

## **PREAMBLE**

This Memorandum of Understanding ("Agreement") is entered into by the State of Maryland ("Employer") and the American Federation of State, County and Municipal Employees, AFL-CIO and Teamsters ("Union"), and has as its purpose the promotion of harmonious relations between the Employer and the Union; the establishment of an equitable and peaceful procedure for the resolution of differences without disruption in the workplace; and includes the agreement of the parties on the standards of wages, hours and other terms and conditions of employment for the Bargaining Unit H employees covered hereunder. The Employer recognizes the commitment of the Union and employees to organizational efficiency and high quality services and will actively encourage the sharing of concerns regarding management practices, policies and procedures.

It is understood that agreements on issues requiring approval by the General Assembly of Maryland are tentative pending approval of the General Assembly of Maryland. The provisions of this Agreement shall in no way diminish or infringe any rights, responsibilities, power or duties conferred by the Constitution of the State of Maryland, the Annotated Code of Maryland and the Collective Bargaining Law (Title 3, State Personnel and Pensions Article) and all laws are hereby incorporated in this agreement as if fully set forth herein, and in the event of a conflict between this Agreement and the law, the law shall prevail.

## **ARTICLE 1. RECOGNITION**

### **Section 1. Exclusive Representation**

Pursuant to the Collective Bargaining Law (Title 3, State Personnel and Pensions Article), the Employer recognizes the Union as the sole and exclusive representative in all matters establishing and pertaining to wages, hours and other terms and conditions of employment for all employees in Bargaining Unit H. The Employer will not negotiate with any other union or employee organization on matters pertaining to wages, hours and other terms and conditions of employment for all employees in Bargaining Units and will not allow non-exclusive representatives or other employee organizations to address new employees at orientation meetings.

### **Section 2. Integrity of The Bargaining Unit**

Unless otherwise provided by law, the Employer recognizes the integrity of the bargaining unit and will act consistently with the current policy to use State employees to perform all State functions in State operated facilities in preference to contracting out with the private sector. In the event the Employer proposes to use non-bargaining unit individuals to displace continuing bargaining unit positions, it will provide the Union with notice at the earliest opportunity, but normally notify the union at least sixty (60) days in advance (unless circumstances require a shorter notice) and be available to meet with the Union within one week after the notice is sent. Supervisors will not be assigned posts for the purpose of limiting overtime opportunities for bargaining unit employees except when fiscal or operational exigencies necessitate.

### **Section 3. Inclusion/Exclusion Of Existing And New Classifications**

If it is believed that the bargaining unit status of a classification has changed, the Employer or the Union, whichever is proposing the change, shall notify the other. Following such notice, the parties shall meet and attempt to resolve the issue. The Employer will promptly notify the Union of all decisions to establish new classifications. If a new classification is a successor title to a classification covered by this Agreement with no substantial change in duties, it shall become part of this bargaining unit. If a new classification contains a significant part of the work done by any classification in this bargaining unit or shares a community of interest with classifications in this bargaining unit, it shall become part of this bargaining unit. The Union may notify the Employer, within thirty (30) days of receiving notice of a new classification, that it believes the classification should be in this bargaining unit. The parties will then meet to review the classification specifications and attempt to resolve the issue. If, within thirty (30) days of such notice, such issues are not resolved in determining the inclusion/exclusion of classifications, the parties shall consider the following factors:

- a. the community of interest of the employees involved;
- b. the Employer's organizational structure;
- c. The Collective Bargaining Law (Title 3, State Personnel and Pensions Article);
- d. the principals of efficient administration of government, including limiting the fragmentation of government administrative authority; and
- e. the recommendations of the parties involved.

### **Section 4. Correctional Facilities**

All references to correctional facilities in this agreement shall include Clifton T. Perkins Hospital.

## **ARTICLE 2. NON-DISCRIMINATION**

### **Section 1. Prohibition Against Discrimination**

It is the policy of the State to prohibit discrimination in employment against any employee or applicant for employment because of race, age, color, religion, creed, sex, sexual orientation, political affiliation, country of national origin, ancestry, genetic information, gender identity or expression, mental or physical disability, marital status, or labor organization affiliations, and to promote and implement a positive and continuing program of equal employment opportunity.

It is the policy of the Union that it shall not discriminate against any employee or cause or attempt to cause the State to discriminate against any employee because of race, age, color, religion, creed, sex, sexual orientation, political affiliation, country of national origin, ancestry, genetic information, gender identity or expression, mental or physical disability, marital status or labor or organization affiliation.

### **Section 2. Union Activity**

Each employee shall have the right to join and while off work or on official release time, assist the Union freely, without fear of penalty or reprisal, and the Employer shall assure that each employee shall be protected in the exercise of such right.

### **Section 3. Equal Employment/Affirmative Action/ADA**

The parties agree to comply with applicable Federal and State Equal Employment laws, Affirmative Action laws, and with the Americans with Disabilities Act.

### **Section 4. Representation**

The Union recognizes its responsibility as the exclusive bargaining representative for this unit and agrees to fairly represent all employees in the bargaining unit to the extent required by applicable law and regulations.

## **ARTICLE 3. MANAGEMENT RIGHTS**

The Employer retains the sole and exclusive authority for the management of its operations and may exercise all rights, powers, duties, authority and responsibilities conferred upon and invested to it by all laws including, but not limited to, the Collective Bargaining Law (Title 3, State Personnel and Pensions Article).

It is agreed by the parties that any section of this MOU that conflicts with current law, in particular the Collective Bargaining Law (Title 3, State Personnel and Pensions Article), can be changed by management after negotiations with the Union; to the extent required by Article 32 (Mid Contract Negotiations).

It is understood and agreed by the parties that the Employer possesses all other power, duty and right to operate and manage its departments, agencies and programs and carry out constitutional, statutory and administrative policy mandates and goals.

## **ARTICLE 4. UNION RIGHTS**

### **Section 1. Access**

The Employer agrees that it shall not discourage bargaining unit employees from Union membership or participation in lawfully permitted activities in the exclusive representative's Union. Local representatives, officers and Union staff representatives shall have reasonable access to the premises of the Employer with prior notice and approval by the Employer for the reason of administration of this Agreement.

The Union agrees to notify the Employer at least five (5) days in advance of a non-emergency, mass meeting. In emergency situations, the Union may call a meeting during work hours to prevent, resolve or clarify a problem with prior reasonable notice to and approval by the Employer. In addition, upon reasonable notice to and approval by the Employer and consistent with security and public service requirements, union representatives shall have access to the Employer's premises for the purpose of membership recruitment. Approval for access described in this section shall not be unreasonably denied.

## **Section 2. Stewards**

The Employer will recognize stewards designated by the Union who will be responsible for investigating and processing grievances and participating in any hearings or conferences related to the grievance. Typically, a grievance will have no more than one (1) steward in attendance, unless the presence of a second steward is part of the training process for the second steward, in addition to a staff representative, but there shall be no more than two (2) stewards in attendance at all times. In addition, at all correctional facilities, there shall be a primary and an alternate steward designated by the Union on all primary shifts who will be responsible for non-grievance activities related to the administration of this agreement and coordinating the activities of other stewards, to ensure the efficient use of release time.

The Union will notify the appropriate agency personnel director in writing of the names of the designated stewards prior to them assuming any duties. Designated stewards shall be allowed a reasonable amount of duty time without charge to pay or leave to administer the Agreement and otherwise represent employees in accordance with the Collective Bargaining Law (Title 3, State Personnel and Pensions Article), law or regulation. To the extent necessary to participate in hearings and meetings, a designated steward's shift shall be adjusted so that such participation shall be on official duty time. Release from duty and shift adjustments will not be unreasonably denied and will be consistent with the operational needs of the Employer.

## **Section 3. Union Activity During Working Hours**

The Employer and the Union recognize that stewards play an important role in effectuating the terms of this agreement; however, both parties acknowledge that the duties undertaken as a steward are in addition to the stewards' job assignments.

Consistent with the operational needs of the Employer, the Employer shall grant time off with pay, including reasonable travel time when necessary, to attend:

- 1) grievance meetings;
- 2) Labor Management Committee meetings;
- 3) negotiating sessions regarding supplementation or amendment of this Agreement during its term;
- 4) committee meetings and activities if such meetings or activities have been jointly established by the parties; or
- 5) meetings called or agreed to by the Employer, if such employees are entitled and required to attend the meetings by virtue of being Union representatives or stewards.

Release hours will not exceed the employee's normally scheduled workday. Time off with pay will not be unreasonably withheld. The Union will normally provide the Employer with the names of its representatives who need release time within 48 hours of the scheduling of the meeting.

Union representatives shall be allowed reasonable work time to complete assignments that have been assigned by the Labor Management Committee. The employee's supervisor shall approve when the time can be taken.

The practices described in § 12-405 of the State Personnel and Pensions Article shall apply to grievants, witnesses and Union representatives.

The practices described in the current Transportation Human Resources Policy §7I, Subsection 10, shall be maintained.

#### **Section 4. Release Time Account For Union Activities**

On July 1 of each year, the Employer shall credit the Union's release time account with one (1) day for every fifteen (15) dues paying members. Union representatives will be allowed time off with pay charged against the Account consistent with the operational needs of the Employer for Union business such as state or area-wide committee meetings or state or International conventions, preparation time for negotiations or Labor-Management Committee meetings, and union sponsored labor relations training provided such representative provides reasonable notice to his/her supervisor of such absence.

Reasonable notice for Union sponsored meetings and conventions listed above is at least thirty (30) days and the employer shall respond within ten (10) days of receiving the representative's notice. Such time off will not be detrimental in any way to the employee's record and will be specifically taken into account when applying performance standards relating to quantity and timeliness of work. Time may be used in one (1) hour increments. Time off with pay will not be unreasonably withheld.

#### **Section 5. Release From Duty Issues**

The parties recognize their respective obligations to grant and utilize release time authorized by this Agreement in an efficient manner in the context of effective and efficient government operations. To this end, the Employer and the Union shall each designate a person to discuss and resolve issues associated with release from duty or time off. Due to geographical factors, more than one team may be created. An employee's supervisor may require the representative to provide the request for release time in writing. Requests for release time in accordance with this Agreement or State policy shall routinely be granted. When the Employer denies time off based on operational needs in accordance with this Agreement, it shall, upon written request of the Union, provide the reasons in writing and shall advise the representative when he/she can obtain the time off. Time off under this provision shall not be arbitrarily denied.

#### **Section 6. Meeting Space**

Union representatives may request the use of state property to hold union meetings. Upon prior notification, the Employer will provide meeting spaces where feasible. Such meetings will not interrupt state work and will not involve employees who are working. The Employer shall make space available for Union representatives to have confidential discussions with employees on an as-needed basis subject to availability.

## **Section 7. Union Offices**

Where the Union is currently provided with office space, such space shall be maintained. In locations where the Union does not have office space, Union representatives shall be permitted to have a lockable Union provided filing cabinet in space provided by the Employer at the Employer's premises.

## **Section 8. Routine Office Supplies**

Union representatives are authorized to make reasonable use of copiers, FAX machines, computers and other office equipment for representational purposes, provided such use does not interfere with official State business. Union representatives shall request permission to use such equipment. Approval for use will not be withheld unless such use interferes with official State business.

## **Section 9. Bulletin Boards**

The Employer shall provide lockable bulletin boards at each work location in areas mutually agreed to on a local basis, for the exclusive use of the Union. The Union shall be responsible for all items posted on the bulletin board. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that items are not illegal, defamatory, political, or partisan and that no item is detrimental to the safety and security of the institution. At the time of posting, the Union shall provide a copy of all items to the Employer. The Employer shall not permit the posting of notices by non-exclusive representative employee organizations on Employer bulletin boards.

The Union shall be permitted to use internal state mail systems, including computer/electronic mail, for membership and bargaining unit mailings and for communication with the Employer. Confidentiality shall be maintained subject to the Employer's security needs. Where available, the Employer shall provide the Union with email addresses for bargaining unit members.

Before sending out mass or bulk emails, the Union shall consult with the agency personnel director to ensure that the agency's email system can accommodate such a transmission. In the event that a single mass or bulk email cannot be accommodated because of system limitations, the agency personnel director shall work with the Union to determine the appropriate size of bulk or mass emails. The Union will then be permitted to send smaller mass or bulk emails as needed.

## **Section 11. Distribution of Union Information**

At non-secure facilities, the Union shall be permitted to place and distribute materials at mutually agreed to locations frequented by employees, before and after work, and during breaks and meals periods.

At secure facilities, the Union shall be permitted to place informational materials for employees at the work site. The placement will be limited to roll call areas, and in or near officers' dining room. The information shall be placed at a table provided by the Employer and may have a sign of identification. This placement must be done by an employee or a Union staff representative designated by the Union during the employee's non-working hours. Distribution of materials will be done in a non-secure area during non-work hours.

## **Section 12A. New Employee Orientation**

The Union will provide each agency personnel director with the names and addresses of up to two (2) authorized Union representatives per agency to receive notice of each formal orientation meeting held by the Department. The notice will be sent as soon as such meetings are scheduled (but not less than ten (10) days in advance) and will include date, time and location. Due to operational exigencies, agencies may schedule an orientation which will provide the Union with less than the requisite ten (10) days notice; however the Union shall be notified as soon as possible after the scheduling of the orientation and the Union representative shall be released from duty. Agencies shall routinely schedule orientations in a manner that will allow for the ten (10) day advance notice to the Union.

During the formal orientation, the Union will be permitted to give a twenty (20) minute presentation which may include an enrollment in supplemental Union benefits. The parties shall encourage employee attendance, although attendance shall not be mandatory if an employee objects to attending the presentation.

In the event a formal orientation meeting is not held, or the Union is unable to attend the formal orientation because the designated Union representatives cannot be released under Article 4, the Employer shall allow the Union representative and the employee(s) to meet during duty hours at a mutually agreed upon time and location for twenty (20) minutes. Employee participation in these meetings shall be encouraged although an employee shall not be required to attend such a meeting.

## **Section 12B. Agreement Orientation**

The parties recognize that it is important for employees covered by this agreement to understand all of its terms and conditions as well as the contract administration matters that may occur during its duration.

Accordingly, the Union shall provide an annual orientation on the agreement to all current employees at all agencies and correctional facilities that conduct in-service training. The Orientation shall be held during a lunch period. The Union will be provided space (such as a classroom) and will be allowed to provide meals consistent with facility security procedures. Employee attendance is voluntary.

In agencies where the Employer does not require in-service training, the Union will be provided space to conduct an annual orientation on the agreement for all current employees to attend on non-duty time (before and after work or during lunch). The Union will be allowed to provide meals consistent with facility security procedures. Employee attendance is voluntary.

## **Section 13. Information Provided To The Union**

In accordance with SPP §3-208, the employer shall provide, upon the written request of the Union, for each employee in the bargaining unit employee represented by the Union :

- a. name;
- b. Position classification;

- c. Bargaining unit;
- d. Home and work site addresses where the employee receives interoffice or US Mail; and
- e. Home and work site telephone numbers.

The Union may present a written request for employee information twice every calendar year. The employer may charge the Union a fee not to exceed the actual cost of providing a list of employees' names, addresses, telephone numbers and work information to the Union. Employees may notify the employer that they do not want the information described in this section released to the Union in accordance with SPP §3-208(d). The Union shall abide by the restriction concerning the use of information as provided for in SPP §3-208 (e), (g) and (h).

Additional information, such as work e-mail address will be made available to the Union by each Department to the extent such information is readily available in an automated fashion.

#### **Section 14. Exclusivity**

No organization other than the exclusive representative shall have access to worksites or otherwise be provided with access to facilities and services of the employer unless they are doing business with the State or except as required by State or federal law.

### **ARTICLE 5. LABOR MANAGEMENT COMMITTEES**

#### **Section 1. Labor/Management Committees**

The parties recognize that the holding of periodic meetings for the exchange of views and information contributes to the effectiveness of the labor/management relationship. Therefore, the parties shall establish Labor/Management Committees (LMC), in accordance with the provisions in this Article, for the purpose of addressing matters of concern in the areas of personnel policies, practices, conditions of employment, and other matters affecting employees. Each LMC will be co-chaired by one member from labor and one member from management.

#### **Section 2. Agency LMC's**

LMCs will be established in each agency with employees covered by this Agreement. For the purpose of this Agreement, the agencies and number of members from labor and management in each LMC are as follows:

- Division of Parole and Probation: 7
- Division of Pretrial Detention and Services: 4
- Department of Juvenile Services: 8
- Clifton T. Perkins: 3
- Patuxent Institution: 3
- Division of Corrections: 12
- Building Guards: 3

To the extent an LMC will discuss matters affecting employees from other units, the parties shall expand membership on the LMC to accommodate representation from other units.

The LMCs will meet at least quarterly. The parties shall exchange agenda items at least two weeks prior to the meeting. Agency LMCs may establish permanent or ad hoc subcommittees. In order to provide for a full discussion of issues, in addition to the number of representatives described in this Article, and upon prior notification, the Union may have up to three Union officials who are not on release time, attend the LMC meetings. The Employer may also have up to three additional representatives. Exceptions may be made upon agreement of both parties.

### **Section 3.**

The local Union President will select or appoint his/her members to the LMC. Upon agreement of the co-chairs, additional members may be added to the committee where the subjects under discussion warrant.

The composition (number of Union and Management representatives) of LMCs at the sub-department level will be determined by agreement of the co-chairs of those respective committees.

The LMCs will establish procedures for scheduling meetings.

## **ARTICLE 6. WORKWEEK, WORK TIME, SCHEDULES, OVERTIME AND COMPENSATORY TIME**

### **Section 1. Scope**

This Article is intended to define the normal hours of work and to provide the basis for the calculation and payment of overtime. It shall not be construed as a guarantee of hours per day or per week, or of days of work per week.

### **Section 2. Administrative Workweek**

The administrative workweek begins at 12:01 a.m. Wednesday and ends at midnight on the following Tuesday.

### **Section 3. Standard Workweek**

Except as noted below the standard workweek for full-time employees consists of five (5) consecutive eight (8) hour days, Monday through Friday each week. Non-overtime hours and starting and quitting times for such employees shall be the same throughout the standard workweek. The standard workweek does not apply to the following:

1. alternative and/or compressed workweek schedules and flextime arrangements;
2. cases where flexible hours are inherent to the job as an established condition of employment;

3. and those employees whose work is continued by other employees who relieve them and continue those same work tasks.
4. Employees described in 2 and 3 above who do not work the standard workweek schedule are subject to Section 4 below. The Employer may not change the work schedule of an employee who works a standard workweek to avoid the payment of overtime or accrual of compensatory time.

### **Section 3A. Division of Parole and Probation (DPP) Employees**

This Section does not apply to DPP Community Supervision Enforcement Program staff.

Employees working for the Division of Parole and Probation shall not be considered as “shift” employees for the purpose of this Agreement. DPP employees covered by the Unit H agreement may work varying starting and ending times to cover work assignments provided that management may not reduce the length of any workday to less than eight (8) hours and, provided further, there shall be no split shifts (unpaid break of greater than one-hour within the workday) unless requested by the affected employee.

### **Section 4. Work Schedules**

- A. For purposes of this Agreement, "work schedules" are defined as an employee's assigned work hours and days of the week. Where work schedules vary, they will be posted at least fourteen (14) calendar days prior to the effective date of the posted schedule unless the current practice is for a longer posting period, in which case the longer posting period will be maintained.
- B. Assigning an employee additional hours on an overtime basis is not considered a change to the work schedule.
- C. Hours worked outside of the established work schedule shall be considered overtime, unless:
  1. the employee voluntarily agrees to adjust the work schedule (volunteering or not volunteering to adjust his/her work schedule shall not be detrimental to the employee in any way); or
  2. the affected employee is given a minimum five calendar days notice and there are no more than two occasions when the schedule is changed within the two week pay period;
- D. Involuntary schedule changes must be for legitimate operational needs and rotated equitably among employees and must be for the total hours of the scheduled workday which is being changed.

- E. Nothing in this agreement shall preclude, with prior approval of management, "trading time" or swapping shifts among employees in the same classification provided they have the particular skills necessary to perform the work and such swaps do not increase Employer costs or substantially disrupt work. There will be no split shifts (unpaid break of greater than one-hour within the workday) unless requested by the affected employee(s).

### **Section 5. Schedule Change/Approved Leave**

The Employer agrees it will not make an involuntary schedule change that affects an employee's previously scheduled and approved leave. This does not include short-term leave (3 days or less) unless it is approved thirty (30) days in advance. Management will make every effort not to disrupt leave approved for special events.

### **Section 6. Implementation New Days/Hours**

- A. In the event the Employer seeks to permanently implement new days/hours for positions that had not previously worked such hours, the Employer shall provide the Union with notice and an opportunity to bargain in accordance with this agreement.
- B. Changes to procedures for selecting shifts and time and attendance recording practices (sign-in procedures, time clocks, etc.) will be negotiated in accordance with this Agreement.

### **Section 7. Work Time**

- A. Work time includes time during which an employee:
  - (1) Is on duty, whether at the employee's principal job site or at a remote location as part of the State's Telecommuting Program;
  - (2) Is on paid leave;
  - (3) Participates in training activities as a job assignment;
  - (4) Is on the employer's premises and is on call and waiting for work;
  - (5) Is not on the employer's premises, but is on call and waiting for work, and the employee's personal activities are substantially restricted;
  - (6) Changing into and removing program-specified clothing and equipment necessary for the performance of the job;
  - (7) Participates in activities that are job-related immediately before the beginning or immediately after the end of an assigned shift;

- (8) Travels to and from work after being recalled to work by the appointing authority or the appointing authority's designated representative after the employee has completed the standard workday;
  - (9) Travels to and from work after being called to work by the appointing authority or by the appointing authority's designated representative on the employee's scheduled day off if the employee works fewer than eight hours as a result of being called on the employee's scheduled day off;
  - (10) Travels between home and a work site other than the assigned office, in accordance with the Standard Travel Regulations;
  - (11) In accordance with this agreement, investigates and processes a disciplinary appeal or grievance, and participates at any conference or hearing relating to a grievance or appeal; or
  - (12) With prior supervisory approval, uses reasonable time to investigate and process a complaint under State Personnel and Pensions Article, Title 5, Annotated Code of Maryland.
- B. Work time includes any other time defined as work time under the Fair Labor Standards Act (FLSA), if applicable.
- C. With the exception of those categories of employees cited in the Fair Labor Standards Act, 29 U.S.C. §201 et seq., or as otherwise provided in this agreement, an appointing authority may exclude meal periods and a maximum of 8 hours sleep from consideration as work time for employees who are on duty for more than 24 hours. If the employee's sleep is interrupted for the performance of work so that the employee is unable to sleep continuously for at least 5 hours, the appointing authority shall consider the entire period of sleep, up to a maximum of 8 hours, as work time.

D. Additional Compensatory Work Time

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 tour of duty, in excess of de minimis time, shall be compensated at the straight time or overtime rate as appropriate and in accordance with the Fair Labor Standards Act. 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 8. Payment For Overtime Non-Exempt Employees**

The current practice regarding eligibility for overtime shall be maintained.

- A. Employees may elect to take compensatory time, paid at time and one-half, or for declared emergency conditions, double time, in lieu of cash payments for overtime. Employees will inform the Employer of their choice of cash overtime or compensatory time before working the overtime. Employees will be allowed to declare their election of compensatory time prior to working overtime but in no case more than on a pay period basis. Opportunities for employees to work overtime will not be affected by their election of cash or compensatory time. Employees can accrue up to 240 hours of compensatory time. Employees who work in a public safety activity, emergency response activity, or seasonal activity, can accrue up to 480 hours of compensatory time.
- B. FLSA nonexempt employees may request the substitution of compensatory time for cash overtime. Such a request must be initiated by the employee who always has the right to insist on cash payment for overtime. A request for compensatory time will be considered by the Employer on a case by case basis and approval shall not be unreasonably denied.
- C. A request to use earned compensatory time will be approved provided:
  - (1) The employee gave the supervisor reasonable notice of the employee's intention to use compensatory time; and
  - (2) The employee's use of compensatory time does not unduly disrupt operations.
- D. There will be no time limit during which the employee must use his or her compensatory time. Employees shall not be required to use compensatory time. Use of such compensatory time will be granted in a fair and equitable manner. All unused compensatory time will be paid upon an employee's leaving State service or upon death, to the employee's estate, at a rate which is the higher of:
  - i. The final regular rate received by the employee; or
  - ii. The final average regular rate received by the employee during the last three years of employment.
- E. All FLSA non-exempt employees who are part-time shall earn overtime at the straight time rate until they exceed the FLSA threshold. Overtime hours exceeding the appropriate FLSA threshold shall be paid at the "time and one-half" rate. "Work time" for part time employees shall include all time described in Section 7.

### **Section 9. 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 premises, shall be guaranteed a minimum of two (2) hours of pay plus travel time at the regular rate of pay for actual hours worked or at the applicable overtime rate, whichever is greater. Employees who are currently guaranteed a minimum of pay greater than two (2) hours shall continue to be paid at the greater minimum. Should the employee be paid for at least eight hours, travel time shall not be paid.

### **Section 10. Report Pay**

An employee who is pre-scheduled to work an overtime shift in a 24-hour facility and reports to duty will be guaranteed three (3) hours overtime pay at the appropriate rate unless the employee is a holdover from a previous shift. 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. Department of Transportation employees will continue to receive the greater benefits under callback pay when applicable.

### **Section 11. On-Call Pay/Stand-By Pay**

Employees are entitled to on-call pay if required to remain on the Employer's premises or so close thereto that he/she cannot use the time effectively for his/her own purposes. On-call payment shall be at the regular, or overtime rate of pay, whichever is applicable. An employee who is not required to remain on the Employer's premises, but is merely required to leave word a his/her home, or with the Employer where he/she may be reached, is not working while on-call. If an employee is called back to work, the provisions of Section 2 apply. Any DOT employee required to be in an on-call status shall be provided with a beeper upon request. DOT employees are not required to remain in any specified geographical boundary, however, if called, the employee shall report to work as soon as practical.

### **Section 12. Roll Call Pay**

Correctional Officers and Arrest Booking Officers in the Division of Corrections, Division of Pre-Trial Detention and Services, Patuxent Institution, Clifton T. Perkins and the Community Supervision Enforcement Program of Parole and Probation along with Department of Juvenile Services institutional employees will be required to stand roll call before the beginning of their shift and will be paid for twelve (12) minutes of pay at the applicable rate of pay. The time spent on roll call will be counted as hours worked.

Other bargaining Unit H employees within the Department of General Services, the Department of Juvenile Services and the Department of Health and Mental Hygiene required to work in excess of their standard shift to be briefed or to brief the outgoing shift or perform other work duties will be paid at the applicable rate.

### **Section 13. Short Turnaround Pay**

Police Communication Operators of the Maryland State Police, as well as shift employees at the Department of Health and Mental Hygiene (including dietary 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 twenty-four hours of the start of the previous days' shift.

### **Section 14. Flextime And Compressed Workweek Schedules**

The Employer recognizes the value and benefits of compressed workweeks and flextime arrangements and encourages the development and implementation of compressed workweek schedules and flextime in appropriate work environments. Implementation will be by mutual agreement between the Employer and the Union. In addition to the above, discussion may include whether employees may

have the option, but not be required, to work eight (8) consecutive hours without a meal break to complete their work requirement.

### **Section 15. Overtime Distribution**

The Employer and the Union will discuss overtime distribution policies at the Departmental level. The Employer agrees to follow its existing overtime distribution policies until changed as a result of Employer/Union agreement.

### **Section 16. Wash-Up Time**

The Employer shall maintain current practices.

### **Section 17. Report-In Procedures And Locations**

All employees covered under the terms of this Agreement will be at their report-in locations ready to commence work at their starting time. Supervisors will normally excuse infrequent tardiness (e.g., 4 per twelve month period) at work sites where the employee's absence of a very limited duration does not impair operations or generate overtime. Nothing herein shall be construed to prevent a supervisor from excusing occasional tardiness or allowing the employee to make up the time at the end of the workday upon a satisfactory explanation from the employee. When assessing discipline for tardiness, extenuating and mitigating circumstances surrounding tardiness will be taken into consideration by the Employer. Discipline for tardiness shall not normally be considered "insubordination." An employee who is charged leave or leave without pay shall not be required to work for any period covered by the charge. Employees who report to work at a work site other than their normal report-in location, which is farther from home than their normal report-in location, will have any additional travel time counted as hours worked. Time clocks or other timekeeping devices shall be immediately accessible to employees at the work site or the Employer must take the limited employee access to such devices into account when assessing tardiness.

### **Section 18. Rest Periods**

Regular and overtime rest periods, overtime meal allowances, and the creation of unpaid lunch periods for employees who do not currently have them shall be the subject of discussion between the Union and the Employer at the Departmental level.

### **Section 19. Time Of Overtime Payment**

The Employer agrees that one of the requirements of a request for proposal (RFP) for an automated time keeping/personnel benefits information system shall be an assessment of the cost and feasibility of real-time overtime payments. The Union will be provided with copies of the cost and feasibility study and the Employer agrees to negotiate with the Union over the timeliness of overtime payments.

### **Section 20. Savings**

Employees who by policy, regulation, or established practice enjoy pay and/or scheduling practices that provide greater compensation than described in this Agreement shall continue to receive such greater benefit. However, if the Secretary of DBM believes such practice is not equitable, the Secretary may propose termination of the practice to the Union in accordance with Article 32 (Mid Contract Negotiations). If a practice is prohibited by law, it shall be terminated in accordance with Article 3 (Management Rights) and Article 32 (Mid Contract Negotiations).

## **ARTICLE 7. WAGES**

### **Section 1. General Wage Increase**

Effective July 1, 2007, a general wage increase consisting of 2% was added to each grade and step of the pay plan(s) affecting the bargaining unit employees.

Effective July 1, 2008, a general wage increase consisting of 2% will be added to each grade and step of the pay plan(s) affecting the bargaining unit employees.

### **Section 1A. Annual Salary Review**

Unless prohibited by law, the Employer shall provide the union with the results of salary and benefits comparative surveys for bargaining unit positions upon the completion of such studies.

### **Section 1B. Deferred Compensation**

Effective July 1, 2007 all employees currently eligible to participate in the State's deferred compensation system shall continue to be eligible for a \$600 year deferred compensation system match through June 30, 2009.

**Section 1C. Step Increases** Effective July 1, 2007 all eligible employees shall be provided with a step increase on their appropriate due date through June 30, 2009.

### **Section 1D. Bonuses**

The Corrections retention bonus program shall be continued in FY 2009. The parties, at the Departmental level, shall discuss extending the bonus to include Corrections Dietary Officers; Corrections Maintenance Officers; Corrections Supply Officers, and Corrections Laundry Officers.

### **Section 2. Shift Differential**

The Employer shall pay a shift differential to an employee who works a qualifying shift. A qualifying shift means a full-time or permanent part-time shift, which starts at or after 2 P.M. and at or before 1 A.M.

The Employer shall pay a shift differential on a prorated basis to an employee who works any part of a qualifying shift. The rate of shift differential pay shall be \$0.625/hour for all classifications in salary grades 5 through 17.

The Employer may not pay a shift differential to an employee who is on leave.

### **Section 3. Acting Capacity Pay**

- (1) An appointing authority may designate an employee to perform temporary duties in a classification for which the rate of pay is higher than that of the employee's classification for any of the following reasons:
  - a.) The temporary absence of an incumbent;
  - b.) A vacancy exists for which recruitment is underway; or
  - c.) Unusual circumstances which necessitate assignment of duties at a level higher than that of the employee's classification.
  - d.) A qualified employee with the most seniority in the unit where the acting capacity is to occur will normally be given the opportunity to perform the higher level duties. If a less senior employee is designated, upon written request from the Union, the appointing authority or designee shall provide a copy of the acting capacity form as documentation of the selection.
  - e.) Should a supervisor assign an employee more than 50% of the higher-level duties of a position that is vacant or from which the incumbent is temporarily absent, the employee shall be considered designated for acting capacity pay.
- (2) Wherever possible an appointing authority shall ensure that an employee designated to receive acting capacity pay meets the minimum qualifications of the higher level and upon written request from the Union shall provide a copy of the acting capacity form as documentation of the selection.
- (3) An appointing authority may not designate an employee to perform temporary duties in a classification for which the rate of pay is higher than that of the employee's classification if both the employee's classification and the higher classification are within the same noncompetitive promotion classification series.
- (4) Payment for acting in a higher classification shall be made as follows when the employee's normal rate of compensation is:
  - a.) Between grades 5 and 10, additional compensation shall be paid for the period in excess of 10 continuous workdays;
  - b.) For grade 11 or above, additional compensation shall be paid for the period in excess of 20 continuous workdays.

The initial period of acting capacity is limited to 6 months or less and may be extended for periods of up to 6 months.

Notwithstanding the above, hour-for-hour acting capacity pay shall be paid to eligible employees who function in the capacity of the Transportation Heavy Equipment Shop Chief effective with the first hour of the assignment and acting capacity pay will continue to be paid in other cases where employees currently receive such pay.

- (5) An employee in acting capacity shall not be relieved of such capacity prior to the completion of the waiting period for the purpose of avoiding acting capacity payment as evidenced by their subsequent return to acting capacity. The Employer shall not rotate employees in an acting capacity position to avoid acting capacity payment nor shall employees be recurrently scheduled in an acting capacity position without compensation unless there are unusual circumstances outside the Employer's control or they volunteer to do so. An employee who is not paid acting capacity pay may not be negatively evaluated on his/her performance in the acting capacity position and may not be disciplined for actions that relate to the acting position taken in good faith. An employee shall not be required to accept an acting capacity assignment if he/she would suffer a loss in pay.

#### **Section 4. Bilingual Pay**

Where the Employer currently pays bilingual pay or bonuses, it shall continue to do so. The Employer retains discretion to initiate bilingual pay or bonuses. The minimum bilingual bonus or hourly equivalent is \$25 per pay period. The Employer may not require an employee to use bilingual skills without paying the appropriate bonus or pay. This does not apply to employees where such skills are in the classification specification.

#### **Section 5. Lead Worker**

The Employer may not require an employee to assume lead workers duties unless they are paid additional compensation. An employee may refuse to perform uncompensated lead duties without penalty. An employee who voluntarily performs lead workers duties without compensation may not be negatively evaluated on his/her performance of the lead duties and may not be disciplined for actions that relate to the lead worker position taken in good faith. This section does not preclude the assignment of an employee as the lead on a specific project of a limited duration (typically 90 days or less).

#### **Section 6. Hazardous Duty Pay**

Employees who have consented and are required to perform asbestos work will continue to be eligible for a 50% work differential for time spent performing such duties. This differential shall be paid 1/10 hour increments, including time spent by the employee changing into and removing program specified clothing and equipment.

Maryland Port employees who are currently covered under the \$10.00 per hour, or 50% per hour of the hourly wage whichever is greater, chrome pay differential, will continue to receive differential. This provision will also cover any existing hazardous duty differential currently provided.

#### **Section 7. Pay On Promotion/Reclassification**

##### **A. Promotion**

When an employee is promoted from a classification with a salary grade to a classification which is one grade higher, the employee shall be placed in the lowest step which provides

at least a six ( 6) percent increase in annual salary, but in no event shall the new rate exceed the maximum in the new grade.

When an employee is promoted from a classification with a salary grade to a classification, which is two, or more salary grades higher, the employee shall be placed in the lowest step which provides at least a twelve (12) percent increase in annual salary, but in no event shall the new rate exceed the maximum in the new grade.

When an employee is promoted from a classification with a salary grade, slope scale or flat rate to a classification with a slope scale, the employee shall receive a six (6) percent increase in annual salary if the slope scale is the equivalent of one grade higher than the salary grade from which the employee is promoted. An employee shall receive an increase of twelve (12) percent if the slope scale is the equivalent of two or more grades higher than the salary from which the employee is promoted, but in no event shall the new rate exceed the maximum in the new scale.

When an employee is promoted from a classification with a salary grade, slope scale or flat rate to a classification with a flat rate, the employee shall receive the specified flat rate salary.

## **B. Reclassification**

With the exception of the implementation of a new classification, when an employee is reclassified from a classification with a salary grade to a classification which is two or more salary grades higher, the employee shall be placed at the lowest step which provides at least a twelve (12) percent increase in annual salary, but in no event shall the new rate exceed the maximum in the new grade.

With the exception of the implementation of a new classification, when an employee is reclassified from a classification with a salary grade to a classification which is one grade higher, the employee shall be placed in the lowest step which provides at least a six (6) percent increase in annual salary but in no event shall the new rate exceed the maximum in the new grade.

When an employee is reclassified from one classification to another for which a flat rate is paid, the employee shall receive that flat rate salary.

When an employee is reclassified from one classification to another with the same salary grade or slope scale, the employee's rate of pay shall not change.

When the Employer determines that a job is classified at a higher rate than appropriate, it may reclassify the job to the appropriate lower grade only upon vacancy.

**Note:** This section does not apply to a reclassification to a lower grade or scale, or demotion.

**C. Reclassification Into A New Classification Series**

When an employee is reclassified as the result of the implementation of a new classification, the employee's step or rate of pay shall be determined by a six (6) percent adjustment. When a DOT employee is reclassified as a result of the implementation of a new classification that is unique to DOT only, the employees step or rate of pay shall be determined by a six (6) percent adjustment for one pay grade, or a twelve (12) percent adjustment for two or more pay grades, whichever is applicable, not to exceed the maximum of the pay grade.

**D. Processing Sequence For Simultaneous Transactions Which Affect Salary**

Whenever two or more salary transactions which are effective on the same date for an employee shall be processed in the following sequence:

- (1) Salary adjustment of the employee's classification;
- (2) General increase of the salary schedule;
- (3) Annual step increase; and
- (4) All other transactions including, but not limited to, promotion, reclassification and demotion.

**ARTICLE 8. HOLIDAYS**

This Article governs holidays except as otherwise authorized by law.

**Section 1. Observance**

The following holidays will be observed:

New Year's Day; Dr. Martin Luther King Jr.'s Birthday; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Day After Thanksgiving (except DOT); Christmas ;Each Statewide Election Day

Any other day proclaimed as a holiday or non-working day by the Governor of the State of Maryland or the President of the United States of America.

Except for employees required to work on a holiday, when a holiday falls on a Sunday, the holiday is observed on the following Monday. When a holiday falls on a Saturday, the holiday is observed on the preceding Friday. A holiday will commence at 12:01 A.M. and end at 12:00 Midnight. Upon request, an employee may observe a religious holiday provided that the time off is charged to vacation, compensatory time, personal leave, or leave without pay, at the employee's choice.

**Section 2A. Work On Holidays**

An employee who is required to work, or works with prior approval, any part of a holiday shall receive holiday compensatory time for up to eight (8) hours, on an hour for hour basis, for the actual

non-overtime hours worked in addition to their regular rate of pay. An employee who works overtime on a holiday shall be compensated in accordance with all applicable pay and overtime provisions. An employee must use holiday compensatory time within one (1) year after having accrued that time.

## **Section 2B. Pre-Scheduled Holidays**

Holidays for certain employees, typically 24/7 facilities, are pre-scheduled on days other than the holidays mentioned in Section 1. This schedule is determined in advance. If employees who have their holiday pre-scheduled are required to work on that pre-scheduled holiday day, they are compensated as follows:

- a.) Cash overtime employees are paid for the number of holiday hours pre-scheduled plus payment at the rate of time and one-half for the number of hours actually worked.
- b.) Compensatory leave eligible employees are paid for the number of hours prescheduled plus credited with holiday compensatory time for the number of hours actually worked, which must be used within one (1) year after having accrued this time.

This provision does not apply to an employee who is on leave without pay during the same pay period as the assigned holiday.

## **Section 2C. Part-Time Employees**

Part-time employees shall be compensated in accordance with all applicable pay and overtime practices.

## **Section 3. Other Holiday Provisions**

An employee whose regular day off falls on a holiday will receive another day off. If a holiday occurs during a period in which an employee is on pre-approved paid leave, the employee will not be charged for the use of leave for the holiday.

## **Section 4. Department Of Transportation Procedures**

In accordance with current practice, employees in the Department of Transportation shall be paid double time and one-half for work on all holidays identified in law or this Agreement. In addition, such employees with the approval of the Employer may request compensatory time in lieu of cash for such Holiday work.

## **Section 5. Exception**

Non-uniformed employees of the State Police who have received premium pay (time and one-half) prior to this Agreement for work on certain Holidays (Christmas, Thanksgiving, New Years) shall continue to receive such pay in addition to compensatory time. Established practices of compensation for Holidays that are better than that described in Sections 2 and 3 shall be continued.

## **ARTICLE 9. LEAVE ACCRUAL**

### **Section 1. Annual Leave**

Annual leave accrues as follows, on a pro rata basis:

- (1) for an employee whose total State service is less than 5 years, at the rate of 10 workdays not to exceed 80 hours, a year;
- (2) for an employee whose total State service is at least 5 years but less than 10 years, at the rate of 15 workdays not to exceed 120 hours a year;
- (3) for an employee whose total State service is at least 10 years but less than 20 years, at the rate of 20 workdays not to exceed 160 hours, a year; and
- (4) for an employee whose total State service is 20 years or more, at the rate of 25 workdays not to exceed 200 hours, a year.

## **Section 2. Accumulated Annual Leave**

Any days of annual leave not used at the end of a year may be carried forward into the next year. Employees may accumulate unused annual leave and may carry over from one year to the next up to seventy-five (75) days, or six hundred (600) hours. (The effectiveness of the increase in carryover from 50 to 75 days is contingent upon legislative changes to SPP 9 -304.)

If an employee is denied the opportunity in a calendar year to use annual leave in excess of seventy five (75) days or six hundred (600) hours, the head of the employee's principal unit may allow the employee compensation, at the employee's regular rate of pay, for those excess leave days.

The head of a principal unit may approve a request for compensation only if:

- (1) the appointing authority documents the unusual administrative reasons for having denied the employee the use of annual leave; and
- (2) funds are available for that purpose.

## **Section 3. Payment Upon Separation**

An employee or an employee's estate, will be paid for:

- 1) the number of days of annual leave, not exceeding 50 days or 400 hours that were accrued at the end of the previous calendar year and that remain unused; and
- 2) the number of days of annual leave that accrued during the calendar year in which the employee's State employment terminates and that remain unused upon termination of state service at the time that the employee receives his/her pay check for the final period of work or the next pay period.

## **Section 4. Sick Leave**

Employees shall earn fifteen (15) days or one hundred twenty (120) hours of sick leave each year. Employees shall earn 1.5 hours of sick leave for every 26 hours worked in non-overtime status. For this purpose, all paid leave will be considered work time. Part-time employees will earn sick leave on a prorated basis. There is no limit on the number of days of sick leave an employee can accrue.

Accrued sick leave shall be used as a service credit toward retirement in accordance with current statute and regulations. Employees may not use accumulated sick leave to qualify for retirement benefits or to become vested in the retirement system.

# **ARTICLE 10. LEAVE WITH PAY**

## **Section 1. Jury Duty Leave**

An employee who is on jury duty is entitled to leave with pay when the employee's jury service occurs on the employee's scheduled workday and provides appropriate documentation. Employees who are scheduled on other than a day shift shall be reassigned to a day shift. If, after reporting for jury duty, the employee is dismissed for the day, the employee shall return to work if

time permits. An employee who is selected for jury service shall notify the Employer as soon as practical.

## **Section 2. Bereavement Leave**

A maximum of five (5) working days may be charged to sick leave in the event of the death of one of the following members of the immediate family: spouse, children, foster-children, step-children, parents, step-parents, foster-parents of employee or spouse or others who took the place of parents, legal guardians of employee or spouse, brothers and sisters of employee or spouse, grandparents and grandchildren of employee or spouse, other relatives living as a member of the employee's household.

A maximum of one (1) working day may be charged to sick leave in the event of the death of one of the following relatives: aunts and uncles of employee or spouse, nephews and nieces of employee or spouse, brothers-in-law and sisters-in-law of employee's spouse and sons-in-law and daughters-in-law.

The employee may elect to receive up to three (3) days of bereavement leave in lieu of three (3) of the five (5) sick days, with appropriate documentation upon the death of the following family members: spouse, children, foster children, step-children, parents, step-parents, foster-parents, brothers or sisters, or grandparents and grandchildren of the employee. Appropriate documentation includes a death certificate, funeral slip or obituary notice.

If additional time is required by the employee, the supervisor shall make reasonable efforts to arrange the work that the employee may take other accrued leave for this purpose.

## **Section 3. Legal Action Leave**

An employee who is summoned to appear in a court action, before a grand jury, before an administrative agency, or for a deposition and is neither a party to the action nor a paid witness, may be absent from work without loss of pay or charge against any leave, with the appropriate documentation, unless the employee is currently on suspension.

An employee who is summoned to appear in a court action, before a grand jury, before an administrative agency, or for a deposition and is a party to the action or a paid witness, may use other accumulated leave, unless the employee is currently on suspension.

An employee who is a party to an action against the State, or its agents, is considered on duty for grievances, disputes, or disciplinary appeals before the Office of Administrative Hearings or the Labor Relations Board. An employee who is not on paid leave or approved leave without pay shall be considered on duty when attending a Worker's Compensation Hearing.

## **Section 4. Military Leave**

Any employee who is a member of a reserve component of the Armed Services or in the organized militia shall be permitted military leave with pay for up to fifteen (15) working days per year for training

or active duty. To be eligible, the employee must provide the employing agency with a copy of the orders from his/her unit.

## **Section 5. Emergency Conditions**

In addition to the "Procedure for Release of State Employees Under Emergency Conditions", revised October 8, 1999 authorized by Executive Order 01.01.1981.10, when:

- 1) A governmental jurisdiction, authorized to do so, declares an emergency condition which prohibits all non-emergency vehicle travel on specified roadways, and such declared emergency is in the home jurisdiction, a jurisdiction along the route, or the jurisdiction of the work location, as determined by the official personnel records of an employee, thereby proscribing the employee's ability to get to work, such employees shall be granted administrative leave because of the emergency condition, unless the Employer provides transportation to the work location. Employees shall notify the appropriate designated contact person as early as feasible, but normally at least one hour before the start of their shift of the emergency condition constraining their travel, unless the emergency has been declared at the employees' work location. Essential employees shall notify the appropriate designated contact person as early as feasible, but normally at least one hour before the start of their shift of the emergency condition constraining their travel.
- 2) A non-state governmental jurisdiction declares an emergency condition which closes a facility where State employees work, such employees shall be granted administrative leave for such an emergency condition.

In accordance with Executive Order 01.01.1981.10 and the procedure referenced above, employees who are required to work by the employer regardless of whether the employee has been designated essential during a declared emergency situation will be credited with two hours of work time for each hour they actually work during the designated emergency condition. The designated emergency situation shall be for the duration of the emergency, and not limited to a particular time of day.

Essential employees will be notified of their essential status no later than December 1st of each year. The Employer retains the ability to notify new hires after December 1st, or declare additional employees as essential when necessary, to avoid or mitigate serious damage to public health, safety or welfare.

In situations of actual or potential emergency conditions, the Employer may declare a liberal leave, delayed arrival (up to two hours of excused tardiness), or early release policy. When an employee uses liberal leave, he or she must call and speak to their supervisor, or supervisor's designee, in accordance with the agency's call-in procedures and leave a message advising them of the type of leave the employee will be using

In the case in which an employee is granted the use of annual leave, personal leave, or compensatory time on the day on which an emergency is declared because of the emergency such annual leave, personal leave, or compensatory leave shall be converted to release time and shall not be deducted

from any time accrued by the employee if the Employer declares an emergency condition within two (2) hours of the beginning of the employee's regular work shift.

Any current practice regarding extra compensation for employees when an emergency is declared necessitating the granting of emergency release time shall be maintained.

### **Section 5A. Emergency Conditions For Additional Employees Of Department of Labor, Licensing and Regulation (DLLR)**

When additional employees of DLLR work during an emergency condition per the contract, the additional employees shall be credited with one (1) compensatory hour for each hour they actually work during the designated emergency condition.

### **Section 5B. Bomb Threat, Loss Of Power, Ventilation Or Plumbing**

Upon resolution of an occurrence that has had a direct, measurable impact upon the life or safety of the employees at one of its facilities that results in the closing of that facility and releasing employees, the Employer shall notify the Union of the occurrence and the action the Employer took to insure the safety of the employees at that facility.

### **Section 6. Examinations and Interviews For State Positions**

An employee shall be allowed up to four (4) hours leave with pay to take examinations and attend interviews for State positions. An employee who has to travel in excess of fifty (50) miles will be given additional administrative leave not to exceed eight (8) hours in total.

The appointing authority may:

1. require prior approval of the interview or examination leave request;
2. require verification of the examination taken or interview or examination attended;
3. require verification of the travel time in excess of 50 miles one way; and,
4. limit the number of interviews and time allotted when abuse is apparent.

### **Section 7. Professional Meetings**

To the extent consistent with the operational needs of the Employer, employees will be granted time off with pay, not to exceed their normal workday to attend pre-approved professional meetings that are job related.

### **Section 8. Disaster Service Leave**

- a.) Requirements for leave with pay. - On request, an employee subject to this section may be entitled to disaster service leave with pay if
  - 1.) the employee is certified by the American Red Cross as a disaster service volunteer; and

- 2.) the American Red Cross requests the services of the employee during a disaster that is designated at Level II or above in the regulations and procedures of the National Office of the American Red Cross.
- b.) Amount allowed: -An employee may use up to fifteen (15) days of disaster service leave in any twelve (12) month period, only after obtaining approval from the employee's appointing authority.
- c.) Employment status for purposes of certain claims. - For purposes of workers compensation and the Maryland Tort Claims Act, while an employee is using disaster service leave, the employee is deemed not to be a State employee.

## **Section 9. Religious Observance**

All employees, except those working in 24-hour facilities, whose religious beliefs require them to be absent from work, shall be permitted to perform compensatory work outside their regular work hours to offset the absence. For those employees entitled to overtime pay, each hour of compensatory work will offset one hour of absence during any workweek in which employees work fewer than forty hours and for those workweeks in which more than forty hours are worked, compensatory work will offset one and one half hours of absence. For those employees exempt from overtime pay, each hour of compensatory work will offset one hour of absence. This section shall be administered in accordance with applicable law and COMAR.

## **ARTICLE 11. REQUESTS FOR PERSONAL AND ANNUAL LEAVE**

### **Section 1. Request For Leave**

At any time, employees may request the use of short-term leave (annual leave, compensatory time use, or personal leave). Such request shall be submitted on the appropriate form and approved or denied on the form within one week of submission to the appropriate authority (practices of shorter time periods will be maintained) except that current practices concerning emergency leave requests shall be maintained. Requests will not be denied unreasonably. The issue of more employees requesting the use of short-term leave than can be granted because of operational needs shall be resolved at the LMC. The Employer shall not request the reasons for the use of earned leave other than sick leave as permitted by Article 12. All leave may be used in tenth of an hour increments provided, however that use of personal leave to cover tardiness related absences shall not serve as a bar or defense to disciplinary action.

### **Section 2. Vacation Schedules**

The approval and scheduling of vacation periods shall be established by the LMC. The Employer agrees it will not cancel vacation periods (vacation periods are approved 30 days in advance).

### **Section 3. Personal Leave (Moved from Article 9. Leave Accrual)**

Employees shall be entitled to six (6) days of personal leave each calendar year except that the Department of Transportation employees shall be entitled to seven (7) days of personal leave. Part-time

employees shall be entitled to days of personal leave on a prorated basis. For the calendar year in which new employees begin employment, the number of personal leave days will be prorated according to applicable law. The Employer shall not request the reasons for the use of earned leave other than sick leave as permitted by Article 12.

Any rights and privileges concerning the use of personal leave shall be maintained unless changed by the Local LMC.

#### **Section 4. Mailing Of Paycheck**

If an employee going on vacation desires that his/her paycheck be mailed to a given address during the vacation, he/she may make a written request to this effect. Such request shall be honored provided a self-addressed envelope is included with the written request.

### **ARTICLE 12. SICK LEAVE**

#### **Section 1. Eligibility**

In accordance with State law, employees are entitled to sick leave with pay:

- a. for illness or disability of the employee;
- b. for death, illness, or disability of a member of the employee's immediate family;
- c. following the birth of the employee's child;
- d. when a child is placed with the employee for adoption; or
- e. for a medical appointment of the employee or a member of the employee's immediate family. Immediate family" is defined in accordance with COMAR 17.04.11.06.

#### **Section 2. Notification**

When an employee is unable to work due to circumstances provided in Section 1, the employee or employee's designee will notify his/her immediate supervisor or designee at the work site at a time as established by existing agency policy/practice, unless extenuating circumstances preclude this notification. When an employee calls in accordance with established practice or policy, he/she shall leave a message if the supervisor or supervisor's designee is unavailable, or the Employer may instruct an employee to call a secondary number, and the employee will not be required to call back. The employee or designee must call each day of absence until the employee notifies the Employer of a date he/she will return to duty. The Employer shall not ask the employee to provide information as to his/her diagnosis or condition except as permitted by applicable law.

#### **Section 3. Certificate Of Illness For Absences For Five (5) Or More Consecutive Days**

The Employer shall require an employee to provide an original certificate of illness or disability only in cases where an absence is for five (5) or more consecutive workdays or in accordance with the procedures described in Section 4 below. The certificate required by this Section shall be signed by a health care provider in accordance with applicable law (SP&P 9-504).

#### **Section 4. Certificate Of Illness For Absences Of Less Than Five (5) Consecutive Days**

The Employer may require an employee to submit documentation of sick leave use on the following conditions:

- A. When an employee has a consistent pattern of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization; or
- B. When an employee has six (6) or more occurrences of undocumented sick leave usage within a twelve (12) month period. Sick leave use that is certified in accordance with this Article shall not be considered as an occurrence.
- C. After the first instance of an employee being absent for more than four (4) consecutive days without documentation, the employer may place the employee on notice that future absences of more than three (3) days, within a rolling twelve (12) month period, will require documentation.

### **Section 5. Procedures For Certification Requirement**

Prior to imposing a requirement on an employee for documentation of sick leave use, the Employer shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future instances of sick leave. If the employee has another undocumented absence after such counseling, the Employer may then put the employee on written notice that he/she must certify all sick leave usage for the next six (6) months if the undocumented absences accumulate in accordance with Section 4. At the conclusion of the six (6) months, the certification requirement will be rescinded provided the employee has complied with the certification requirement. If the employee has not complied with the certification requirement, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement. Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplication of this procedure.

### **Section 6. Chronic Conditions**

Employees who suffer from chronic or recurring illnesses or disabling conditions that do not require a visit to a health care provider each time the condition is manifested, shall not be required to provide certification for each absence, provided that a general certification is provided unless the absence is for five (5) or more consecutive days. Such frequent absences shall also not be used as the basis for a certification requirement. Unless the employee has a condition identified as a permanent disabling condition, the Employer may require certification and follow-up reports from a health care provider no more frequently than every six (6) months of the continued existence of the chronic condition.

### **Section 7. Acceptable Documentation**

For the purposes of absences of less than five (5) consecutive days, acceptable documentation shall consist of the following:

- A. A certificate from a health care provider that the employee (or member of the employee's immediate family) visited the office and/or the employee was unavailable for duty for the reasons specified in Section 1 on the day or dates of absence. For absences of four (4) hours or less, at the employee's option, he or she may submit a copy of the universal health insurance claim form or similar document from the health care provider's office showing the

name of the provider, the date of treatment and address and telephone number of the provider.

- B. An employee who works less than his/her full work day due to having to provide care to the employee's child or member of his/her immediate family shall not be required to provide certification from an acceptable health care provider unless management has a basis to believe sick leave is being used for a purpose other than described in Section 1 above. Sick leave use in such circumstances shall not count as an occurrence under Section 4.

### **Section 8. Disciplinary Actions**

The Employer may take appropriate disciplinary action against an employee for using sick leave for purposes other than described in law or this Agreement; for failing to properly notify the Employer of the use of sick leave; or for failure to provide appropriate documentation when properly required to do so.

The Employer may not penalize an employee with regard to scheduling overtime eligibility, performance evaluations or other right or benefit for sick leave usage for being subject to documentation requirement. This does not preclude appropriate disciplinary action for use of sick leave for purposes other than described in Section 1.

### **Section 9. Sick Leave Reduction Goal**

The Employer and the Union agree that unscheduled absences, excessive sick leave usage and fraudulent sick leave usage unnecessarily increase overtime costs, exacerbate the workloads of other employees and negatively impacts morale. As a result, the Employer and the Union agree to form a LMC with the objective of reducing total hours of sick leave used by 10% from CY 2007 to CY 2009.

## **ARTICLE 13. LEAVE BANK AND LEAVE DONATION PROGRAM**

### **Section 1. Membership In The State Employees' Leave Bank Program**

A new employee may donate one day (eight hours) of Personal Leave to the State Employees' Leave Bank within the first sixty (60) days of their employment. All other employees may donate one day (eight hours) of Annual, Personal, or Sick Leave to the State Employees' Leave Bank during the open enrollment period. Sick Leave may only be donated if the employee has a balance of 240 hours after the donation. The employer shall hold an open enrollment period during the health insurance open enrollment period.

### **Section 2. Access To Leave Bank**

An employee becomes eligible for the State Employees' Leave Bank 90 days following the initial donation to the bank. Membership in the State Employees' Leave Bank is for two years, unless the leave in the bank is exhausted, at which time all employees will be notified and given the option of rejoining by donating an additional day. In these cases, employees who had served the 90-day waiting period for eligibility will not be required to serve an additional waiting period. Eligibility for use of leave from the bank will be determined in accordance with existing policy

(COMAR).

### **Section 3. Department Of Transportation Employees**

Department of Transportation employees will continue to have Advanced and Extended Sick Leave available to them but may first choose to use the Sick Leave Bank or Employee to Employee Donated Sick Leave.

### **Section 4. Sick Leave Bank Additional Employees**

Additional employees shall be eligible for the Sick Leave Bank.

### **Section 5. Short Term and Long Term Disability Policies**

The Union and the Employer agree to negotiate the implementation of Short Term and Long Disability Policies with the intent of eliminating the State Employees Leave Bank, the Employee-to-Employee Leave Donation Program and MDOT's Advanced and Extended Sick Leave Policies.

## **ARTICLE 14. LEAVES WITHOUT PAY**

### **Section 1. General Leave**

The Employer may grant general leaves of absence to employees, upon request, for periods not to exceed two (2) years. The employee may request that the Employer hold the employee's position for up to twenty-four months. When the Employer does not hold the employee's position and elects to accept the employee's request for reinstatement, the Employer will use good faith efforts to return the employee to his/her previous work location.

### **Section 2. Leave For Union Office**

Upon request of the Union's Executive Director, the Employer will grant leaves of absence without pay to bargaining unit employees who serve as Union representatives or officers for up to ninety (90) days, if it is consistent with operational needs. This leave will be for no more than one time per year per employee and no more than eight (8) employees per year who must be from different Departments. Such employees will not be separated from the payroll and will be restored to their previous positions at the conclusion of such leaves.

### **Section 3. Education Leave**

Employees may be granted educational leave for up to two (2) years to attend an accredited educational institution, including colleges, universities, trade schools, technical schools, or high schools. Such leave will be approved or denied in a fair and equitable manner. Reinstatement will be governed by COMAR.

### **Section 4. Military Leave**

If an employee enters military service, his/her employment will be separated with the right to reemployment in accordance with applicable law and regulation.

### **Section 5. Family And Medical Leave**

The Employer shall provide employees with the benefits of the Family and Medical Leave Act on a fair and equitable basis in accordance with applicable law and regulation.

## **ARTICLE 15. PERSONNEL FILE**

### **Section 1. Official Personnel File**

Only one (1) official personnel file shall be kept for each employee at the appropriate personnel office. Records of previous discipline not found in the official personnel file cannot be used against an employee in any future disciplinary proceeding. Grievances shall not be kept in the employee's official personnel file. Employees shall be informed as to where their personnel file is maintained.

### **Section 2. Access**

An employee and, with the employee's written authorization, a representative(s) shall have the right to review his/her personnel files upon request, during normal business hours, with no loss of pay. Employees have the right to copy any documents in his/her file. The employee may be required to assume reasonable costs of copying.

### **Section 3. Notification**

From the effective date of this memorandum, any derogatory material to be placed in an employee's personnel file will be initialed and dated by the employee and a copy provided to him/her. If the employee refuses to sign, material shall be placed in the file with a note of the employee's refusal. The employee's initials indicate simply that he/she has seen the material and is not to be construed as agreement with its content. In addition, any derogatory material which is placed in an employee's personnel file without following this procedure will be removed from the file and returned to the employee.

### **Section 4. Anonymous Materials**

Other than routine personnel forms, no anonymous materials shall be placed in an employee's official personnel file.

### **Section 5. Rebuttal**

Employees shall have the right to respond in writing and/or through grievance procedure to any materials placed in their official personnel file. Any written response by the employee shall be appended to the appropriate document.

## **Section 6. Work Files**

Supervisors may keep working files, but records of previous discipline not found in the official personnel file cannot be used against an employee in any future disciplinary proceeding.

## **ARTICLE 16. JOB CLASSIFICATION**

### **Section 1. Job Study**

When the employee (and Union representative, if chosen) and supervisor believe a position is incorrectly classified, a request may be submitted to study the position. Such study shall be completed in a timely manner unless a study of the job in question has been completed within the previous twelve months and the job duties have not changed. The employee (and Union representative, if chosen) will be provided with a copy of the Employer's findings upon request. The Employer will apply its established classification standards and guidelines in a fair and equitable manner.

### **Section 2. Pending Job Study for Reclassification Purposes**

Upon request to the agency personnel director, an employee will be given the estimated completion date of a pending job study. Job studies shall be conducted by a trained personnel analyst.

### **Section 3. Position Description**

The employee shall be responsible for drafting his/her position description form and shall forward it to his/her supervisor for approval. When the employee and the supervisor disagree on the job description, they shall meet promptly and attempt to reach an agreement on the employee's job duties. In the event that an agreement cannot be reached, the supervisor will finalize the job description in accordance with the supervisor's understanding and expectations of the position. The employee may submit his or her comments for the classification analyst to consider when reviewing the position description.

### **Section 4. New or Revised Classifications**

The Employer shall meet and confer with the Union over any new or revised classification specifications. The Employer shall negotiate with the Union on other classification issues as required by State personnel law.

## **ARTICLE 17. JOB DESCRIPTIONS**

### **Section 1. Job Descriptions**

All employees shall be provided an accurate copy of their job description. When job descriptions are changed, employees shall be furnished a copy. Terms such as "other duties as assigned" shall mean job-related duties relevant to carrying out the mission of the agency for which the employee works.

When an employee's job duties are changed, the employee and the employee's supervisor shall meet promptly and discuss the change in duties. A new, modified job description will be prepared following the process outlined in Article 16, Section 3.

## **Section 2. Gender Based Assignments**

The Employer agrees that the impact of gender based work assignments will be negotiated at the facility level at the local LMC. Management will make a good faith effort to resolve those issues and in all cases give the basis for the assignment.

# **ARTICLE 18. PERFORMANCE EVALUATION**

## **Section 1. Intervals Between Appraisals**

Employees shall receive written performance appraisals at six (6) month intervals according to their entry-on-duty date. There will be a mid-year appraisal and an end-of-year appraisal, which will include a performance rating. Performance ratings are as follows:

1. Outstanding
2. Exceeds Standards
3. Meets Standards
4. Needs Improvement
5. Unsatisfactory

## **Section 2. Performance Standards**

Performance standards and behavioral elements shall be specific, attainable, relevant measurable and fully consistent with an employee's duties, responsibilities and grade as described in his/her job description. Standards and elements will be job and outcome related, not trait related. Standards, elements, and criteria for each rating level shall be provided to an employee in writing at the outset of the rating period and changed during the period only after review with the employee. Performance outcomes considered to be "outstanding", "exceeds standards" and "meets standards" shall be described for each performance standard and behavioral element.

If an employee does not have an opportunity to perform work described by a standard or element, that standard/element will not be considered in the performance appraisal process.

Standards/elements will be applied fairly, objectively and equitably. The Employer shall take into account equipment and resource problems, lack of training, frequent interruptions, and other matters outside of an employee's control when applying standards/elements to performance. Pre-approved time away from the job including sick leave, 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 standards and behavioral elements. Evaluations shall fully take into account such approved absences in a measure of timeliness and quantity of work.

## **Section 3. Appraisal Procedure**

The employee's supervisor will prepare the mid-year and end-of-year performance appraisal. If such is not the case, the second level supervisor shall prepare the appraisal. If an employee is transferred, he/she shall be given an exit appraisal and it shall be used in conjunction with his/her new supervisor's year-end appraisal, unless the employee has been working under the new supervisor for at least six months, and the employee and the Employer mutually agree not to use the former supervisor's appraisal.

When both appraisals are used, they shall be averaged in accordance with the number of months evaluated by each appraisal. If the evaluating supervisor is not the direct supervisor, he/she must have actual knowledge of the employee's performance.

#### **Section 4. End-Of-Year Appraisal**

The end-of-year appraisal, which the appointing authority will approve before it is final, shall include the following:

1. performance rating;
2. specific tasks the employee needs to achieve during the next appraisal period and performance standards/behavioral elements;
3. modifications to the employee's job description, if any; and
4. recommendations for training to enhance the employee's skills, if any.

The Employer will not prescribe a forced distribution of levels for ratings for employees covered by this Agreement. No quotas or other limitations shall be applied to employee ratings.

An appointing authority may change an employee's end-of-cycle final evaluation only with written justification, which cites the employee's performance standards/behavioral elements and the employee's actual performance. The supervisor shall give employees a copy of the end-of-year appraisal and a copy will be placed in the employee's personnel file. A statement of an employee's objection to an appraisal or comment may be attached and put in their personnel file.

#### **Section 5. Appraisals Of Supervisors**

Employees may evaluate, anonymously, the performance of supervisors who have at least five (5) employees assigned to them. The Employer shall ensure that employees are given the opportunity to evaluate the supervisor prior to the supervisor's year-end evaluation. The forms will be considered in the supervisor's evaluation.

#### **Section 6. Department Of Transportation Procedures**

This article applies to the Department of Transportation except that DOT:

1. is not required to develop and utilize performance standards;
2. is not required to conduct mid-year evaluations;
3. will appraise performance on a calendar year basis;

4. will provide exit appraisals only to employees transferring to another State agency; and
5. will not require employee self-assessments.

### **Section 7. Performance Appraisal Task Force**

The parties shall establish a Performance Appraisal Task Force, with the objective of reviewing the current employee appraisal procedure and suggesting changes that will

- 1) increase the effectiveness of the evaluations; and
- 2) increase the overall rate of completion by supervisors.

### **Section 8. Evaluation Form**

The Union agrees that the Management Rights provision of this agreement and Section 3-302 of the State Personnel and Pension Article confers upon the State the authority to make changes to the forms used to evaluate employees. Such changes may be implemented after notification to the Union.

### **Section 8. Evaluations of Employees Dealing with Private Service Providers**

A State employee whose job duties require interaction with a private service provider may not be penalized solely due to poor performance by the private service provider unless the employee was responsible for ensuring that the performance of the private service provider was satisfactory.

A State employee observing poor performance by a private service provider shall submit a written report to his/her observations to his/her immediate supervisor. The supervisor shall forward the information to the Appointing Authority. The employee shall be protected as provided under the Whistleblower law, SPP Title 5, Subtitle 3. If the poor performance continues the report shall be discussed at the departmental LMC.

If the employee's disclosure results in a direct savings to the State, the head of a principal unit may award the employee an Incentive Performance Award for extraordinary service in accordance with Section 10-204 of the State Personnel and Pensions Article. Under this provision, the head of a principal unit may award an employee or members of a group of employees in the unit:

- 1) Cash of not more than \$300;
- 2) A gift of not more than \$300 in value;
- 3) Paid administrative leave of not more than 3 days; or
- 4) Any combination of cash, gift, and leave of not more than \$300 in value.

## **ARTICLE 19. WITHIN GRADE INCREASES**

### **Section 1.**

This Article and appropriate law, regulation or procedure governs within grade step increases.

### **Section 2.**

An employee may not be denied a step pay increase for reasons of performance unless substantial performance deficiencies, defined as not meeting standards on performance standards/behavioral elements, warranting such action are cited on the employee's mid-year or final performance appraisal forms. In no case will the Employer withhold a step increase unless the affected employee has been notified.

### **Section 3.**

When the Employer determines that an employee's performance warrants withholding of a step increase, it shall notify the employee in writing and:

1. identify the specific incidents of unacceptable performance including reference to performance standards/behavioral elements;
2. provide a description of what the employer will do to assist the employee and a description of what the employee must do to improve the allegedly unacceptable performance during the opportunity period.

### **Section 4.**

If at anytime an employee's performance is considered to be at a level which jeopardizes his/her eligibility to receive a within grade increase as scheduled, the supervisor shall notify the employee in writing as soon as possible. Unless the deficient performance warranting the denial of the increase occurs late in the evaluation period, such notice shall be sufficiently in advance in order to provide the employee with an opportunity to improve performance and become eligible for the within grade increase. Failure to notify the employee per this Article shall not entitle the employee to a within grade increase if the employee's performance does not warrant it.

## **ARTICLE 20. TRAINING AND EDUCATION**

### **Section 1. Accreditation, Licensure Or Certification**

- A. Employees who are assigned or volunteer and are approved by the Employer to assume additional duties in their job classification which requires accreditation, licensure or certification, shall be granted time off with pay, consistent with the operational needs of the Employer, and be reimbursed for any cost associated with the accreditation, licensure or certification. The Employer shall, consistent with operational needs, grant the necessary time off with pay and/or provide in-service training for employees required to maintain accreditation, licensure or certification as a minimum qualification for their position. The Employer may, but is not required to, reimburse the costs required to maintain accreditation, licensure, or certification. In addition, the Employer will pay the cost of and grant time off for physical examinations required for obtaining and renewing Commercial Driver's Licenses.

The Employer shall reimburse the annual cost associated with an employee obtaining/retaining CNA certification.

In the event the employee is unable to obtain or retain accreditation, licensure or certification for medical reasons the State will provide career counseling and assist in identifying other State positions for which the employee may qualify.

## **Section 2. In-Service Training**

Whenever employees are required to participate in, in-service training programs, they will be given time off from work with pay to attend such programs. Travel time will be reimbursed, in excess of the employee's normal, round trip commute in accordance with State Fleet Policies promulgated by the Secretary of the Department of Budget and Management. The costs of such training will be paid by the Employer. When employees are scheduled for an in-service training day, they shall not ordinarily be scheduled to work the shift immediately before or after the training. The only allowable exceptions are for employees who volunteer for such scheduling or when employees are assigned to a shift on an overtime basis to meet minimum staffing requirements.

## **Section 3. Time Off For Education**

When an approved course is offered only during an employee's working hours, an employee may receive, with prior management approval, up to 6 hours per week of release time to attend job related training. The term "job-related" includes preparation for potential promotion as well as improvement in currently utilized skills and knowledge.

## **Section 4. Tuition/Training Reimbursement**

Those agencies that have tuition reimbursement shall continue their current policy and practice, contingent on available funding. .

An employee seeking tuition reimbursement shall submit a written request stating the course and the cost of tuition. The level of reimbursement per credit shall be limited to the per credit charge at the University of Maryland, College Park for graduate and undergraduate courses. All courses that are "job related" are eligible for reimbursement. The term "job-related" includes preparation for potential promotion, as well as, improvement in currently utilized skills and knowledge. Employees may request reimbursement in accordance with the employing department's policies and procedures.

## **ARTICLE 21. DISCIPLINARY ACTIONS**

Disciplinary Actions and Appeals shall be governed by SP&P and TSHRS laws, regulations and policies.

### **Section 1. General**

Except as otherwise provided by law, the Employer has the burden of proof by preponderance of the evidence in any proceeding under this Article. After taking a disciplinary action against an employee, the Employer may not impose an additional disciplinary action against that employee for the

same conduct unless additional information is made known to the Employer after the disciplinary action was taken.

The suspension of an employee who is exempt from the overtime pay requirements of the Fair Labor Standards Act shall be done so that the employee's overtime exemption will not be lost.

## **Section 2. Disciplinary Actions Permitted**

The Employer may take the following disciplinary actions against any employee:

1. give the employee a written reprimand;
2. direct the forfeiture of up to 15 work days of the employee's accrued annual leave;
3. suspend the employee without pay;
4. deny the employee an annual pay increase;
5. demote the employee to a lower pay grade; or
6. with prior approval of the head of the principal unit (Secretary of Department);
  - i) terminate the employee's employment, without prejudice, or;
  - ii) if the Employer finds that the employee's actions are egregious to the extent that the employee does not merit employment in any capacity with the State, terminate the employee's employment, with prejudice.

## **Section 3. Right To Union Representation**

An employee shall have the right to Union representation if requested by the employee, only as provided below. There will be no exceptions to this rule.

1. In any investigatory interview or discussion, conference or meeting with an employee who is the subject of the investigation.
2. At any disciplinary hearing, discussion, conference or meeting (including settlement discussions) with the employee whom is the subject of the disciplinary hearing.

Management shall allow reasonable time for the Union Representative to attend said meeting but in no case less than one (1) hour if there is a representative on duty at the worksite. If there is no Union representative on duty at the worksite, the employee shall be allowed at least four (4) hours to obtain a Union representative; however, the employee must sign a waiver extending the time limits by no more than one (1) workday, excluding weekends and holidays, for FLSA non-exempt employees and no more than five (5) workdays for FLSA exempt employees.

If the union cannot or does not have a representative available within a reasonable period of time, the meeting may be conducted without representation. If the Employer disapproves release time for the representative under Article 4, the meeting shall be delayed until the representative is released from duty.

An employee shall not have the right to a Union Representative in attendance during a discussion solely related to performance or during a performance review. The right to representation does not include a criminal investigation.

All employees are required to give prompt, accurate answers to any and all questions concerning matters of official interest put to him/her by the Employer.

The role of the Union Representative is to assist in the clarification of questions and otherwise advise the employee of his/her rights. Under no circumstances may the Union Representative answer for the employee, dominate the meeting or interfere with the employer's investigating process.

#### **Section 4. Automatic Termination Of Employment**

The following actions are causes for automatic termination of employment:

1. Intentional conduct, without justification that:
  - i) seriously injures another person,
  - ii) causes substantial damage to property, or
  - iii) seriously threatens the safety of the workplace;
2. theft of State property of a value greater than \$300;
3. illegal sale, use or possession of drugs on the job;
4. conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification;
5. conviction of a felony;
6. accepting for personal use any fee, gift or other valuable thing in connection with or during the course of State employment if given to the employee by any person with the hope or expectation of receiving a favor or better treatment than that accorded to other persons;
7. violation of the Fair Election Practices Act; or
8. using, threatening, or attempting to use political influence or the influence of any State employee or officer in securing, promotion, transfer, leave of absence, or increased pay; or
9. wantonly careless conduct or unwarrantable excessive force in the treatment or care of an individual who is a client, prisoner, or any other individual who is in the care or custody of this State.

#### **Section 5. Duty Of The Employer Prior To Imposing Sanctions**

- A. The State agrees with the tenets of progressive discipline, where appropriate. Similarly situated employees will be treated similarly regarding the application of disciplinary actions, but mitigating circumstances will be considered.
- B. Procedures - Before taking any disciplinary action related to employee misconduct, the Employer shall:
  1. investigate the alleged misconduct;
  2. meet with the employee (unless the employee is unavailable or unwilling to meet) at which time the employee shall be notified of the misconduct and provided an explanation of the Employer's evidence;
  3. consider any mitigating circumstances;
  4. determine the appropriate disciplinary action, if any, to be imposed; and

5. give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.
- C. Time Limits - An appointing authority may impose any disciplinary action no later than 30 days after the appointing authority acquires knowledge of the misconduct for which the disciplinary action is imposed.
  - D. Suspension - (1) An appointing authority, may suspend an employee without pay, no later than five (5) workdays following the close of the employee's next shift after the appointing authority acquires knowledge of the misconduct for which the suspension is imposed. (2) Saturdays, Sundays, legal holidays, and employee leave days, whether paid or unpaid, are excluded in calculating the five (5) workday period.
  - E. Except for employees working for a law enforcement agency and other exceptions authorized by law, an employee may not be required to submit to a polygraph test.
  - F. Termination of probationary employees is covered by appropriate Law, Regulations, and /or Policy.

## **Section 6. Actions Which Do Not Constitute Disciplinary Actions**

### **A. Counseling Memoranda:**

1. Issuing a counseling memorandum is an instructional communication and is not a disciplinary action.
2. Counseling memorandums shall be issued to employees in a confidential manner.
3. Within 5 days after receiving a counseling memorandum, an employee may submit to the Employer a written response to the memorandum. The response shall be placed in the employee's personnel file and attached to any record of the memorandum.
4. Counseling Memoranda can only be grieved by employees of the Department of Transportation (MDOT).

### **B. Leave Without Pay:**

1. Placing an employee on leave without pay when the employee is absent without approval is not a disciplinary action.
2. An employee who is placed on leave without pay for an unapproved absence also may be subject to disciplinary action for the unapproved absence.

### **C. Restitution:**

1. Requiring an employee to make restitution to the State for loss or damage to State property due to an employee's negligence is not a disciplinary action.
2. The Employer may not require an employee to pay restitution exceeding 3% of the employee's annual base pay.

3. An employee who is ordered to make restitution under this subsection also may be subject to civil prosecution or criminal prosecution.

## **Section 7. Other Procedures**

- A. Negotiation and bargaining permitted - this Article does not preclude the Employer and an employee from agreeing to:
  1. holding in abeyance a disciplinary action for a period not to exceed 18 months in order to permit the employee to improve conduct or performance;
  2. imposition of a lesser disciplinary action as a final and binding action.
- B. Failure to appeal - if an employee fails to appeal a decision per law, regulation, or policy, the employee is considered to have accepted the decision.
- C. Time limits - the parties may agree to waive or extend any time limits as stated in this article.
- D. Resolution of appeal encouraged - each party shall make every effort to resolve an appeal at the lowest level possible.
- E. A failure to decide an appeal in accordance with law and regulation is considered a denial from which an appeal may be made.
- F. Management shall not willfully misrepresent the appropriateness of any disciplinary sanction to either increase the level of said disciplinary sanction or prompt acceptance of a lesser disciplinary sanction. Moreover, management shall not deny any bargaining unit employee the right to representation by the exclusive representative as provided in Section 3 of this Article during any settlement discussions pertaining to disciplinary actions, or make a settlement offer contingent upon an employee voluntarily waiving his/her right to representation.
  1. An employee may have up to four (4) hours, or where less than four (4) hours remain in the employee's workday, until noon of the next regularly scheduled workday (exclusive of Saturdays, Sundays and holidays) after a settlement offer is made by management to advise management of his/her decision to accept, or reject the settlement offer.
  2. Where the time frame allowed an employee to consider the settlement would cause the disciplinary action to be untimely, the employee must sign an acknowledgement that extends the time limits in Section 5 by no more than one (1) workday for FLSA non-exempt employees and no more than five (5) workdays for FLSA exempt employees. If the extended time frame to impose discipline expires before the employee reports back to the appointing authority with a decision, the settlement offer shall be considered rescinded and the initial discipline shall be considered imposed within the appropriate timeframe and cannot be appealed as being untimely.

## **Section 8. Retention Of Records**

After twenty-four (24) months without any further disciplinary action, the record of any prior disciplinary action, up to and including suspensions of five (5) days shall be expunged at the employee's request. After twelve (12) months, letters of a reprimand and counseling memorandum shall not be used in assessing discipline if there has been no further disciplinary action.

## **Section 9. Excessive Absenteeism, Tardiness Or Abuse Of Sick Leave**

It is understood that excessive absenteeism, excessive tardiness, or the abuse of sick leave constitutes just cause for discipline and it is the intent of the Employer to take corrective action.

## **Section 10. Maryland Department Of Transportation Employees (MDOT)**

If an employee is suspended without pay pending charges for termination the appointing authority or designated representative shall provide to the Secretary or designee the charges for termination within 30 calendar days after the first day of the suspension. If the appointing authority or designated representative files the charges for termination after the 30 calendar days the employee shall be placed on leave with pay until the Secretary or designee received the charges.

If during this period of time the employee applies for and is awarded unemployment compensation MDOT will not challenge this determination. MDOT will provide to any prospective employer that contacts them, a neutral reference.

### **ARTICLE 22. DISCIPLINARY ACTIONS RELATED TO EMPLOYEE PERFORMANCE**

- A. Scope: This article applies to an employee in the skilled and professional services.
- B. The appointing authority may discipline an employee for reasons related to the employee's performance. These reasons include but are not limited to:
  - 1. that the employee is incompetent or inefficient in the performance of the employee's duty;
  - 2. that the employee is an individual with a disability who with reasonable accommodation cannot perform the essential functions of the position; or
- C. Before an employee in the skilled or professional service may be disciplined for performance-related reasons, the appointing authority or designee shall:
  - 1. Investigate the employee's performance, including the employee's most recent performance appraisals.
  - 2. Notify the employee in writing of the deficiency and provide an explanation of the employer's position. The notice shall include:
    - a. Specific instances of unacceptable performance by the employee on which the proposed action is based;

- b. the performance standards/behavioral elements of the employee's position involved in each specification of unacceptable performance;
    - c. a description of the efforts made by the employer to assist the employee in improving performance.
  - 3. Meet with the employee to hear the employee's explanation, unless the employee is unavailable or unwilling to meet; and
  - 4. After determining the appropriate discipline, give the employee written notice of the disciplinary action to be taken, and the employee's appeal rights, and inform the employee of the effective date of the disciplinary action.
- D. Between the time an appointing authority notifies the employee of the disciplinary action and the time of the imposition of the discipline, the appointing authority may rescind the discipline.
- E. Except in the case of an annual performance appraisal, within 30 days after the appointing authority acquires knowledge of performance-related reasons for which disciplinary action may be imposed, the appointing authority shall take each of the actions required in Section C of this article. The time period may be extended for any time that the employee is unavailable.
- F. In the case of an annual performance appraisal, the appointing authority shall impose discipline within 30 days after the time period specified in Section G of this Article.
- G. Performance Appraisals.
  - 1. When an employee has been given an overall rating of "Needs Improvement" on an annual performance appraisal, the employee's supervisor shall inform the employee that the employee has 180 days from issuance of the rating to improve to the level of "Meets Standards." The employee's development plan will be completed to identify the following:
    - a. an identification of the performance standards/behavioral elements for which performance is unacceptable;
    - b. description of what the Employer will do to assist the employee and a description of what the employee must do to improve the unacceptable performance during the opportunity period;
    - c. statement as to when the employer and the employee decide to meet to evaluate the employee's performance within the 180-day period.

Failure to meet standards at the end of the 180-day period shall result in the employee's termination.

- 2. When an employee has been given an overall rating of "unsatisfactory" on an annual performance appraisal, the employee's supervisor shall inform the employee that the employee has 90 days from issuance of the rating to improve to the level of "Meets Standards." Approximately midway through

the 90-day period, the employee and the employee's supervisor shall meet to evaluate the employee's progress toward meeting standards.

3. Failure to meet standards at the end of the 90-day period shall result in the employee's termination.
4. An employee may not receive an overall rating of "unsatisfactory" on the employee's annual performance appraisal unless during the rating period the employee has been given written notice, citing specific examples, (and accompanied by supporting documentation) that the performance is "unsatisfactory" and has received an "unsatisfactory" or "needs improvement" rating on the employee's previous mid-year appraisal.
5. Under the provisions of State Personnel and Pensions Article, §8-107, Annotated Code of Maryland, an employee may not be denied a pay increase unless substantial reasons of performance were cited on the employee's mid-year or final performance appraisal forms.

H. DOT employees shall be evaluated based on TSHRS Policy 7A. In application of this policy, no employee will have less notice time for improvement and/or notice of termination than what is prescribed in the above article.

## **ARTICLE 23. TRAVEL**

### **Section 1. Personal Vehicles**

- A. Employees who are directed by the Employer to use a personal vehicle for official state business shall do so in accordance with state fleet policies established by the Department of Budget and Management. When circumstances make it impractical for an employee to obtain a state vehicle on the day the vehicle will be used, such employee may request the vehicle at the end of the prior day's shift, and the appointing authority shall make reasonable accommodation, consistent with the efficient operation of the unit, to accommodate such request. If such request cannot be granted, the employee may use his/her own vehicle and be reimbursed at the full rate in accordance with state fleet policies.

### **Section 2. Per Diem And Lodging**

Employees required to travel overnight will be reimbursed the overnight lodging and meal costs incurred in accordance with applicable regulations promulgated by the Secretary of Budget and Management. Employees required to travel but not overnight will be reimbursed for meal costs in accordance with applicable regulations.

### **Section 3. Travel Advances**

Employees may apply for and receive a travel advance prior to embarking on state travel if adequate funding is available in accordance with applicable regulations promulgated by the Comptroller of the Treasury.

#### **Section 4. Taxi, Road, Bridge, Parking Fees, And Other Travel Matters**

Taxi, road, bridge and parking fees, or other transportation and travel costs incurred by an employee on official state business, will be reimbursed by the Employer in accordance with applicable regulations.

#### **Section 5. Reimbursement**

The Employer will reimburse employees for transportation and travel expenses in an expeditious manner.

## **ARTICLE 24. INSURANCE AND BENEFITS**

### **Section 1. Medical Plans**

The Employer will maintain the current health (including vision) and dental insurance programs and practices. The Employer shall contribute 80% of the premium charge for PPO plans, 83% of premium for the POS plan, 85% of premium for the HMO plan, 80% for the prescription drug plan and 50% for the dental plan.

### **Section 2. Expanded Dependent Coverage**

Effective July 1, 2008, the State shall offer dependent health benefits up to the age of 25, provided that:

1. The child dependent is either:

- a) the natural child, stepchild, adopted child or grandchild of the insured;
- b) a child placed with the insured for legal adoption;
- c) a child who is entitled to dependent coverage under IN § 15-403.1; or
- d) a dependent within the terms of COMAR 17.04.13.03B(11) but for the age limitation.

2. The child dependent is unmarried;

3. The child dependent is under the age of 25; and

4. The child dependent is either:

- a) a "qualifying child" of the insured, as that term is defined in 26 U.S.C. § 152(c); or
- b) a "qualifying relative" of the insured, as that term is defined in 26 U.S.C. § 152(d), excluding (d)(1)(B).

### **Section 3. Term Life Insurance**

The Employer will maintain and make available to full-time and part-time employees, the current term life insurance plan as set forth in the document "Summary of Health Benefits, Maryland State Employees."

### **Section 4. Personal Accidental Death And Dismemberment Plan**

The Employer will maintain and make available to full-time and part-time employees, the current personal accidental death and dismemberment plan as set forth in the document "Summary of Health Benefits, Maryland State Employees."

### **Section 5. Health Insurance Portability And Accountability Act of 1996**

The Employer shall not elect to be excluded from subparts 1 and 2 of the Health Insurance Portability and Accountability Act of 1996.

### **Section 6. Health Insurance Advisory Council (HIAC)**

The Union will not object to the abolishment of the Health Insurance Advisory Council.

### **Section 7. Open Enrollment**

The Employer will conduct an open enrollment period each year at which time eligible employees shall be able to enroll in a health plan, continue enrollment in their current plan, or switch to another plan. Unless there is a mandatory open enrollment, employees who take no action during open enrollment will automatically be re-enrolled in their current plans and coverage. The Employer shall ensure that health benefit fairs are held during open enrollment, that such fairs are well publicized and scheduled to facilitate employee attendance, and that the Union be provided with space at such fairs. Open enrollment information and forms will be available to all employees and the Union in a timely manner. State agencies will make a good faith effort to mail open enrollment information to any employee who, on the first day of open enrollment, is scheduled to be on approved leave for more than 80% of the open enrollment period.

### **Section 8. Transit Subsidy Program**

The Employer agrees to provide a free transit program for employees covered under this MOU. This program will include all Baltimore/Metro buses, Light Rail, Subway and Commuter Bus Lines No. 120, 150, 160 and 210 and all other systems and lines included in the current program.

### **Section 9. Death Benefit**

A death benefit in the amount of \$100,000 shall be paid to the surviving spouse, children or dependent parents (as defined in SPP Section 10-404) of any State employee who is killed in the performance of job duties. A death benefit may not be paid under this section if an employee is killed as a result of the employee's negligence.

## **ARTICLE 25. EMPLOYEE ASSISTANCE PROGRAM**

### **Section 1. Employee Assistance Program (EAP)**

The Employer and the Union recognize the value of counseling and assistance programs to those employees whose personal problems affect performance of their job duties and responsibilities. Therefore, the Employer agrees to continue the existing Employee Assistance Program.

### **Section 2. Labor-Management Advisory Committee**

At the request of the Union, the Union and the Employer agree to form a joint labor-management committee on employee assistance. The committee will be composed of an equal number of

representatives for the Union and the Employer. The committee will review the EAP, EAP provider networks and EAP training programs for employees and supervisors.

### **Section 3. Confidentiality**

Records regarding treatment and participation in the Employee Assistance Program shall be confidential and retained by the Employee Assistance Program.

In cases where the employee and the Employer have entered into a voluntary Employee Assistance Program Participation Agreement in which the Employer agrees to defer discipline as a result of employee participation in the Employee Assistance Program treatment program, the employee shall be required to waive confidentiality by signing appropriate releases of information to the extent required to enable the Employee Assistance Program to provide the Employer with reports regarding compliance or non-compliance.

In cases of supervisor referral to the Employee Assistance Program, records shall be released to the Employer solely in reference to the ability of the employee to perform the job safely and effectively and or whether the employees need to participate in the program.

In addition, the Employer shall be informed of the employee's compliance or non-compliance in the Employee Assistance Program.

## **ARTICLE 26. DRUG AND ALCOHOL TESTING**

### **Section 1.**

Drug and alcohol testing shall be done in a fair and equitable manner in strict observance of all applicable laws and regulations. All employees subject to such testing shall be so informed.

### **Section 2.**

- a.) Employees who are called in to work outside of their regularly scheduled hours shall be provided the opportunity to acknowledge they have consumed alcohol within the previous four hours.
- b.) The employees who make an acknowledgment under paragraph (a) may not be subject to disciplinary action and may not be assigned to perform a safety-sensitive function.

## **ARTICLE 27. EMPLOYEE FACILITIES**

### **Section 1. Water And Restroom Facilities**

Sanitary drinking water will be provided to all employees and all employees will have access where possible to fully equipped and clean restroom in reasonable proximity to their place of

employment. Where possible, in institutional settings, restrooms will be set aside for the exclusive use of employees.

## **Section 2. Personal Property**

For employees who are required to wear uniforms or other special attire or equipment, the Employer will provide a secure place for employees to store their personal wearing apparel and other personal items where possible.

At the request of the Union, the local LMC may discuss issues of securing of personal possessions in the absence of lockable areas.

## **Section 3. Eating Areas**

For employees who have an unpaid lunch (dinner) break, the Employer will provide employees with an area suitable for eating in reasonable proximity to their work area where possible. Wherever possible, the eating area will be away from residents, patients, inmates, students, and clients.

## **Section 4. After Hours For Department Of Human Resources Employees**

Local level Labor Management Committees will periodically review currently established internal procedures for the prompt reimbursement to workers who incur expenses arising from their work duties at the Department of Human Resources. Additionally, the LMCs will explore options for emergency fund access for workers who are required to provide after hours emergency relief to clients.

# **ARTICLE 28. CASE LOAD MANAGEMENT GUIDELINES**

## **Section 1. Scope**

The parties recognize that the subject of caseloads for employees in DHR, DHMH, DJS, DPSCS and DLLR was an important issue for the Union during the negotiations, which resulted in this Memorandum of Understanding, and shall be a subject of discussion at these agencies.

Accordingly the parties have agreed to the following process, which has as its objective the evaluation of appropriate caseload management guidelines while also recognizing management's need for efficient and flexible operations. Specifically, the parties agree to create caseload study subcommittees at the Departmental Level LMCs for the Departments or Agencies listed above. The subcommittees will evaluate and make recommendations to their respective Department Heads regarding:

- 1.) The types of work where caseload guidelines should be developed.
- 2.) Reasonably attainable minimum and maximum caseload management (numbers and types of cases) guidelines.
- 3.) Procedures that will be applied when caseload management guidelines are exceeded, or not met. The committee shall attempt to agree upon recommended procedures that will provide

sufficient relief for the affected employee in instances where individual caseloads exceed agreed upon guidelines.

- 4.) Development of a caseload monitoring plan.
- 5.) Fiscal and legislative restrictions.
- 6.) The nature of work to be performed.

## **Section 2. Timetable**

In order to set a timetable and procedural framework within which the subcommittees will accomplish their tasks, the parties have further agreed to the following:

The subcommittees referenced in Section 1 above will be appointed and have their first organizational meeting within six (6) weeks of the date of the MOU ratification.

Each subcommittee shall provide to the Head of the affected Department a final report no later than thirty (30) weeks after the date of the MOU ratification.

The Department Head who receives a final report will meet with the LMC to provide feedback on the report, indicating areas of acceptance and explaining the reasons for rejecting any of the recommendations in the report.

## **Section 3. Committees/Subcommittees**

In the event either party believes a committee or subcommittee is not functioning appropriately, the Union's Executive Director and the Secretary of the Department (or their respective designees) shall investigate the situation and take any corrective action that they agree is appropriate.

## **ARTICLE 29. UNIFORMS AND EQUIPMENT**

### **Section 1. Uniforms**

The provisions of this Article apply to employees who are required to wear uniforms. The Employer shall provide the employee with five (5) sets of required uniform trousers and shirts (short and long sleeve) and the employee will be provided with sufficient uniform replacements to maintain five (5) serviceable uniforms. The Employer shall furnish American made uniform products to the extent possible.

All Department of Transportation employees shall continue to be subject to their Administration's existing policy.

- A. Subsequent to the original issue, if uniforms are in such a state of disrepair as to require replacement, they will be returned to the Supply Officer for a replacement. Replacement needs will be verified by appointing authority, or designee.
- B. All uniforms shall be in new condition and fit properly.
- C. New employees shall receive three uniforms, after 5 months they shall receive 2 additional uniforms to provide them with their 5 sets of uniform trousers and shirts.

- D. Where an employee's position and/or duties requires the wearing of safety shoes, the Employer shall either provide employees with such shoes, or provide reasonable reimbursement to employees for the purchase of shoes.
- E. The Employer shall purchase or provide reasonable reimbursement to employees who are required to wear non-prescription safety glasses. For employees who wear prescription glasses, where non-prescription safety glasses do not provide adequate protection, the Employer shall provide reasonable reimbursement for prescription safety glasses.
- F. The Employer shall provide reasonable reimbursement to employees for replacement and/or repairs of non-uniform clothing or other items worn by employees that are damaged by clients or members of the public.
- G. The appropriate labor management committee shall discuss other issues associated with uniform policies.

## **Section 2. Equipment**

The Employer will ordinarily furnish and maintain in good condition the equipment needed by employees to perform their jobs. Employees required to supply their own equipment will be promptly reimbursed for such upon submitting a receipt. Reimbursement will be made expeditiously following submission of receipts.

## **Section 3. Body Armor**

In recognition of the need to enhance the personal safety of security personnel at DHMH and Correctional facilities, the parties agree that non-probationary security personnel who have contact with forensic patients and/or inmates should generally have the opportunity to have individually fitted stab proof vests and, in addition, individually fitted bullet proof vests will be provided to officers on an "as-needed" basis. The sharing of vests shall not be considered an acceptable practice and vests may transferred from employee to employee only if such vests are a proper fit and are appropriately sanitized in accordance with practices necessary to eliminate the risk of the spread of MRSA and other communicable diseases. The parties agree to meet and agree to policies, including any limitations or exclusions, for the provision of stab proof vests to correctional officers and security attendants by January 31, 2008. In developing the policies, the committee shall:

- a. Assess the need for stab proof vests at specific locations within the various facilities by agreeing upon exceptions to the general rule of providing security personnel with an opportunity to obtain individually fitted body armor; and
- b. Address issues related to employee responsibilities regarding the fit and usage of such vests.

The parties shall be represented by individuals authorized to commit their respective organizations to agreement.

## **Section 4. Flight Suits**

Each employee assigned to duties on a flight crew shall be provided with two (2) serviceable fire retardant flight suits and two pairs of fire retardant gloves.

## **ARTICLE 30. DISPUTE RESOLUTION PROCEDURE**

### **Section 1.**

Subject to any limitations of existing law, a complaint is defined as a dispute concerning the application or interpretation of the terms found only in this MOU. The provisions of this procedure shall be the only procedure for complaints concerning interpretation or application of terms found only in this MOU. Issues otherwise appealable through the existing disciplinary appeals/grievance procedures established by law or regulation are not subject to this procedure. AFSCME and the Teamsters are the only Union representative that may represent employees in disputes regarding the terms found only in this MOU.

### **Section 2. Procedure**

#### **Step One**

Within 15 days after the event giving rise to the complaint or within 15 days following the time when the employee should reasonably have known of its occurrence, the employee aggrieved and/or the Union representative shall discuss the dispute with the employee's immediate supervisor. The Supervisor shall attempt to adjust the matter and respond orally to the employee and/or the Union representative within three (3) days.

#### **Step Two**

If the dispute has not been settled at step one, a written complaint may be filed and presented to the employee's appointing authority and/or designee within seven days after receiving the step one response. A Union representative must sign the complaint. The appointing authority or designee shall meet with the employee and the employee's Union representative and render a decision in writing no later than twenty (20) days after receiving the complaint.

#### **Step Three**

If the complaint has not been settled at step two, a written complaint may be filed with the Head of the Principal unit within seven days after receipt of the answer at step two. The Head of the Principal unit or designated representative shall meet with the employee and the Union representative and render a written decision within twenty (20) days after receiving the written appeal. When the appointing authority is also the Head of the Principal unit, this step shall be skipped and the step two decision shall be appealed directly to step four.

#### **Step Four**

If the dispute has not been settled at Step Three, AFSCME's Executive Director, or designee, or the Teamsters' designee, may file a written complaint with the Secretary of the Department of Budget and Management, or designee, within thirty (30) days of the Step Three response. If the Secretary, or designee, does not concur with the decision rendered at Step Three of the procedure, the Secretary, or designee, shall

render a decision that is binding on the unit. If the Secretary, or designee, concurs with the Third Step decision, the Secretary, or designee, shall notify the Union within thirty (30) days.

#### Step Five

The Union can appeal the decision of the Secretary, or designee, within thirty (30) days to factfinding.

When factfinding is invoked, the Union and the Employer shall jointly request a list of seven (7) neutral factfinders from the FMCS. The parties will meet within fifteen (15) days of receipt of the FMCS list to seek agreement on one of the listed factfinders. This meeting may take place on the telephone. If the parties cannot agree on a factfinder, the Employer and the Union will alternately strike one name from the list until a single name remains. A flip of the coin shall determine who shall strike the first name.

The factfinder shall resolve all questions related to the procedure. Upon mutual agreement of the parties, threshold issues may be resolved prior to the parties proceeding with the substantive issues involved in the case. The cost of the fact-finder shall be shared equally by the parties.

#### **Appeal of Fact Finder's Decision**

If the Employer or the Union disagree with the fact-finder's decision, an appeal may be filed with the State Labor Relations Board within thirty (30) days of receipt of the decision in accordance with the Board's regulations. Only the Union's Executive Director or the Governor's designated collective bargaining representative may appeal a fact-finder's decision.

### **Section 3. General Provisions**

- A. As used in this Article, "days" means calendar days. If the last day a response or action is due falls on a Saturday, Sunday, or State holiday, the deadline shall be extended to the next non-holiday weekday. All deadlines in this Article may be extended by mutual agreement. Time limits for the processing of complaints are intended to expedite dispute resolution and, if not extended, must be strictly observed. If the matter in dispute is not resolved within the time period provided for in any step, the next step may then be invoked. If the employee or Union fail to pursue any step within the time limits provided, he/she shall have no further right to continue to seek resolution of that dispute.

A failure by management to provide a response in the time required shall be deemed a denial of the complaint. A failure to appeal such denial within ten (10) calendar days of the date a response was due shall constitute a withdrawal of the complaint except that the Union shall have thirty (30) days from the date the response was due to invoke step four. The Employer shall ensure that its supervisors and representatives do not repeatedly fail to respond to complaints in a timely manner and shall also ensure that its designees are authorized to settle matters subject to the complaint.

- B. If a dispute arises from the action of an authority higher than the immediate supervisor, such dispute may be initiated at the appropriate step of this procedure.

- C. Each agency shall provide the Union with a list (including telephone number, fax number and mailing address) of its appointing authorities and Heads of Principal units (or designees).
- D. Only designated Union representatives may represent employees or file appeals under this procedure. For purposes of this Article, stewards, Union staff and Union officers shall be considered designated Union representatives. The Union will provide a list of the names of the aforementioned (to include telephone numbers, fax numbers and mailing addresses) to the Executive Director of the Office of Personnel Services and Benefits. An employee's complaint must be signed by a Union representative of AFSCME.
- E. Stewards and Union representatives referred to in this procedure shall be granted reasonable time off with pay to process disputes pursuant to this Article during working hours. Meetings scheduled pursuant to this Article shall be scheduled at a mutually agreeable time during the regular working hours of the Union representative and Employer representative, if possible, but such meetings may be waived by mutual agreement. If the Union and Employer representative do not work on an overlapping schedule, the meeting shall be scheduled during regular day shift hours and, upon request of the Union representative, his/her schedule shall be adjusted if it is consistent with operational needs without regard to the restrictions in Article 6, Hours of Work. There shall be no overtime or compensatory time earned for the processing of a complaint or attendance at a meeting under this Article.
- F. A written complaint shall state the issues including a citation to the relevant portion of the MOU allegedly being violated.
- G. Each party shall make every effort to resolve a dispute at the lowest level possible.

### **ARTICLE 31. ACCOUNTABILITY**

Supervisors shall not knowingly violate the rights of employees contained in the MOU; but if such violations occur, management shall take corrective action, including progressive discipline where appropriate.

### **ARTICLE 32. MID-CONTRACT NEGOTIATIONS**

#### **Section 1.**

The Employer and the Union acknowledge their mutual obligation to negotiate as defined and required by law over Employer proposed changes in wages, hours and other terms and conditions of employment affecting bargaining unit employees not specifically covered by this Agreement. The Union's ability to negotiate does not provide the Union with a "veto" power over Employer initiated changes and shall not unduly delay the implementation of Employer initiated changes. The Employer expressly agrees not to propose changes in working conditions that are mandatory subjects of bargaining to the General Assembly that have not been subject to the bargaining process described in this Article.

## **Section 2.**

The obligation to bargain is limited to those changes that will substantially affect the working conditions of bargaining unit employees.

The minimum notice to the Union of an intended change in working conditions is fifteen (15) days. If required to meet a legislative mandate or an emergency situation, management will notify the Union as soon as possible.

The Union may request bargaining within this fifteen (15) day period and shall submit proposals in response to the Employer's intent to change working conditions within ten (10) days of its request to bargain.

## **Section 3. Mediation.**

If after good faith negotiations at the local level, the parties are unable to reach an agreement on a mandatory subject of bargaining, the issue will be forwarded to the Executive Director of the Office of Personnel Services and Benefits and the Executive Director of AFSCME to negotiate the issue.

At this point, if an agreement still has not been reached, either party may request the assistance of a mediator from the Federal Mediation Conciliatory Services (FMCS). Should there be a cost involved, this cost will be the responsibility of the party requesting the mediator.

If the mediator is unable to bring the parties to an agreement, both sides will ask for a recommendation. If the recommendation does not support the State's position, the State may implement its proposal upon providing written notification to the Union identifying the reason(s) the State is going forward with the proposed change. However, this procedure does not prevent the State from implementing proposed changes in an emergency situation declared by the Governor, or when the proposed changes are required to meet a legislative \_mandate.

## **ARTICLE 33. MISCELLANEOUS**

### **Section 1. Agreement**

To the extent that this Agreement addresses matters covered by existing or future administrative rules, regulations, guidelines, policies or practices, that are mandatory subjects of Bargaining, management agrees to make any necessary changes in the rules, etc. to be consistent with this agreement. References in this Agreement to "COMAR," "rules" "regulations," or "Transportation Services Human Resources System (TSHRS)," is understood by the parties to be negotiable when consistent with the law under Article 32.

### **Section 2. Preservation Of Benefits**

The Employer agrees not to make changes to State statutes, administrative rules, regulations, guidelines, TSHRS or policies that are mandatory subjects of bargaining per the law until negotiated in accordance with this agreement (Article 32 ).

## **ARTICLE 34. SAVINGS**

Should any part of this Agreement be declared invalid by operation of law or by a tribunal of competent jurisdiction, the remainder of the Agreement shall not be affected but shall remain in full force and effect. In the event any provision is thus rendered invalid, upon written request of either party, the Employer and the Union shall meet promptly and negotiate a substitute for the invalid Article, Section or portion thereof.

## **ARTICLE 35. CHILD CARE**

At the request of the Union, the Union and the Employer agree to form a statewide joint labor-management committee on childcare. The committee will be composed of six (6) representatives for the Union and six (6) representatives for the Employer.

## **ARTICLE 36. WORK STOPPAGES**

It shall be a violation of this Agreement for the Union to engage in a strike or work stoppage against the State of Maryland. The Union shall forfeit its status as the exclusive representative of employees in this bargaining unit if the Union engages in a strike or work stoppage against the State of Maryland.

## **ARTICLE 37. HEALTH AND SAFETY**

### **Section 1. General Duty**

The Employer will provide, to the extent possible, safe, secure, healthful working conditions for all employees. The Employer agrees to 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. All employees shall comply with all safety rules and regulations established by the Employer.

### **Section 2. Unsafe Conditions**

In accordance with 29 CFR § 1977, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself/herself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself/herself to the dangerous condition, he/she would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger by resorting to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

### **Section 3. Health And Safety Committees**

In order to provide a safe and healthful workplace, principal unit level LMC's shall establish Health and Safety Committees where they do not already exist and at the request of the Union. Each committee will be composed of an equal number of representatives appointed by the Union and the Employer and will be co-chaired by a Union and Employer representative. A Union representative must be a member of the unit but either party may be accompanied by staff and/or other subject matter experts who may participate, but not vote, at meetings. Each party shall prepare and submit an agenda to the other party one week prior to any scheduled meeting. If neither party submits an agenda, the meeting shall be canceled.

Each committee's general responsibility will be to provide a safe and healthful workplace by recognizing hazards and recommending the abatement of hazards and educational programs. Each committee will:

1. establish an accident reduction target for each fiscal year;
2. Meet on an established schedule;
3. arrange periodic inspections to detect, evaluate and offer recommendations for control of potential health and safety hazards;
4. appoint members of the committee to participate in inspections, investigations, or other established health and safety functions to the extent necessary;
5. receive and review a quarterly summary of job-related health and safety reports including accident reports and make appropriate recommendations;
6. investigate all types of employee job-related accidents and all types of occupational illnesses and make recommendations;
7. promote health and safety education;
8. study the use of VDTs and make appropriate recommendations to ensure the health and safety of employees regarding such use;
9. maintain and review minutes of all committee meetings; and
10. review the availability and adequacy of first aid supplies and equipment and address any inadequacies;
11. review and recommend any measures to maintain a secure work force in view of the potential for a terrorist threat.

In cases where summary reports are provided, a committee member may request and receive an individual case file or report. In no case will an employee's records be provided when the law forbids disclosure. In addition, employees' names will normally be deleted but may be provided to all committee members in instances where committee members need to know the name(s) of employee(s) to effectively represent the bargaining unit(s) and disclosure of name(s) is not prohibited by law. The Employer may require committee members and union representatives to sign confidentiality statements.

Members of each Health and Safety Committee will be paid by the Employer while performing committee duties, including travel time, and will also be paid for any time spent in committee approved training related to health and safety. The Committee will develop an annual training program for its members.

Each Health and Safety Committee will establish rules consistent with the above principles. A mechanism to coordinate the efforts of individual Health and Safety Committees will be established at each agency

#### **Section 4. Personal Protective Clothing And Equipment**

The Employer will provide all personal protective clothing and/or equipment that are required by applicable laws, regulations, and policies. The Employer shall purchase or provide reasonable reimbursement to employees who are required to wear non-prescription safety glasses. For employees who wear prescription glasses, where non-prescription glasses do not provide adequate protection, the Employer shall provide reasonable reimbursement for prescription safety glasses.

#### **Section 5. Communicable Diseases**

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Training provided to employees will include the symptoms of the diseases, modes of transmission, methods of self-protection, proper workplace procedures, special precautions, recommendations for immunization and any relevant regulations, guidelines and CDC recommended precautions.

Employees who have any contact with blood and other body fluids will be offered Hepatitis B vaccinations and follow up testing and vaccination at the Employer's expense.

Any screening of incoming clients, residents or inmates in health care facilities or residential or correctional institutions for communicable diseases will be performed according to relevant Centers for Disease Control (CDC) guidelines. If a resident or inmate is found to carry a communicable disease, all appropriate precautions will be taken.

The Employer will comply with the latest CDC guidelines on post exposure treatment whenever an employee receives an exposure, while on duty, to potentially infectious bloodborne or otherwise transmittable diseases, except for cases of employee misconduct or gross negligence. Employer arranged testing associated with such diseases will be paid by the Employer and will be done on work time.

#### **Section 6. Cardiopulmonary Resuscitation (CPR) Training**

Ongoing CPR training will continue to be provided in accordance with current practice at Employer cost. The Employer will develop emergency facility evacuation plans and provide appropriate training, including fire drills.

#### **Section 7. Ergonomics/Back Injury Prevention**

At the request of the Union, the Employer and the Union shall establish an Ergonomics Committee which shall consider and make recommendations on methods to prevent injuries. The Ergonomics Committee will develop an informational program on musculoskeletal disorders (MSDs) and their causes for referral to management for its review and subsequent dissemination to the work force.

#### **Section 8. Staffing Levels**

To the extent legislative appropriations and PIN authorizations allow, safe staffing levels will be maintained in all institutions where employees have patient, client, inmate or student care responsibilities. In July of each year, the Secretary or Deputy Secretary of each agency will, upon request, meet with the Union, to hear the employees' views regarding staffing levels. In August of each year, the Secretary or Deputy Secretary of Budget and Management will, upon request, meet with the Union to hear the employees' views regarding the Governor's budget request.

### **Section 9. Asbestos**

All employees who work with or around asbestos shall have the proper required training and personal protective equipment where necessary. When an asbestos hazard is discovered, employees shall be promptly notified of the existence and location of the hazard.

### **Section 10. Workplace Violence**

The Employer, in cooperation with the Union, shall develop a comprehensive workplace violence prevention program. As a part of this program, the Employer will provide training in handling violent and aggressive patients, customers, inmates, and co-workers. Such training shall be provided at least annually to all employees who deal with patients in DHMH facilities, and to all employees in Juvenile Services and Public Safety positions, who come in contact with inmates or juvenile offenders. Other employees shall receive such training at a frequency to be decided by the appropriate health and safety committee.

In the event an employee is threatened or attacked, he/she may take appropriate legal action and will be released from duty with pay for the time necessary to file the report.

Where armed security personnel are deployed, such personnel will escort employees to their vehicles after normal business hours upon request.

### **Section 11. Indoor Air Quality**

The Employer shall ensure a healthful air quality and attempt to ensure comfortable air temperature in buildings it owns and in space that it leases.

### **Section 12. Reproductive Hazards**

Any pregnant employee assigned to work in an environment that may be harmful to the pregnancy or to the fetus may request reassignment to alternative work, at equal pay, within her department. Such environments include, but are not limited to, exposure to toxic substance such as ethylene oxide or lead, communicable disease such as cytomegalovirus or rubella, physical hazards, or where there is a reasonable expectation of violence against the employee. Management shall assess any suspected hazard on a case-by-case basis. The Employer shall attempt to accommodate such a request.

### **Section 13. Physical Exams**

The Employer agrees to provide without cost to employees, physical examinations and/or other appropriate tests when such tests are deemed necessary by management to determine whether the health of employees is being or has been adversely affected by exposure to potentially harmful physical agents, toxic materials, or infectious agents, or by attacks and assaults.

The Employer agrees to provide to each affected employee who requests it a complete and accurate written report of any such medical examination or other appropriate tests related to occupational exposure. Additionally, written results of an industrial hygiene measurements or investigations related to an employee's occupational exposure will also be provided, upon request, to the employee or the employee's authorized representative. The Union and/or members of the applicable Health and Safety Committee will be provided copies of summary reports, but such reports will not contain personally identifying information.

#### **Section 14. Duty To Report**

All employees who are injured or who are involved in an accident during the course of their employment must fill out an accident report as soon as possible but not more than three (3) working days after the injury on forms furnished by the Employer. Employers may not unreasonably require the employee to delay medical treatment for the purpose of filling out forms.

## **Section 15. Vehicle Inspection**

All State agencies must have a formal vehicle inspection program for State vehicles to assure that vehicles are clean, properly equipped, maintained, and in good repair. Each program must provide:

1. the designation of a responsible official for the program and notification to the Union and employees of the name and contact information of that individual;
2. inspections conducted at least every six months;
3. maintenance of inspection records at agency headquarters and allowance for inspection by any employee or the Union;
4. correction of unsatisfactory conditions within seven (7) days and such action shall be recorded on the inspection sheet.

## **Section 16. Imminent Weather Related Conditions**

When imminent weather-related conditions will create potentially hazardous travel conditions, the Employer will make every reasonable effort to callback employees to work prior to the development of hazardous travel conditions.

# **ARTICLE 38. LAYOFFS AND SEPARATIONS FOR LACK OF APPROPRIATION**

## **Section 1. Layoff/Separations**

The Employer agrees that prior to deciding a layoff, or a separation for lack of appropriations, the Employer will consider all of its reasonable alternatives. Prior to imposing a layoff or a separation for lack of appropriations, the Employer will meet with the Union in an effort to develop appropriate arrangements for affected employees. All layoffs shall be in strict conformance with applicable law and regulation including State Personnel and Pension Article '11-206 regarding seniority points. All separations for lack of appropriations shall be in strict conformance with applicable law and regulation, including State Personnel and Pensions Article Title 11, subtitle 3.

# **ARTICLE 39. LIGHT OR MODIFIED DUTY ASSIGNMENT**

LMCs will be formed to evaluate light duty assignment procedures and make recommendations regarding the expansion of the current Managed Return to Work Program.

# **ARTICLE 40. LOCAL SIDE AGREEMENTS**

Prior to any local parties implementing any negotiated supplemental side agreements, approval must be obtained from the Secretary of the respective Department. The Secretary will have 30 days from receipt of the proposed side agreement to review and approve unless a longer period of time is requested. Should the Secretary not approve the supplemental side agreement, the local parties shall be notified.

If approved at this level, it is forwarded to the Executive Director of the Office of Personnel Services and Benefits and AFSCME who will have twenty-one (21) days to review and approve, unless a longer period of time is requested. If for any reason the side agreement cannot be approved at this level, the Secretary of the respective Department shall be notified.

Such side agreements may not change the terms of the MOU but may supplement the MOU. Upon sign off by all parties, side agreements shall be enforceable under the terms and for the duration of the current MOU.

## **ARTICLE 41. DEFINITIONS**

### **Section 1.**

An Employee is defined for the purpose of this Memorandum as an individual employed by the Executive Branch in Unit H unless the individual is excluded from the bargaining unit in accordance with SP&P §3-102.

### **Section 2.**

"Permanent Part-Time Employees" - To be considered a permanent part-time employee, an individual must be scheduled to work at least 50% of the full-time work schedule. Permanent part-time employees are eligible for benefits on a pro rata basis.

## **ARTICLE 42 DURATION**

### **Section 1. Duration**

This MOU shall become effective upon signing (subsequent to a proper ratification by both parties) and remain in effect until December 31, 2009.

### **Section 2. Renewal**

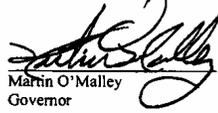
Should either party desire to renew this MOU, they may only do so by providing written notification of its intent to do so to the other party by July 1 of the year in which this MOU expires. After notification is provided, the parties shall then commence negotiations for a successor MOU at dates and times agreed to by the parties. If neither party requests amendment to this MOU, it shall automatically be renewed for a one year period.

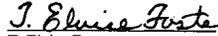
### **Section 3. Limited Reopeners**

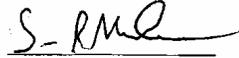
Notwithstanding the provisions of Section 1, Duration, either party may reopen this MOU in September of each succeeding year for the purpose of negotiating over economic issues for the following fiscal year and any other matter mutually agreed upon. All other terms and conditions of this MOU shall remain in full force and effect during any such reopener throughout the duration of this MOU. In the event that there is a change in law affecting the legally permissible scope of bargaining, either party may reopen this MOU to negotiate the newly negotiable matters.

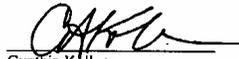
This M.O.U. is hereby accepted by the parties on this day: January 9, 2008.

For the State of Maryland:

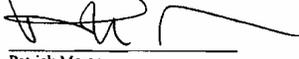
  
Martin O'Malley  
Governor

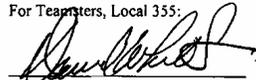
  
T. Eloise Foster  
Secretary  
Department of Budget and Management

  
Sean Malone  
Chief Negotiator

  
Cynthia Köllner  
Executive Director  
Office of Personnel Services and Benefits  
Department of Budget and Management

For the American Federation of State, County, and  
Municipal Employees, AFL-CIO:

  
Patrick Moran  
Director

For Teamsters, Local 355:  
  
David White  
Secretary-Treasurer