay for the entire period of the assignment provided employees who, in connection with voluntary participation in supervisor training are assigned to perform duties normally assigned to the supervisor shall not receive lead worker pay.

Lead Worker Definition: An employee in a Technical Occupation Group classification who has mastered full performance level and provides work direction to one or more employees. This may include duties such as: the distribution of work, employee training, and assisting and/or advising lower level employees. However, once a lead worker has executed these techniques and instructions the responsibility ends, and responsibility for work performance and evaluation rests ultimately with the supervisor.

Section 8. Telephonic Response. Employees who are authorized by the Employer to perform work via the telephone in an emergency or non-emergency situation, before or after their regularly assigned shift, in excess of de minima time, shall be compensated at straight time or overtime rate as appropriate. The Employer reserves the right to verify calls and require documentation of the call, including but not limited to: date, time, and length of call; time spent addressing the emergency or required work; name of client or contact; reason for the emergency or required work; and signature of employee.

Section 9. Multi-lingual Pay. In facilities or offices where it is deemed necessary to have on staff multi-lingual employees to facilitate communications with members of the public, and employees on

staff and assigned to the facility are available and capable of fulfilling such need, the Employer may designate a sufficient number of employees in the assigned work force to perform such duties and such employees shall be entitled to a differential in the amount \$0.10 per hour.

Section 10. New Hire Pay. When establishing the entrance salary of a new employee entering the classified service into a bargaining unit position with an employee(s) within the same work unit and location of an agency holding a like bargaining unit position performing the same work; the Employer will ensure that the entrance salary of the new hire does not exceed the midpoint of the pay band, unless the Employer determines that doing so is appropriate due to factors such as specialized qualifications, experience, education or certification appropriate to the occupation and job duties of the position, or administrative or court proceedings, or requirements of or pursuant to law, rule, or regulation.

ARTICLE 28. CONTINUATION OF BENEFITS

Employees shall enjoy all economic benefits contained in this Agreement. Where other or greater economic benefits are not contained herein, but are contained in legislative enactment or rule or regulation of the SPB, the Employer shall continue such economic benefits.

ARTICLE 29. BENEFITS

Thirty (30) days prior to any anticipated changes in benefits plans, programs, or premiums, the Employer will meet with the Union and discuss such changes.

ARTICLE 30. PHYSICAL EXAMINATIONS

Whenever the Employer requires a physical examination from a physician selected or approved by the Employer, and where applicable law allows such an examination, the employee will be on paid status for the amount of time to complete the examination and the Employer will pay the cost of such examination.

ARTICLE 31. SAFETY

Section 1. Health and Safety Standards and Measures. Safety is an integral part of the responsibilities of every manager, supervisor and employee. Safety management exists to assist managers, supervisors and employees in the better performance of their duties. Employees, supervisors and managers shall comply with such rules, regulations and practices as may be prescribed in order to provide safe, sanitary and healthful working conditions. For all employees covered by this Agreement, the Employer shall:

- A. provide safe and healthy working conditions and practices;
- B. comply with the federal Occupational Safety and Health Act (OSHA) and all other applicable federal, state and local laws and regulations, and departmental safety rules and regulations;
- C. provide safe, healthy, and clean work sites and grounds; and
- D. provide employees with adequate information on communicable diseases and infestations and hazards to which they may have routine exposure.

Section 2. Hazardous Duty. No bargaining unit employee, without his or her express permission, shall be required to work or come in contact with, or be in unreasonable proximity to, any hazardous liquid, chemical, gas, explosives, radioactive material, or vapor, unless the presence or use of such liquid, chemical, gas, explosives, radioactive material, or vapor is normal in the performance of his or her duties. The Employer shall provide employees with proper training and information on hazardous material and the risks of injury from hostile clients or residents.

Section 3. Risk to Employees. In all agencies of the Employer where there may be a high risk of a client, patient, or member of the public posing a threat of physical harm to employees, such employees who must interact with the above-mentioned people shall not be required to work at their work site, or where they are exposed to such risk or threat of physical harm, for periods of time when adequate security is not provided.

For purposes of facilities and agencies of the Employer where the treatment or placement of the client, patient, resident, or inmate, is predicated on the potential risk or threat of physical harm by such patient, client, resident, or inmate, adequate security is to be defined as the prior provision of equipment, tools, methods, and training to employees adequate to carry out their job duties in such facilities or agencies.

Section 4. Health and Safety Committees. To facilitate the development and active maintenance of safety management programs, Health and Safety Committees (hereinafter referred to as "HSC") are established. The Employer shall appoint a reasonable and equal number of management employees and the Union shall select an equal number of employees to an HSC in each agency of the Employer where there are employees covered by this Agreement. HSCs shall meet regularly at reasonable intervals based on the tasks needing to be accomplished and employee members shall attend on paid status. The Union and the Employer shall each designate one (1) of their respective members to serve as co-chair to the HSC. The agency HSC shall:

- A. Recommend safety and health standards specific to each agency's operations;

- B. Review agency loss control information to ensure adequate measures are being taken to prevent recurrence of the same or similar losses;
- C. Establish guidelines designed to minimize employee risk of becoming harmed by prisoner, client, or patient violence or abuse;
- D. Be briefed, upon request, by Employer representatives undertaking workplace redesign and seek remedies for workplaces with inadequate heating, ventilation, cooling, air quality, and workspace;
- E. Implement emergency evacuations plans; and
- F. Consider ways to promote good mental health in the workplace.

Upon mutual agreement the Agency Labor-Management Committee may serve as the Health and Safety Committee.

Section 5. Emergency Transportation. An employee who suffers an on-the-job injury or illness and requires immediate emergency care shall be transported to a treatment facility at the expense of the Employer.

Section 6. Reimbursement for Property Loss. Should employees, during the course of their duties, suffer damage to clothing or personal effects, including a motor vehicle, which are necessary to do their job, the Employer shall reimburse the reasonable cost, at actual market or depreciated value, of repair or replacement of such items. This section shall not apply to wear and tear and damage to personal effects normally associated with the work being performed. Where damages result in whole or in part from an employee's own negligence, the Employer shall not reimburse the employee for a proportion of the damages that is equivalent to the employee's proportion of fault.

Section 7. Critical Incident Stress Debriefing. The Employer shall provide employees appropriate and adequate Critical Incident Stress Debriefing [hereinafter referred to as "CISD"]. CISD is to be used for critical job-related incidents including, but not limited to, mass casualty, riots, work peer suicide, serious work injury, and/or work related death of co-worker. Such CISD shall include, when appropriate, initial debriefing, individual and group therapy and/or counseling, and/or follow-up. All debriefings and other CISD sessions shall be strictly confidential. Where Workers' Compensation benefits are available for an employee injury, this Section, if otherwise applicable, may be used to provide reasonable supplemental treatment not provided by Workers' Compensation.

ARTICLE 32. NEW TECHNOLOGY AND NOTIFICATION

Section 1. In the event the Employer makes technological or service improvements or changes production methods, the Employer will provide employees affected by such changes with adequate training, during normal working hours, to learn to use the new technology, services, or production methods.

Section 2. The Employer will provide employees affected by substantial changes with at least fifteen (15) work days advance notice prior to the changes being implemented unless impossible due to emergency or unforeseen circumstances.

Section 3. The Employer recognizes that relevant training opportunities should be made available to employees on a fair and equal basis. Accordingly, where feasible, before selecting employees for training, interest shall be solicited among all employees in the work unit in which the training is to be offered and selection of candidates made by Agency seniority in the work unit where all other factors are equal.

ARTICLE 33. ELECTRONIC MONITORING

Section 1. Electronic and telephonic data and communications may be monitored to ensure compliance with applicable State, Agency, and Department policies, to assist in the training and development of employees; identification of customer and client needs; and product evaluation. Such monitoring shall not be used to harass an individual or group of employees, nor will it be used to create an atmosphere of intimidation or pressure in the work environment.

The Employer will provide a copy of all new and existing policies governing electronic monitoring and will meet with the Union to discuss and/or explain the implications of those policies.

Section 2. Following monitoring, employees will be notified in a timely manner of their non-compliance of applicable policy. The notification will not result in the employee being disciplined unless misuse, abuse, fraud, or violation of applicable policies are involved at which time all rights afforded under Article 7 will apply.

ARTICLE 34. EDUCATION AND TRAINING

Section 1. Purpose. The Employer will establish and maintain education and training policies as it deems appropriate. The goals of this training are to improve a worker's proficiency in carrying out his/her current duties and acquire skills to meet the needs of the employee and the Employer.

Section 2. Educational Leave. The Employer, in accordance with respective Agency policies, unless negotiated in Supplemental Agency agreements, shall grant employees educational leave with or without pay to pursue special training, including licenses, certification, and sabbatical travel for educational and vocational training opportunities for career advancement. Requests for educational leave shall not be unreasonably denied.

All requests and responses shall be in writing. The Employer shall accommodate work schedules commensurate with the operational needs of the Employer to permit employees to pursue educational or vocational training opportunities.

ARTICLE 35. CERTIFICATION AND LICENSURE

In Agencies that require employees to be certified and/or licensed, the terms and conditions by which employees shall maintain their proper credentials, licensure, and/or certification shall be addressed in Agency supplemental bargaining in accordance with Article 40, Section 2 of this Agreement.

ARTICLE 36. EMPLOYEE ASSISTANCE PROGRAM

Within each Agency, employees who self-refer to an Employee Assistance Program (EAP) shall be entitled to paid administrative leave on the same basis as employees who are referred to an EAP by the Employer. In order to receive paid administrative leave, employees must sign an appropriate authorization to allow the Employer to verify attendance.

ARTICLE 37. UNIFORMS, TOOLS AND EQUIPMENT

In agencies that require employees to use or wear specific uniforms, protective clothing, tools, and/or equipment in the performance of their job duties, the terms and conditions by which such uniforms, protective clothing, tools, and/or equipment are provided shall be addressed in Agency supplemental bargaining in accordance with Article 40, Section 2 of this Agreement.

ARTICLE 38. WHISTLEBLOWER PROTECTION

Employees shall have the right, without interference or fear of penalty or reprisal, to disclose in good faith to internal auditors, Inspectors General, or other appropriate governmental authorities information that may evidence improper governmental activity (including, but not limited to, action that is in violation of any state or federal law or regulation; action that is economically wasteful; or action that involves gross misconduct, gross incompetence, or gross inefficiency) or conditions that may threaten the health or safety of employees or the public.

ARTICLE 39. CONTRACTING OF WORK

Section 1. Contracting Out. In the event the Employer decides to contract out work which has been traditionally performed by employees in the bargaining unit, it shall provide the Union with written notice, as soon as practical but not less than twenty-one (21) days prior to the proposed implementation, describing the work to be contracted, the basis for the decision to contract out the work, and the anticipated effect on employees. The Union may request bargaining within twelve (12) days of receipt of the notice. In the event of an impasse in bargaining the Employer may implement its last offer and the Union may not invoke impasse arbitration provided the Employer's action will not result in an employee's classification being downgraded, regular straight time hours being reduced, being laid off or being transferred more than 35 miles. If any such adverse actions would occur, the Employer may only contract out the work consistent with the resolution of the impasse by an arbitrator. Work "traditionally performed" shall not include work temporarily contracted out to meet emergency needs or mandates of higher authorities or work contracted out in accordance with existing practice.

Section 2. Returning Work to State Service. When the Union contends that work being performed under a service contract can be more economically, efficiently and qualitatively performed by employees in the bargaining unit, it shall notify the Employer of its contention in writing, supported by a statement setting forth the reasons why it believes such work can be more economically, efficiently and qualitatively performed by bargaining unit employees. The Employer will, upon specific written request, furnish the Union with information reasonably available and relevant to its analysis, subject to withholding such information after receiving valid written objections from the contractor on grounds of confidentiality or because of the proprietary nature of the information requested. Where the Employer, after reviewing the Union's contentions and conducting further analysis on its own, determines that the work can be more economically, efficiently, and qualitatively performed by employees in the bargaining unit, the parties shall jointly develop a plan to return such work to State service.

Section 3. Limitations on Contractor's Authority. Contractors providing services to a state agency may not hire, promote, or discipline employees in the bargaining unit. Contractors may only evaluate the performance of employees in the bargaining unit pursuant to or where otherwise required by rule, regulation, or law.

ARTICLE 40. MID-CONTRACT BARGAINING

Section 1. Changes in Statutes and Regulations. The parties recognize that from time to time the U.S. Congress, federal agencies, and the State Legislature may enact changes that affect terms and conditions of employment and that the State Personnel Board (SPB) may adopt, repeal, and/or modify its rules and regulations and that these legislative or regulatory actions may alter established terms and condition of employment or conflict with or nullify terms of this Agreement. Accordingly, within thirty (30) calendar days following the enactment of such legislative or regulatory action, if requested by a party hereto, the parties shall negotiate over the matter to the extent consistent with law.

Section 2. Agency Supplemental Bargaining. The parties acknowledge that there are terms and conditions of employment that are unique to employees covered by this Agreement who are employed in particular agencies which are not generally applicable to all employees covered by this Agreement. Accordingly, the parties agree to engage in supplemental bargaining at the Agency level to discuss and seek to agree to matters not controlled by federal or State legislation or regulation that uniquely affect Agency employees or as authorized by this Agreement. The Union must provide to each agency written notice of all such matters on which it desires to engage in supplemental bargaining within thirty (30) days of the effective date of this Agreement (for agencies added to the bargaining unit after the effective date of this Agreement, within thirty [30] days of Union certification), and supplemental bargaining shall be limited to such matters for the duration of this Agreement. Any supplemental agreements concluded shall be appendices to this Agreement. Supplemental agreements may not modify or conflict with the terms of this Agreement, prior to engaging in formal negotiations at the Agency level, the Employer and the Union shall first address the issue informally. In any circumstances where the parties engage in Agency supplemental bargaining, the parties shall resolve any impasse in accordance with the PEBA.

Section 3. Union Time for Employee Bargaining Representatives. Employee representatives engaged in mid-contract bargaining pursuant to law and/or this Agreement shall be released from duty without charge to pay or personal leave to participate in negotiations when otherwise in a duty status. Time to prepare for such negotiations may be granted at the Employer's discretion but, if not granted, employee representatives shall be granted reasonable amounts of paid time off (accrued vacation, compensatory time, etc.) or LWOP upon request. Nothing in this Section authorizes the payment of mileage and per diem for the time spent preparing for or engaging in negotiations. The number of employee representatives entitled to time under this Section shall be greater of:

- A. The number of management representatives involved in bargaining;
- B. One (1) employee representative for every two hundred (200) employees affected by such negotiation up to a maximum of thirteen (13) employee representatives;
- C. Three (3) employee representatives; or
- D. One (1) employee representative from each represented agency affected by such negotiations.

ARTICLE 41. WHOLE AGREEMENT

This Agreement shall be deemed the final and complete Agreement between the parties and, in conjunction with written supplemental and any other written Agreements reached between the parties, expresses the entire understanding of the Employer and the Union. In the event of a conflict between this Agreement and any other rule, law, regulation, or policy, the terms of this Agreement shall prevail unless the conflicting rule, law, regulation, or policy is considered as controlling authority in accordance with the PEBA.

ARTICLE 42. EXPIRATION

This Agreement shall take effect on July 21, 2009 and shall expire on December 31, 2011. If either party wishes to modify, annul, or terminate this Agreement or negotiate a successor, it shall give notice of its desire to reopen this Agreement for negotiations no later than July 1 of the year of expiration. Negotiations shall convene promptly after notice but no later than August 1. If either party provides notice to reopen for negotiations, this Agreement will continue in full force and effect until it is replaced by a subsequent written Agreement in accordance with the PEBA.

ARTICLE 43. WAIVER

Section 1. For the duration of this Agreement, the Employer is not obligated to bargain over Union initiated changes in terms and conditions of employment unless such changes are proposed pursuant to the terms of this Agreement.

Section 2. In addition to changes initiated pursuant to its Management Rights (Article 5 of this Agreement), the Employer reserves the right to propose other reasonable changes in the terms and conditions of employment of employees to meet legitimate public service and operating needs, and such changes are subject to negotiation in accordance with the PEBA or any other expedited impasse resolution procedures mutually agreed upon by the parties at the time of such negotiations.

ARTICLE 44. GENERAL SAVINGS CLAUSE

If any Article, Section, or provision of this Agreement is found to be invalid, unenforceable, or no longer appropriate by any board or court of competent jurisdiction, the specific Article, Section, or provision shall cease to be in effect. If this occurs, either party shall have the right to re-open negotiations with respect to the specific Article, Section, or provision of this Agreement found to be invalid, unenforceable, or no longer appropriate. All other provisions of this Agreement not found to be invalid, unenforceable, or no longer appropriate will continue to be in full force and effect and shall not be subject to renegotiation.

AGREEMENT SIGNATURES / UNION BARGAINING COMMITTEE

AGREEMENT SIGNATURES

In Witness whereof, the State and the Union have caused this Agreement to be executed by their authorized Representatives.

For the Communications Workers of America, AFL-CIO, CLC:



Jana Smith-Carr, District 7 Staff Representative

September 2, 2009



Robin A. Gould, Union Bargaining Committee Co-Chair

September 2, 2009

For the State of New Mexico:



Bill Richardson, Governor

September 2, 2009



Sandra Perez, State Personnel Director

September 3, 2009

UNION BARGAINING COMMITTEE

Lawrence G. Sandoval, Co-Chair
Robin Gould, Co-Chair
Janine Anton
Glen Carlberg
Thomas Espinoza
Paula Hopper
Michelle Lewis
Leona Maes
Michael Malinowski
Rosa Padilla
Eric Peters
Carl Reed
Betty Jean Shinas
Paul Singdahlsen
Thomas Scharmen
Mark Tapia

APPENDIX A - FILING A DISCIPLINARY APPEAL AND MAKING AN IRREVOCABLE ELECTION FOR ARBITRATION.

Within seven (7) calendar days of the receipt of notice of appeal and that an irrevocable election for arbitration has been made, the State Personnel Director shall notify the employee, the Union, and the Agency of his/her receipt.

Within seven (7) calendar days of the receipt of notice from the Director, the Union shall make a request for a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), unless the parties within such time period can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator.

Within seven (7) calendar days of the receipt of a list of arbitrators by both parties or agreement to an alternative panel, the parties will meet to select the arbitrator.

The selection shall be made by the Union and the Employer alternately eliminating names. The last name remaining shall be the arbitrator. The parties shall flip a coin to determine who shall strike the first name.

Each party shall pay one-half of the cost of obtaining the panel of arbitrators from FMCS, except that the Employer may elect not to pay one-half of the cost of obtaining a panel of arbitrators on the condition that it strikes the first name from the panel of arbitrators.

HEARINGS:

In accordance with the Personnel Act 10-9-18 (A)(H), the appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

In accordance with the Personnel Act 10-9-18 (C)(H), the technical rules of evidence shall not apply.

In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of rule 11-707 NMRA.

The Arbitrator shall admit evidence relevant only to those allegations against the employee included in both the notice of contemplated action and the notice of final action.

In the event that an interpreter is needed, due to visual or hearing impairment or due to non-understanding of English well enough to understand the proceedings, the party responsible for the person in need of the interpreter shall bear the burden of providing said interpreter.

RECORD OF THE HEARING:

In accordance with NMSA 10-9-18 (D)(H), a record shall be made of the hearing.

The hearing shall be recorded by a court reporter, video and/or audio-recording device, provided by the Employer, under the supervision of the Arbitrator. No other recording of the hearing, by whatever means, shall be permitted without the approval of the Arbitrator.

The Employer will provide a copy of the record to the Arbitrator and shall make a copy of the record available for review by the Union.

The Employer shall provide a copy of the record for submission to District Court in the event of an appeal.

DECISIONS OF THE ARBITRATOR:

The Arbitrator's decision shall be final and binding on the parties' subject to judicial review in accordance with NMSA 10-9-18 (G)(H).

The arbitrator shall not have authority to make an award that includes a fine or other punitive damages or award of attorneys' fees.

In the event of an appeal to District Court, the party staging the appeal shall prepare the Record Proper, subject to review by the other party prior to submission to District Court.

The appealing party will ensure there is ample time for review.

REINSTATEMENT:

In accordance with NMSA 10-9-18 (F)(H), if the Arbitrator finds that the action taken by the agency was without just cause, the Arbitrator may modify the disciplinary action or order the agency to reinstate the appealing employee to the employee's former position or to a position of like status and pay. The reinstatement shall be effective within thirty days of the Arbitrator's decision. The Arbitrator may award back pay as of the date of the dismissal, demotion or suspension or as of the later date the arbitrator may specify.

COST of ARBITRATION:

Each party shall pay one-half of the arbitrator's fees and expenses.

In the event that the Union does not represent the employee in their appeal before an Arbitrator the burden of representation and burden of cost falls on the employee.

APPENDIX B - CWA-COPE VOLUNTARY DEDUCTION FORM

PAYROLL NUMBER (IF REQUIRED)	SOCIAL SECURITY NUMBER	PRINT EMPLOYEE NAME
<h2 style="margin: 0;">PAYROLL AUTHORIZATION CARD</h2>		
<p>CWA-COPE POLITICAL CONTRIBUTIONS COMMITTEE</p> <p>I hereby authorize my employer to deduct from my wages the sum of \$ _____ each pay period and to remit such amount to the Communications Workers of America Committee on Political Education Political Contributions Committee. ("CWA-COPE PCC")</p>		
<p>THIS AUTHORIZATION IS VOLUNTARILY MADE BASED ON MY SPECIFIC UNDERSTANDING THAT:</p>		
FOLD HERE	<p>▶ The signing of this authorization card and the making of contributions to CWA COPE PCC are not conditions of membership in the union nor of employment with the Company and that I may refuse to do so without fear of reprisal.</p>	
FOLD HERE	<p>▶ I am making a contribution to a joint fund-raising effort sponsored by CWA-COPE PCC and the AFL-CIO Committee on Political Education Political Contributions Committee ("AFL-CIO COPE PCC") and that CWA-COPE PCC and AFL-CIO COPE PCC will use my contributions for political purposes, including but not limited to, the making of contributions to or expenditures on behalf of candidates for federal, state, and local offices and addressing political issues of public importance.</p>	
	<p>▶ Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation, and the name of employer of individuals whose contributions exceed \$200 in a calendar year.</p>	
	<p>▶ Contributions or gifts to CWA-COPE PCC and AFL-CIO COPE PCC are not deductible as charitable contributions for federal income tax purposes.</p>	
	Check one: _____ New Enrollment _____ Change of Amount	
	EMPLOYEE SIGNATURE _____	DATE _____ LOCAL NUMBER _____
	EMAIL ADDRESS _____	STREET ADDRESS _____ CITY _____ STATE _____ ZIP _____
	NAME OF EMPLOYER _____ OCCUPATION _____	
Authorized by the Communications Workers of America and the AFL-CIO on behalf of a joint fund-raising effort by CWA-COPE PCC and AFL-CIO COPE PCC.		

ADDENDUM 1. NEW MEXICO DEPARTMENT OF HEALTH

Article 1. Shift Selection for 24-hour Medical Facilities.

Section 1. As shift positions become vacant, the facility Human Resource office shall use previously submitted and received shift bid forms to identify the qualified employee with the most facility seniority and contact that employee regarding the vacancy. The facility Human Resource office will make offers to employees based on facility seniority, after ensuring that each shift is staffed with at least one-third of capable and qualified employees who have at least one (1) year of experience on the particular shift and the employees offered vacant positions meet any and all special qualifications for the position.

Section 2. Should it be necessary to make a change in the scheduling method or starting and ending times, the Employer will produce a suggested change in writing to the Union at least fifteen (15) calendar days prior to its proposed implementation and give the Union an opportunity to present a proposal for discussion regarding the change prior to the date of implementation as contemplated in Article 5(L).

This Section shall exclude changes in flextime as set forth in Article 12, Section 2.

Article 2. On-Call.

Employees may be required to remain in contact with the Employer outside of scheduled hours. Employees will be solicited on a rotational voluntary basis and selected by agency seniority so long as an employee has the necessary skill set to perform the particular on-call duties. If no volunteers are available, then the supervisor will designate employees capable and qualified to perform the work based on reverse agency seniority, so long as the employee has the necessary skill set to perform the particular on-call duties. Depending on the Employer's need, employees shall, be assigned on-call for one (1) day up to and including seven (7) consecutive days. Those employees assigned on-call duty will be compensated in accordance with current agency or division allowance. Employees listed on standby status in the SHARE system shall be compensated according to the regulations and procedures for on-call status.

Article 3. Uniforms, Tools, and Equipment.

Section 1. The Employer will provide for direct health care workers at the New Mexico Rehabilitation Center two (2) scrubs per year, the cost not to exceed \$12.50 per scrub. The employee is responsible for laundering the scrubs. The Employer agrees to provide two uniforms, consisting of a pair of pants and a shirt, to maintenance workers employed at the Turquoise Lodge and the New Mexico Rehabilitation Center. Maintenance workers will be required to wear these uniforms and launder the uniforms.

Section 2. Any and all safety items required by law and relevant DOH safety policy, including gait belts, safety belts, safety glasses, protective gloves, and protective clothing, will be supplied by the Employer.

Section 3. The Employer will provide the tools and equipment it deems necessary for the performance of the employee's job duties.

Section 4. The Employer shall provide all employees reasonable access to computers/internet service in order to remain current on matters pertaining to the State. Employees shall be given access before and after work, on breaks or at lunch. All State-issued memos will be hand-delivered to those employees who do not have a computer assigned to them for their use.

Article 4. Certification and Licensure.

Section 1. The Public Health Division shall designate an individual or entity that will ensure that in-house training provides employees with continuing education credits required to maintain credentialing.

Section 2. While ensuring appropriate staff coverage, DOH will allow employees to attend in-house training on state time.

Section 3. Employees must make every effort to attend available in-house training that would satisfy credentialing requirements.

Section 4. DOH shall designate a contact person(s) to respond to questions regarding training.

Section 5. In the event in-house training is not available, the DOH will approve reasonable in-state training requests that will allow employees to attend training on work time up to the number of hours necessary to maintain the credentialing required to perform their job duties.

Section 6. Employees whose license or credentials are required to perform their job duties and are dependent on continuing education will be provided with the first opportunity to take classes required to maintain their license or credentials prior to those whose training/education deadline is at a later date.

Section 7. Employees whose license or credentials are required as a condition of employment to perform their job duties may request and will be reimbursed in an amount up to \$90.00 each renewal period subject to the employee remaining employed for the entire renewal period in a position that requires the license or certification.

Article 5. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file with the current work location and address of each bargaining unit member.

Article 6. Filling of Vacancies. Vacancy Location.

Postings for job openings, on bulletin boards or on the SPO website, shall designate the specific office or worksite where the vacancy will be filled.

Article 7. Secured Access to Worksites.

At worksites where a security system is required to enter a secured building or workspace or facility, the use of such system shall be subject to the DOH policy and procedures governing that system.

Article 8. Temporary or Contract Nursing Personnel.

Contract nursing personnel shall receive an orientation to the facility or worksite and shall function under the direction and supervision of a qualified professional registered nurse. If the qualified professional registered nurse is a member of the bargaining unit, they shall thereby be eligible for lead worker pay.

ADDENDUM 2. NEW MEXICO ENVIRONMENT DEPARTMENT

Article 1. Tools and Safety Equipment.

The Employer will provide the following tools and safety equipment as needed to technical classifications as appropriate to job classification and assignment:

Safety equipment

Work footwear (i.e. steel toed boot, rubber boots), hard hats or bump caps, protective gloves, safety glasses, hair restraints, ball caps or hair nets, disposable dust masks, lab coats, rubber gloves, earplugs, safety vests, waders, respirators, dosimeters (measure radiation), Tyvek suits, special protection suits, and knee protection pads.

Tools and Other Equipment

Tools and other equipment shall be provided as appropriate to job classification and assignment and contingent on sufficient budget. Thermometers, alcohol swabs, flashlights and batteries, clipboards, chlorine test strips, temperature test strips, thermal strips, tape measures, shovels, levels, PH paper, filament tape, sample collection materials, hammers, screwdrivers, pry bars, pliers, socket set, notebooks, bound filed notebooks, blank CDs and blank DVDs.

The following equipment may be available as needed but may not be individually assigned: Cameras, cell phones, GPS, laptops, rain gear, PH meters, coolers, hand trucks (dollies), range finders, safety harnesses, measuring wheels, monitoring devices, multi gas meter (photoionization detector, explosive meter, oxygen meter), soil sampling supplies (sampling jars, aluminum foil), ropes, traffic cones, and bailers.

Software required to perform assignments efficiently may be provided, including GIS software, modeling software, word processing software, spreadsheet software, data analysis software, and e-mail.

Equipment and tools will be maintained by the Employer and replaced when the Employer determines it is worn out or replacement is otherwise necessary. Employees are responsible for reporting lost, broken or badly worn equipment or tools to their immediate supervisor as soon as possible.

The Employer will determine the brand, style and material of tools and safety equipment. Unless specifically noted the determination of providing other clothing, tools and equipment is reserved for the sole discretion of the Employer.

If, because of budgetary constraints, the Employer is unable to provide tools and other equipment deemed necessary by management to complete a specific task, the Employer shall not penalize the employee for not completing the specific task.

Article 2. Certification and Licensure.

If the Employer requires employees to be certified and/or licensed as a condition of the employee's continued employment, the terms and conditions by which employees shall maintain the employee's certification, and/or license, shall be identified by the Employer and made available in writing to each

employee so required. The Employer will reimburse, or pay for pre-approved costs associated with the maintenance of an employee's certification or license subject to budget appropriation.

Article 3. Travel.

Pre-approved work related travel time will be compensated in accordance with Article 13 – Overtime and Compensatory Time, Sections 3 and 4 and Article 12 – Hours of Work and Schedules, Section 3, paragraph 2. If an employee is offered public transportation but requests and is granted permission to drive their private car instead, the employee will be compensated only for the hours the employee would have traveled had they used public transportation. This will include reasonable travel time to and from the airport and reasonable time to check in through airport security and baggage check in and claim.

Article 4. Stand-by or On-Call Status.

Employees on stand-by status shall be compensated according to the regulations and procedures for on-call status.

Article 5. Bargaining Unit Information.

The Employer will provide a list of all offices and their corresponding addresses to the Union within 30 days of ratification and will provide updates when necessary. The Employer will also provide the first pages of the organizational listing which shows the names of the divisions, bureaus, and sections in the Environment Department.

Article 6. Bicycle Transportation Credit.

In the spirit of the State's Lead by Example initiative to reduce greenhouse gas emissions and the Bicycle Commuter Act within House Resolution 1424 (the bailout bill), the Employer shall support NMED employees who bicycle commute to work as follows. The LMC shall evaluate employee tax credits options. NMED's LMC shall compile and evaluate tax credit implementation options and recommend an implementation strategy to NMED's Cabinet Secretary by December 31, 2010.

Article 7. Supporting Working Parents with Newborn Babies.

NMED shall develop a workplace breast pump support policy no later than March 31, 2010.

ADDENDUM 3. MINERS' COLFAX MEDICAL CENTER

Article 1. Shift Selection.

Section 1. Whenever a shift vacancy exists within an established unit, the Employer shall fill the vacancy as quickly as possible, with a capable and qualified MCMC employee based on facility seniority.

Definition of units at MCMC: ER, ICU, MED\SURG, OB, OR, Long Term Care, Housekeeping, Dietary, Respiratory, Radiology, Laboratory, Laundry, Maintenance, and Admissions.

Section 2. The Employer shall continue the existing schedules. Any changes in scheduling are subject to Article 5, Section 2.

Article 2. On-Call.

Section 1. Based on facility or departmental staffing, the Employer will rotate the on-call assignment to employees who are qualified and capable of performing the on-call assignment.

Section 2. The Union will be provided an on-call list for each unit that requires employees to be on-call. The list will be provided when the on-call list changes.

Section 3. An employee assigned to on-call status in circumstances where time expended will not constitute compensable hours worked under the FLSA shall be paid an on-call rate of \$2.00 per hour or the current rate, whichever is greater.

Article 3. Call-Back.

If the employee returns home prior to the end of the 2-hour period and is called back within that 2-hour period, the employee will not receive an additional 2 hours of pay. If the time worked exceeds the 2 hour limit the employee will receive either straight time pay or overtime, depending on the circumstance.

Article 4. Shift Differential.

Shift differential will be paid to all employees for hours worked on a premium shift (evening, night, and weekend shifts) in accordance with current differential rates and will continue to be in full force and effect throughout the term of this agreement.

Article 5. Uniforms, Tools, and Equipment.

Section 1. The Employer shall provide, maintain, and clean scrub suits in the Operating Suite and lab coats in Respiratory, Medical Laboratory, and Radiology at no cost to the employees.

Section 2. Tools and equipment needed for employees to perform their job duties, as deemed necessary by the Employer, shall be furnished and maintained by the Employer.

Section 3. The Employer shall provide all employees reasonable access to computers/internet in order to remain current on matters pertaining to the State.

Article 6. Certification and Licensure.

If the Employer requires employees to be certified and/or licensed, the terms and conditions by which employees shall obtain and maintain their proper credentials, certifications, and/or license, shall be identified by the Employer and made available in writing to each employee who is required to be certified and/or licensed. Additionally, the Employer shall cover all costs associated with programs or trainings necessary for obtaining or maintaining proper credentials, certification, and/ or licensure.

If the Employer does not offer the program or training in-house and it is required as a condition of employment, the Employer shall cover all costs based on management’s prior approval and budgetary constraints. However, if the employee fails to attend the in-house training without prior approval from management, the employee bears all costs, unless the absence is due to an unforeseen circumstance, such as illness.

Article 7. Bargaining Unit Information.

The Employer shall provide the local union a key for the work site codes that appear on the OL. This key shall be updated as necessary.

ADDENDUM 4. COMMISSION ON THE STATUS OF WOMEN

Article 1. Work Assignment.

Accommodations in work assignments shall be made for employee's participation in community programs.

Article 2. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file of the work location and address of each bargaining unit member.

ADDENDUM 5. DEPARTMENT OF CULTURAL AFFAIRS

Article 1. Certification and Licensure.

Section 1. When the Employer requires an employee to be certified and/or licensed as part of the terms and conditions of their employment, the Employer shall document these requirements in a Position Assignment Questionnaire (PAQ) and Employee Development Appraisal (EDA) form or equivalent current forms.

Section 2. In the event the Employer modifies an employee's PAQ to require a certification or license, then all costs associated with obtaining proper credentials, certification, and/or licenses shall be paid by the Employer when the certification and/or license is a requirement for the position.

Section 3. The Employer shall not require an employee to perform a task that requires a license for which the employee is not certified.

Article 2. Uniforms, Tools and Equipment.

Section 1. DCA agrees to continue the existing purchase practice of providing uniform clothing at each of the museums and monuments for employees who are required to wear a uniform and that management deems necessary.

Section 2. DCA agrees to continue the existing practice of providing and maintaining tools and equipment that management deems necessary for the employee to perform their job duties.

Section 3. DCA agrees to continue to provide the existing practice of providing reasonable access to computers/internet service in order to remain current on matters pertaining to the State.

Article 3. On-Call.

Section 1. Based on staffing, the Employer will rotate the on-call assignment to employees who are qualified and capable of performing the on-call assignment. Rotation through on-call will be based on agency seniority.

Section 2. An employee assigned to on-call status in circumstances where time expended, will not constitute compensable hours worked under the FLSA. On-call compensation shall be granted at the rate of 1/8 hour for each hour on-call. Whenever the term "stand-by" is used, it shall be considered the same as "on-call".

Article 4. Parking.

The parties, recognizing that there is an absence of available automobile parking space for Department of Cultural Affairs (DCA) employees downtown Santa Fe agree to continue the parking task force comprised of four (4) employees from each party. Task force is charged with recommending solutions to parking problems affecting DCA employees in downtown Santa Fe, and these recommendations shall be considered for implementation within budget.

Article 5. Filling of Vacancies.

Whenever a vacancy exists in a specific classification, within a specific museum or division, an employee with the highest agency seniority who is employed within that museum or division, who has the same classification as the vacant position, and who is capable and qualified shall be permitted to select the vacant work schedule. Following the filling of the vacant position, no more than one subsequent work schedule change may occur for that vacancy.

Article 6. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file of the work location and address of each bargaining unit member.

ADDENDUM 6. ORGANIC COMMODITIES COMMISSION

Article 1. Training.

Staff will have access to essential training in areas appropriate and pertinent to their jobs, subject to budget availability.

ADDENDUM 7. WORKERS COMPENSATION ADMINISTRATION

Article 1. Certification and Licensure.

The Employer will continue its present practice of paying for the cost of providing workers with additional training opportunities within budgetary constraints.

Article 2. Filling of Vacancies.

In-house applicants. All in-house applicants determined by WCA to meet or exceed all established requirements shall be given the opportunity to interview for posted vacancies.

Article 3. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file of the work location and address of each bargaining unit member.

ADDENDUM 8. GENERAL SERVICES DEPARTMENT

Article 1. Tools and Safety Equipment.

Section 1. GSD agrees to continue the existing practice of providing uniform clothing for employees who are required to wear a uniform and that management deems necessary.

Section 2. GSD agrees to continue the existing practice of providing and maintaining tools and equipment that management deems necessary for the employee to perform their job duties.

Section 3. Equipment and tools will be maintained by the Employer and replaced when the Employer determines it is worn out or replacement is otherwise necessary. Employees are responsible for reporting lost, broken or badly worn equipment or tools to their immediate supervisor as soon as possible.

Section 4. GSD agrees to provide reasonable access to computers/internet service in order to remain current on matters pertaining to the State.

Article 2. Certification and Licensure.

Section 1. When the Employer requires an employee to be certified and/or licensed as part of the terms and conditions of their employment, the Employer shall document these requirements in a Position Assignment Questionnaire (PAQ) and Employee Development Appraisal (EDA) form.

Section 2. In the event the Employer modifies an employee's PAQ to require a license, then all costs associated with obtaining proper licensure shall be paid by the Employer when the license is a requirement for the position.

Section 3. The Employer shall not require an employee to perform a task that requires a license for which the employee is not certified.

Article 3. Travel.

Pre-approved work related travel time will be compensated in accordance with Article 13 – Overtime and Compensatory Time, Sections 3 and 4 and Article 12 – Hours of Work and Schedules, Section 3, paragraph 2.

Article 4. Shift Selection.

Section 1. Upon ratification the Employer will identify work units requiring shift schedules and shall post said schedules.

Section 2. Whenever a vacancy occurs within an established shift schedule, the Employer shall fill the vacancy as follows: 1) based on agency seniority within the same classification, then 2) by those employees who wish to bid for the shift, and 3) by posting externally.

Section 3. The Employer may suspend the provisions of this article in the event of an emergency. Prior to the suspension, the Employer must notify the Union.

Article 5. On-Call.

Section 1. Based on facility or departmental staffing, the Employer will rotate the on-call assignment to employees who are qualified and capable of performing the on-call assignment. Rotation through on-call will be based on agency seniority.

Section 2. The Union will be provided an on-call list for each unit that requires employees to be on-call. The list will be provided when the on-call list changes.

Section 3. An employee assigned to on-call status in circumstances where time expended will not constitute compensable hours worked under the FLSA shall be paid an on-call rate of at least \$1.70 per hour or the present rate paid by the Agency if the amount is greater.

Section 4. Employees on stand-by status shall be compensated according to the regulations and procedures for on-call status.

Section 5. Employees who are on-call and are unable to report due to an unforeseen event will not be disciplined, provided the on-call employee ensures coverage by contacting another on-call employee and the BSD supervisor or manager. This section does not prevent the Employer from imposing discipline in the event of abuse.

Article 6. Training.

Section 1. Staff will have access to essential training in areas appropriate and pertinent to their jobs with division/management approval and within budgetary constraints.

Section 2. An employee can request remedial or additional training.

Article 7. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file of the work location and/or campus and work address of each bargaining unit member.

ADDENDUM 9. PUBLIC EDUCATION DEPARTMENT

Article 1. Training.

Staff will have access to essential training in areas appropriate and pertinent to their jobs, within budgetary constraints.

Article 2. Certifications and Licensures.

Employees whose license or certification are required as a condition of employment to perform their job duties may request and will be reimbursed for that specific license or certification in an amount up to \$50.00 each renewal period.

Article 3. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file of the work location of each bargaining unit member.

ADDENDUM 10. OFFICE OF THE STATE TREASURER

Article 1.

All bargaining unit employees at the State Treasurer's Office shall have the same opportunities as other classified state employees if the Governor offers administrative leave for inclement weather or leave as contemplated in Article 19, Section 3.

Article 2. Security.

At worksites where a security system is required to enter a secured building or workspace, within six (6) months of ratification of the CBA, the agency will develop a policy that will outline the use of the security system.

ADDENDUM 11. COMMISSION FOR THE BLIND

Article 1.

All bargaining unit employees at the Commission for the Blind shall have the same opportunities as other classified state employees if the Governor offers administrative leave for inclement weather or leave as contemplated in Article 19, Section. Subject to a determination by the agency head or his/her designee that the particular employee is an essential employee and has to remain or be on duty for reasons of safety, security, or other legitimate business reasons.

Article 2. Training.

Staff will have access to training deemed by management as necessary and appropriate to the job within budgetary constraints.

Article 3. Certification and Licensure.

If the Employer requires vocational rehabilitation counselors to be certified and/or licensed as a condition of the employee's continued employment, the terms and conditions by which employees shall maintain the employee's certification, and/or license, shall be identified by the Employer and made available in writing to each employee so required. The Employer will reimburse, or pay for pre-approved costs associated with the maintenance of an employee's certification or license subject to budget appropriation.

Article 4. Bargaining Unit Information.

The Employer will provide the local union twice a year (April and October) with an electronic file of the work location and address of each bargaining unit member.

ADDENDUM 12. DEPARTMENT OF INFORMATION TECHNOLOGY (DoIT)

Article 1. Uniforms, Tools and Safety Equipment.

Section 1. If uniforms are deemed necessary and appropriate for Security employees only of DoIT, the selection and type of uniform required will be determined and provided by the Employer, as needed and appropriate, and within budgetary constraints.

Section 2. DoIT will provide and maintain tools and equipment that management deems necessary for employees to perform their job duties, within budgetary constraints.

Section 3. The DoIT will provide the following tools and safety equipment, as needed, to employees in technical classifications as appropriate to job classification and assignment and within budgetary constraints:

- A. Safety Equipment: Communications Tower Climbing Safety Equipment including Accessories; First Responder Medical Kits; Inclement Weather Gear (Hot/Cold); Multiple Type Fire Extinguishers; Animal/Insect Deterrent/Bit Kits/Products; Gloves (Leather, Vinyl, Latex); Water Coolers; Vehicle Safety Kits, including but not limited to Shovel, Pick, Saw, Axe, Warning Devices.
- B. Tools and Other Equipment: Radio Communications Test Set(s)/Equipment, including but not limited to Service Monitors, Spectrum Analyzers, VOM Meters, Power Meters, Frequency Counters, DATA Analyzers, Wireless Analyzers, PC's/Laptops, Transmission Test Sets, Electronic Technician Tool Sets, Mechanical Technician Tool Sets, Microwave Alignment Test Sets(s) Equipment, Path Aligners, Writing Utensils/Material.
- C. The following equipment is available as needed and approved by management, but may not be individually assigned: Cell Phones, Cameras, GPS.
- D. Equipment and tools will be maintained by DoIT and replaced when DoIT determines it is worn out or replacement is otherwise necessary. Employees are responsible for reporting lost, broken or badly worn equipment or tools in writing to their immediate supervisor as soon as possible, but no later than 24 hours after first becoming aware of an issue regarding the piece of equipment or tool, or within 24 hours of returning from a field situation.
- E. DoIT will determine the brand, style and material of the tools, and safety equipment. Unless specifically noted, the determination of providing other clothing, tools, and equipment is reserved for the sole discretion of the Employer.

Article 2. Certification and Licensure.

When the DoIT requires an employee to be certified and/or licensed as a condition of employment, DoIT shall document these requirements on a Position Assignment Document Form (PADF) and Employee Evaluation Form, or whatever appropriate personnel form exists for such purposes. If certification and/or licensure is required as a condition of employment, DoIT will pay for preapproved costs associated with maintaining an employee's certification or license.

Article 3. Training.

DoIT employees will have access to essential training in areas appropriate and pertinent to their jobs within budget constraints.

Article 4. Stand-By or On-Call Status.

Section 1. Based on department staffing, the Employer will rotate the on-call assignment to employees who are qualified and capable of performing the on-call assignment. Rotation through on-call will be based on agency seniority.

Section 2. Stand-By/On-Call.

Stand-By/On-Call time is defined as non-duty hours when an employee is required to remain in telephone or other electronic contact in order to respond to an emergency or non-emergency situation. An employee Stand-By/On-Call is not restricted to his/her home, duty station or any other location, but must be in electronic or telephone contact and/or have computer access in order to respond to emergencies. Employees will be given reasonable notice when they are directed to be on Stand-By/On-Call.

Those employees assigned Stand-By/On-Call will be compensated at 1/8 their hourly rate of pay.

Article 5. Bargaining Unit Information.

The Employer will provide the local union with an electronic file of the work location and physical address of each DoIT building, as necessary and within 30 days of ratification.

Article 6. Filling of Vacancies.

All in-house applicants determined by DoIT to meet or exceed all established requirements shall be given the opportunity to interview for posted vacancies, if they can be contacted to schedule an interview and are available at the scheduled interview time.

Article 7. Shift Selection.

Section 1. Whenever a vacancy occurs within an established shift schedule, DoIT shall fill the shift vacancy based on the following: (1) Employee seniority within the same classification; (2) knowledge, skills and abilities of other internal candidates; (3) posting the vacancy externally.

Section 2. DoIT may suspend the provisions of this article in the event of an emergency.

ADDENDUM 13. BEHAVIORAL HEALTH DIVISION, HUMAN SERVICES DEPARTMENT

Article 1. Training.

Staff will have access to training, considered by division management to be essential and pertinent to their jobs, within budgetary constraints.

Article 2. Certification and Licensure.

In the event the Employer requires employees to be certified and/or licensed as a condition of the employee's continued employment, the terms and conditions by which employees shall maintain the employee's certification and/or license, shall be identified by the Employer and made available in writing to each employee so required. The Employer will reimburse, or pay for pre-approved costs associated with the maintenance of an employee's certification or license subject to budget appropriation.