

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TODD BURNS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 13; PENNSYLVANIA PUBLIC
UTILITY COMMISSION,

Respondents.

No. _____

Civil Action

Original Jurisdiction

NOTICE

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Harrisburg, Pennsylvania 17101
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Dauphin County Lawyer Referral Service
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
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PETITION FOR REVIEW

Petitioner Todd Burns (“Petitioner”) hereby brings this action against Respondents American Federation of State, County and Municipal Employees, Council 13 (“Council 13” or “Union”) and the Pennsylvania Public Utilities Commission (“PUC”).

INTRODUCTION

1. Petitioner is an experienced Utility Complaints Investigator employed by the PUC.

2. On July 28, 2024, Petitioner applied for a vacant PUC position titled Utility Complaints Investigator Supervisor 2.

3. Despite being highly qualified for the position, Petitioner was passed over for the promotion in favor of a less qualified and less senior candidate.

4. Under the governing terms of the applicable collective bargaining agreement (“CBA”), if candidates for a promotion within the PUC are of equal qualifications, the promotion must be awarded to the most senior candidate.

5. Petitioner was both better qualified than the selected candidate and also more senior than the selected candidate. Therefore, Petitioner was entitled to the promotion.

6. The PUC, as a result, filled the vacant position in violation of the collective bargaining agreement.

7. Petitioner drafted and attempted to process a grievance related to his non-selection for the promotion, but, even though the grievance was facially meritorious, the Union refused to pursue it. The Union stated that it never pursues grievances like Petitioner’s because it never wins them and that the PUC can promote employees to vacant positions however it chooses.

8. By outright refusing to process Petitioner's plainly meritorious grievance, the Union acted arbitrarily or in bad faith and therefore breached its duty of fair representation.

JURISDICTION

9. Pursuant to 42 Pa.C.S. § 761, this Court has jurisdiction over this matter.

PARTIES

10. Petitioner Todd Burns is an adult individual residing in Dauphin County, Pennsylvania.

11. Respondent American Federation of State, County and Municipal Employees, Council 13 is an employee organization, as defined under 43 P.S. Labor § 1101.301, with a principal place of business at 150 South 43rd Street, Suite 3, Harrisburg, Pennsylvania 17111.

12. Respondent Pennsylvania Public Utility Commission is a public employer and Commonwealth administrative agency with a principal office and place of business at 400 North Street, Suite 3, Harrisburg, Pennsylvania 17120.

FACTUAL ALLEGATIONS

13. Petitioner has worked for the PUC as a Utility Complaints Investigator since January 2019.¹

14. Council 13 is Petitioner's exclusive representative for collective bargaining with the PUC. *See* Master Agreement between Commonwealth of Pennsylvania and Council 13, American Federation of State, County and Municipal Employees, AFL-CIO, July 1, 2023 to June 30, 2027 ("CBA"), Article I, Section I, a copy of which is attached hereto as Exhibit A.

15. Article 29, Section 6 of the CBA addresses requirements for filling civil service vacancies and states, in relevant part:

Section 6. Whenever the Employer deems it necessary to fill a civil service vacancy, vacancies shall be filled in the following manner:

- a. Employees in the classification immediately below the vacancy within the seniority unit wishing to bid for such a vacancy shall submit their name to the Employer on a bidding form available from an agency office specified on the posting. Employees must submit a bid within the time period specified on the posting.
- b. When a vacancy is filled without examination and where it is determined that skill and ability are relatively equal among the bidding employees in the classification immediately below the vacancy within the seniority unit, the vacancy shall be filled by promoting the employee with the greatest Master Agreement seniority subject to the exceptions noted in Subsections (1), (2) and (3) of Section 5.b. of this Article.

¹ The PUC originally recognized two positions at different pay grades: Utility Complaints Investigator 1, at pay grade 6, and Utility Complaints Investigator 2, at pay grade 7. In or around 2019, the PUC retitled these jobs, changing Utility Complaints Investigator 1 to Utility Complaints Investigator Trainee, and changing Utility Complaints Investigator 2 to simply Utility Complaints Investigator. In this Petition for Review, all references to "Utility Complaints Investigator" are references to the position that was previously known as Utility Complaints Investigator 2.

Ex. A, Art. 29, § 6(a)–(b).

16. Supervisory positions are covered by a separate agreement that contains a similar set of provisions relating to promotions and seniority:

Section 6. Whenever the Employer deems it necessary to fill a civil service vacancy, vacancies shall be filled in the following manner:

- a. Employees in the classification immediately below the vacancy within the seniority unit wishing to bid for such a vacancy shall submit their name to the Employer on a bidding form available from an agency office specified on the posting. Employees must submit a bid within the time period specified on the posting.
- b. When a vacancy is filled without examination and where it is determined that skill and ability are relatively equal among the bidding employees in the classification immediately below the vacancy within the seniority unit, the vacancy shall be filled by promoting the employee with the greatest Master Memorandum seniority subject to the exceptions noted in Subsections (1), (2) and (3) of Section 5.b. of this Recommendation.

See Master Memorandum between Commonwealth of Pennsylvania and Council 13, American Federation of State, County and Municipal Employees, AFL-CIO, July 1, 2023 to June 30, 2027 (“Supervisor CBA”), attached hereto as Exhibit B, Recommendation 29, § 6(a)–(b).

17. Under Pennsylvania law, Section 6 in both the CBA and the Supervisor CBA is controlling. *See* 71 Pa.C.S. § 2401(b)(2) (“If a labor agreement covering promotions in the classified service exists, the terms and procedures of the labor agreement relative to the procedures for promotions shall control.”).

18. On July 25, 2024, the PUC began accepting applications to fill a vacancy for a Utility Complaints Investigator Supervisor 2 (“Supervisor Position”). *See* Vacancy Notice attached hereto as Exhibit C.

19. The Supervisor Position is covered by the terms of the Supervisor CBA.

20. The Vacancy Notice identified several ways to meet the eligibility requirements for the Supervisor Position. For example, a person was eligible for the position if he had served for at least one year as a Utility Complaints Investigator. *Id.* at 3.

21. The Vacancy Notice further stated that the Supervisor Position was subject to the promotion provisions of the CBA and Supervisor CBA and could be filled by promotion without examination procedures. *Id.* at 4.

22. Pursuant to Article 29, Section 6 of the CBA, on July 28, 2024, Petitioner applied for the Supervisor Position.

23. Given that, at the time, he had more than five years of experience as a Utility Complaints Investigator, the classification immediately below the Supervisor Position, Petitioner readily satisfied the eligibility requirements for the Supervisor Position.

24. Additionally, Petitioner's PUC employee performance reviews ("EPR") demonstrate that he was highly qualified for the Supervisor Position.

25. In his EPR for the 2023–2024 review year, for example, Petitioner was rated as outstanding overall, which is the highest possible rating. In each category, Petitioner rated no lower than commendable, the second highest rating.

Petitioner's overall outstanding rating is so exemplary and rare that Petitioner's supervisor was required to seek special approval before awarding the rating to him.

26. Petitioner's skill and qualifications are further reflected by the fact that, as a PUC Utility Complaints Investigator, he regularly is assigned the most complex cases and asked to assist other investigators in resolving their cases.

27. Despite these qualifications, the PUC promoted a less-qualified and less-senior candidate over Petitioner.

28. The selected candidate and Petitioner objectively were not of equal skill and ability, as Petitioner, at times, needed to assist the selected candidate with his assignments, and Petitioner was given a higher EPR rating than the selected candidate by their employer.

29. And even assuming, *arguendo*, that Petitioner and the selected candidate were relatively equal in skill and ability, Petitioner still had seniority over the selected candidate, and pursuant to the governing terms of the CBA and Supervisor CBA, Petitioner's seniority should have earned him the promotion.

30. The selected candidate is a friend and former colleague of the PUC hiring manager, Kevin Ford ("Ford"), who worked with the selected candidate at the Lancaster Police Department.

31. Upon information and belief, in hiring PUC personnel, Ford has been deliberately choosing former colleagues to fill positions over more qualified and/or more senior candidates, in violation of the governing CBA.

32. The selected candidate is the latest example of Ford's pattern of hiring his preferred candidates, regardless of the CBA's promotion and seniority requirements.

33. Petitioner contacted Shannon Marciano, who works in the PUC human resources department, to inquire which specific criteria were used to eliminate him from selection for the Supervisor Position, but Ms. Marciano refused to provide Petitioner with any information or explain the basis for his non-selection. Ms. Marciano admitted, however, that the hiring manager uses the interview process to determine which candidate is "best suited" for the job.

34. After communicating with human resources, Petitioner sought out the Union's assistance in filing a grievance relating to the PUC's blatant disregard for the governing provisions of the CBA.²

² In his communications with the Union, Petitioner also was assisted by his mother, who is an experienced former representative of a different union. Petitioner's mother communicated only on Petitioner's behalf and with his approval; thus, all communications are construed as originating from Petitioner himself.

35. Because the PUC does not have a Union steward, Petitioner attempted to reach out to several Union representatives with limited success before connecting with Zollie L. Rayner Jr., chief of staff of Council 13.

36. On September 26, 2024, Petitioner forwarded to Mr. Rayner a draft grievance that Petitioner had prepared.

37. The draft grievance clearly outlined Petitioner's qualifications and seniority, the requirements for promotion that are set forth in the CBA and Supervisor CBA, and the PUC's disregard of those requirements in this instance.

38. Upon information and belief, Mr. Rayner never considered whether Petitioner's grievance was meritorious. Instead, Mr. Rayner categorically rejected the grievance because the Union, as a general policy, refuses to process any grievance regarding an employee who was passed over for a promotion in favor of a less qualified and less senior candidate.

39. During an October 2024 phone call, Mr. Rayner stated that the Union refuses to process those types of grievances because it "never wins" them. Mr. Rayner further stated that the Union has taken the position that the PUC may promote employees to fill CBA-covered vacancies in any manner the PUC chooses, including by relying exclusively on interviews and the subjective opinions and preferences of the hiring manager, regardless of qualifications and the seniority provisions in the CBA.

40. Based on this policy, the Union refused to process Petitioner's facially meritorious grievance.

41. Upon information and belief, there is an arrangement between the Union and PUC under which Union officials are rewarded for refusing to process promotion-related grievances and allowing the PUC to fill vacancies in violation of the CBA.

42. In this context, therefore, the Union has favored the personal interests of Union officials over the interests of Union members.

CLAIM FOR RELIEF
Breach of the Duty of Fair Representation

43. Petitioner incorporates the previous paragraphs as though fully set forth herein.

44. Because the "Union has assumed the role of trustee for the rights of its members and other employees in the bargaining unit" and employees are "beneficiaries of fiduciary obligations owed by the Union[,] . . . the Union bears a heavy duty of fair representation to all those within the shelter of its protection." *Falsetti v. United Mine Workers*, 161 A.2d 882, 895 (Pa. 1960). Accordingly, unions must "act in good faith, in a reasonable manner and without fraud." *Id.* The duty to act in a reasonable manner includes a duty not to act arbitrarily. *See Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 77 (1991) (noting the "tripartite

standard” of the duty of fair representation, prohibiting union conduct that is arbitrary, discriminatory, or in bad faith).

45. A union acts arbitrarily when its conduct is “so far outside a wide range of reasonableness as to be irrational.” *Anderson v. Pleasant Valley Educ. Support Pros.’ Ass’n*, 76 Pa. D. & C.5th 75, 85 (C.P. Monroe Cnty. 2019) (quoting *Air Line Pilots*, 499 U.S. at 67).

46. “A union’s decision to favor one member’s interest in contravention of the collective bargaining agreement over other members’ interests in enforcing the same agreement constitutes irrational conduct.” *Id.* at 86.

47. At all relevant times, Council 13 has held a duty to fairly represent Petitioner, who, at all relevant times, has been part of the bargaining unit that Council 13 exclusively represents for collective bargaining purposes.

48. Council 13 breached its duty of fair representation by arbitrarily refusing to process Petitioner’s facially meritorious grievance. *See Anderson*, 76 Pa. D. & C.5th at 85; *Clowney v. URS/AECOM*, 858 F. App’x 469, 471 (3d Cir. 2021) (a union cannot arbitrarily ignore a meritorious grievance); *Lettis v. USPS*, 39 F. Supp. 2d 181, 199 (E.D.N.Y. 1998) (union may breach its duty of fair representation when it fails to process a meritorious grievance in a timely fashion)

49. Council 13 further breached its duty of fair representation by failing to enforce the terms of the CBA and Supervisor CBA and, thus, favoring “one

member's interest in contravention of the collective bargaining agreement over other members' interests in enforcing the same agreement[.]” *Id.*

50. Council 13's actions were arbitrary because it purportedly based its decision on the outcomes of other promotion-related grievances, without regard to the facial merits of Petitioner's grievance in particular.

51. Further, upon information and belief, there is an arrangement between the Union and PUC under which Union officials are rewarded for refusing to process promotion-related grievances and allowing the PUC to fill vacancies in violation of the CBA.

52. By favoring the personal interests of Union officials over the interests of Union members, the Union has engaged in bad faith conduct.

NOTICE TO PLEAD

53. Respondents are notified to plead to this Petition for Review within thirty days from service or a judgment may be entered against them.

REQUEST FOR RELIEF

WHEREFORE, Petitioner Todd Burns respectfully requests that this Honorable Court:

- a) Enter judgment against Council 13 for breach of the duty of fair representation;
- b) Award Petitioner compensatory and/or nominal damages;

- c) As necessary, in the alternative, order Council 13 to pursue and/or fund Petitioner's grievance as set forth in Article 38 the CBA, *nunc pro tunc*, specifically arbitration; and
- d) Award any other relief the Court deems to be appropriate.

JURY DEMAND

Petitioner demands a trial by jury on all matters triable by jury pursuant to Pennsylvania Rule of Civil Procedure 1007.1.

Respectfully submitted,

THE FAIRNESS CENTER

Dated: March 7, 2025


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Counsel for Petitioner

VERIFICATION

I, Todd Burns, verify that, based on knowledge or information and belief, any factual averments in the foregoing Petition for Review are true. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

March 7, 2025



Todd Burns

CERTIFICATION OF COMPLIANCE WITH RULE 127

The undersigned certifies that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: March 7, 2025

By: /s/ Jonathan R. Vaitl
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Exhibit A

Relevant Portions of the Collective Bargaining Agreement Between
Commonwealth of Pennsylvania and AFSCME, Council 13 (July 1,
2023–June 30, 2027)

MASTER AGREEMENT

BETWEEN

COMMONWEALTH OF PENNSYLVANIA

AND

**COUNCIL 13, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**

July 1, 2023 to June 30, 2027

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PREAMBLE

This Agreement entered into by Council 13 American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union, and the Commonwealth of Pennsylvania, hereinafter referred to as the Employer, has as its purpose the promotion of harmonious relations between the Union and the Employer; the establishment of an equitable and peaceful procedure for the resolution of differences, and the establishment of rates of pay, hours of work, and other conditions of employment.

ARTICLE 1 RECOGNITION

Section 1. Council 13 of the American Federation of State, County, and Municipal Employees, AFL-CIO, is recognized as the exclusive representative for collective bargaining purposes for employees within the classifications included under the following certifications of the Pennsylvania Labor Relations Board: PERA-R-13-C, Units I and III, Maintenance and Trades; PERA-R-1205-C and R-1207-C, Human Services; PERA-R-1413-C, Clerical, Administrative and Fiscal; PERA-R-2180-C, Technical Services; PERA-R-777-C, Inspection, Investigation and Safety; PERA-R-2687-C, Professional, Administrative and Fiscal; PERA-R-3294-C, Engineering and Scientific; PERA-R-1329-C, R-1330-C, R-1331-C and R-1879-C, Auditor General Department; PERA-R-1468-C, R-1469-C, R-1470-C, and R-2495-C, Treasury Department; PERA-R-2598-C, Pennsylvania Higher Education Assistance Agency; PERA-R-2566-C and PERA-R-2567-C, Public School Building Authority; PERA-U-81-351-E, U-81-352-E and U-353-E, Attorney General; Pennsylvania State System of Higher Education; and PERA-R-09-54-E and PERA-R-09-57-E, Pennsylvania Gaming Control Board.

Section 2. The term employee when used in this Agreement is defined as those persons in the classifications covered by the certifications referred to in Section 1 of this Article.

ARTICLE 2 MANAGEMENT RIGHTS

Section 1. It is understood and agreed that the Employer, at its sound discretion, possesses the right, in accordance with applicable laws, to manage all operations, including the direction of the working force and the right to plan, direct, and control the operation of all equipment and other property of the Employer, except as modified by this or unit agreements.

Matters of inherent managerial policy are reserved exclusively to the Employer. These include but shall not be limited to such areas of discretion or policy as the functions and programs of the Employer, standards of service, its overall budget, utilization of technology, the organizational structure, and selection and direction of personnel.

Section 2. The listing of specific rights in this Article is not intended to be nor should be considered restrictive or as waiver of any of the rights of management not listed and not specifically surrendered herein whether or not such rights have been exercised by the Employer in the past.

A temporary employee who receives a permanent position through the process set forth in Article 29, Section 20 will serve a probationary period in the permanent position of 180 calendar days, or the length of the Civil Service probationary period, whichever is longer. The probationary period can be extended by written agreement between the Employer and the appropriate local or district council of the Union for an additional period. During the 180 calendar day probationary period, or any extension period, the employee will have a limited right to the grievance and arbitration procedure for discharge for unsatisfactory work performance. The burden of proof shall rest upon the Employer to prove unsatisfactory work performance. Periods of leave without pay and periods during which an employee is using paid leave to supplement workers' compensation shall not count toward the employee's probationary period or any extension period.

Section 6. This Article shall not apply to demotions resulting from an employee appeal, an Employer-initiated classification review or unsuccessful completion of a probationary period upon promotion.

Section 7. The Employer and the Union agree to expand the alternative forms of discipline in lieu of suspension actions program in accordance with the side letter dated January 27, 2017.

Section 8. An employee who is the subject of an Inspector General investigation will be notified when the investigation is concluded. The employee who is not being subject to disciplinary action will be notified at the conclusion of the investigation that the allegations were either "unfounded" or "unsubstantiated". An employee shall be deemed a subject of an investigation when the employee has been accorded a "subject interview".

Section 9. The Commonwealth agrees to meet and discuss at the request of the Union over the SEAP Program. It is understood that the Union has not waived its right to negotiate over Conditions of Continued Employment for individual employees.

ARTICLE 29 SENIORITY

Section 1. Under the terms of this Agreement, the term "seniority" means a preferred position for specific purposes which one employee within a seniority unit may have over another employee within the seniority unit because of a greater length of service within the state government or a particular organizational or occupational segment thereof.

a. Classification seniority standing shall be determined by the length of unbroken (as defined in Section 2) service with the Employer in the employee's current classification. An employee whose position has been downgraded will have service in the higher classification counted toward classification seniority in the lower classification.

b. Master Agreement seniority standing for the purpose of promotion, furlough and shift preference shall be determined by the length of unbroken (as defined in Section 2) service with the Employer in rank and file classifications subsequent to July 1, 1973 in all bargaining units included in this Agreement. For employees who occupied a rank and file classification covered by this

Agreement on July 1, 1973, all unbroken service with the Employer prior to July 1, 1973 will be counted toward Master Agreement seniority, except for leaves of absence without pay for four weeks or more. Employees who did not occupy rank and file classifications on July 1, 1973 but did so prior to that date will have such service in rank and file classifications counted toward Master Agreement seniority, if there has been no break in service, except for leaves of absence without pay of four weeks or more.

c. Employees who served in the Armed Forces of the United States during periods of war in which the United States was or is engaged as listed below shall be responsible for providing proof of military service to their human resource officer within 60 days of their first day of work or 60 days after discharge or release from active duty during a current period of war in order to receive seniority credit in accordance with the Veteran's Preference Act 51 Pa. C.S. 7101. Failure to provide the required proof of service during the time period shall bar the employee or union from claiming credit for such service at a later date.

Applicable periods of war are as follows:

- (1) World War II-December 7, 1941-September 2, 1945
- (2) Korea-June 25, 1950-July 27, 1953
- (3) Vietnam-August 5, 1964-January 28, 1973
- (4) Persian Gulf – August 2, 1990 – August 31, 1991
- (5) War on Terrorism, September 11, 2001 to date determined by the Adjutant General (Department of Military and Veterans Affairs) pursuant to 51 Pa.C.S. 7101.

d. Seniority credit for each employee is maintained as a total number of days. Employees will accrue seniority in accordance with the following procedure: The number of regular hours paid each biweekly pay period plus the number of hours of military leave without pay; leave without pay for union business in accordance with Article 17, Section 3; leave without pay for work-related injuries in accordance with Article 26; and Family and Medical Leave Act (FMLA) leave under Article 18, Section 1 will be accumulated. This total number of hours will be divided by 7.5 or 8 as applicable and rounded up to the next higher day. The result will be added to the employee's accumulated total.

Section 2. The following shall constitute a break in service: resignation, separation for just cause, retirement, absence without leave for five consecutive working days, failure to report within 10 consecutive working days of recall, expiration of recall period, failure to report after leave and acceptance of other permanent employment while on leave. This shall not restrict the Employer's right to take whatever personnel action it deems warranted for any of the above. If service is broken by any of the above, the employee shall lose Master Agreement and Classification seniority. If an employee is returned within one year after such break in service, the employee shall be entitled to credit for seniority purposes the time accrued up to the time break in service occurred, but shall not be entitled to any credit for the time represented by such break in service.

Employees who are furloughed and who file applications for retirement benefits which are subsequently approved, will be considered to have a break in service as of the date of the approval

of benefits by the State Employees' Retirement Board.

Section 3. Seniority lists shall be prepared for each seniority group and revised where necessary every six months. Appropriate service information shall be shown thereon to permit application of various seniority provisions. Such lists shall be posted on the appropriate bulletin boards. Seniority lists shall be provided to the local Union President upon request not more than once every six months. Grievances alleging a violation of this Section may be appealed directly to the fourth step of the grievance procedure or directly to the State Committee, where applicable. In the Pennsylvania State System of Higher Education grievances alleging a violation of this Section may be appealed directly to the third step of their grievance procedure or directly to the State Committee, where applicable.

Section 4. The Employer agrees that all vacancies which are to be filled within the seniority unit will be posted at appropriate work locations prior to the filling of such vacancies for a period of at least 10 calendar days unless an emergency requires a lesser period of time. The Employer also agrees to post entrance level vacancies within the seniority unit at appropriate work locations prior to the filling of such vacancies for a period of at least five calendar days unless an emergency requires a lesser period of time. Such postings shall include the position number (Bureau Code, Class Code and serial number).

Virtual postings via NEOGOV or officially designated online platforms shall satisfy the requirements of this section without the need for a physical posting.

Section 5. Whenever the Employer deems it necessary to fill a non-civil service vacancy, vacancies shall be filled in the following manner:

- a. Employees in the classification immediately below the vacancy within the seniority unit wishing to bid for such vacancy shall submit to the Employer their name on a bidding form available from an agency office specified on the posting. Employees must submit a bid within the time period specified on the posting.
- b. Where it is determined that skill and ability are relatively equal among the bidding employees in the classification immediately below the vacancy within the seniority unit, the vacancy shall be filled by promoting the employee with the greatest Master Agreement seniority except in the following instances:
 - (1) Where it is necessary to comply with the provisions of applicable law and rules relating to the Commonwealth's Equal Employment Opportunity Program.
 - (2) Where the job involved requires highly specialized skill, training and expertise and there are no employees in the classification immediately below the vacancy who possess such qualifications.
 - (3) Whenever a position is reclassified upward to correct an improper classification or to reflect an accretion of duties or reorganization of duties, then the incumbent shall be awarded the higher position.

- c. If an employee is promoted in accordance with this Section and was temporarily assigned, at the time the position was posted or thereafter, to work in that position, the employee will be promoted retroactive to the ending date of the posting.

Section 6. Whenever the Employer deems it necessary to fill a civil service vacancy, vacancies shall be filled in the following manner:

- a. Employees in the classification immediately below the vacancy within the seniority unit wishing to bid for such a vacancy shall submit their name to the Employer on a bidding form available from an agency office specified on the posting. Employees must submit a bid within the time period specified on the posting.
- b. When a vacancy is filled without examination and where it is determined that skill and ability are relatively equal among the bidding employees in the classification immediately below the vacancy within the seniority unit, the vacancy shall be filled by promoting the employee with the greatest Master Agreement seniority subject to the exceptions noted in Subsections (1), (2) and (3) of Section 5.b. of this Article.
- c. When a vacancy is filled by examination within a seniority unit, the bidding employee with the greatest Master Agreement seniority in the classification immediately below the vacancy who is within five points of the seniority unit employee with the highest score shall be promoted unless a person outside the seniority unit receives a grade placing the person 10 points or more higher than the seniority unit employee with the highest score in which instance the person from outside the seniority unit may be appointed. An example of a five-point range would be 85-90, inclusive. An example of a 10-point range would be 80-90, inclusive. This Section is subject to the exceptions as set forth for non-civil service employees in Subsections (1), (2) and (3) of Section 5.b. of this Article. For the purpose of this Section, persons outside the seniority unit whose names appear on the civil service list are not required to submit a bid in order to be considered for the vacancy.
- d. If an employee is promoted in accordance with this Section and was temporarily assigned, at the time the position was posted or thereafter, to work in that position, the employee will be promoted retroactive to the ending date of the posting.

Section 7. a. When the Employer determines that a furlough is necessary within a seniority unit, employees will be furloughed in the inverse order of Master Agreement seniority. Employees affected by furlough who have the requisite seniority and skill and ability shall bump laterally or down in the following manner:

- (1) If an employee is affected by furlough the employee shall bump down into the next lower classification within the classification series within the same geographical and organizational limitation as the seniority unit, provided the employee has more Master Agreement seniority than the employee with the least Master Agreement seniority in that classification and has the requisite skill and ability. If such a bump is not available, the

employee shall bump into any other lower classification in the same classification series using the same procedure.

(2) If the affected employee is unable under Subsection (1) above to bump into a lower classification the employee shall bump laterally or down into any other classification previously held within the bargaining unit but within the same geographical and organizational limitation as the seniority unit, using the seniority procedure specified in (1). above. If such a bump is not available, the employee shall bump into any other lower classification in the classification series of the position previously held using the same procedure.

(3) If the affected employee is unable under Subsections (1) and (2) above to bump into a position, the employee shall bump laterally or down into any classification previously held within any bargaining unit included in this Agreement but within the same geographical and organizational limitation as the seniority unit in which the furlough is occurring using the seniority procedure specified in a. above. If such a bump is still not available, the employee shall bump into any other lower classification of the classification series of the position previously held using the same procedure.

(4) If the affected employee is unable to bump into any position as provided in Subsections (1), (2), and (3) above, the employee shall be furloughed, subject to the provisions of Section 12 of this Article.

(5) If an employee refuses to exercise rights under this Section, the employee shall forfeit all further bumping rights under this Section, recall rights under Section 9 of this Article to positions in all classifications except the one from which the employee was furloughed and placement rights under Section 12 of this Article. However, if an employee refuses a bump to a position that is 50 miles or more from the employee's residence as measured by the shortest regularly travelled route, the employee shall retain all recall rights under Section 9 of this Article and placement rights under Section 12 of this Article.

(6) In cases where a seniority unit is comprised of more than one geographic work location, an affected employee, who in exercising his or her bump rights under Subsections (1), (2), and (3) above, would otherwise be required to move into another geographic location within the seniority unit, may bump the employee in the affected employee's current geographic work location with the least amount of Master Agreement seniority. The employee with the least Master Agreement seniority in the affected employee's current geographic work location may then bump an employee in another geographic location within the seniority unit, in accordance with Subsections (1), (2), and (3).

b. For the purposes of the exercise of bumping rights under this Section, permanent full-time employees shall have bumping rights to both full-time and part-time positions. Permanent part-time employees shall have bumping rights to part-time positions only.

c. Where the need for furlough can be reasonably anticipated, the Employer will notify the Union one month in advance of any impending furlough.

Section 8. Before any furlough is implemented in a classification in the classified service in a seniority unit, all emergency employees will be separated before any temporary employees; temporary employees will be separated before any provisional employees; and all provisional employees will be separated before any probationary employees or any regular status members of the classified service are furloughed.

Before any furlough is implemented in a non-civil service classification, all temporary employees will be separated before any permanent employees are furloughed.

Section 9. The Employer shall establish a recall list by classification series using the same geographical and organizational limitation as the seniority unit in which the furlough occurred for those employees furloughed under Section 7 of this Article in the inverse order of Master Agreement seniority.

a. Employees on such recall lists shall have rights to a position in a classification within the seniority unit from which they were furloughed or to any lower-level classification in the same classification series in the same geographical and organizational limitation as the seniority unit in which the furlough occurred provided they have the requisite seniority and skill and ability.

b. Such recall lists will remain in effect for a furloughed employee for a period of three years after the effective date of the furlough.

c. In the event an employee on a recall list refuses an offer of employment in a lower classification for which the employee has seniority rights, the employee shall forfeit recall rights to such a classification; if the employee refuses an offer of employment in the classification from which the employee was initially furloughed, the employee shall forfeit all recall rights.

d. During the period that employees are on a recall list, they shall keep the Employer informed of any changes in address. The Employer shall not be held liable if an employee is not offered recall because of failure to notify the Employer of a change of address. An employee who is not offered recall because of failure to notify the Employer of a change of address and who subsequently informs the Employer of the current address shall be returned to the recall list and shall be offered the next opportunity for recall, provided the employee's three year recall period has not expired.

e. During the recall period employees may be offered recall to either temporary or part-time positions. If an employee refuses an offer of either temporary or part-time recall, the employee forfeits all further recall rights to the type of employment refused. The employee would retain recall rights to permanent, full-time employment for which the employee is eligible.

f. The recall period of a furloughed employee who, during the recall period, returns to the furloughing agency's payroll in a temporary capacity shall be extended by the amount of time the employee serves in the temporary capacity.

g. A furloughed employee who, during a recall period, returns to the Employer's payroll in a temporary capacity shall upon recall from the furlough to permanent employment, be credited with seniority for the amount of time spent in the temporary capacity.

h. A furloughed employee who, during a recall period, returns to the Employer's payroll in a temporary capacity shall be eligible for all benefits enjoyed by permanent employees, provided other applicable eligibility requirements are met.

i. The Employer will provide the Union with a copy of all recall lists.

j. A furloughed employee shall forfeit all recall rights under this Section under the following circumstance:

- 1) For a defined benefit retirement plan employee or a hybrid retirement plan employee, recall rights are forfeited when the furloughed employee applies for and receives retirement benefits from the State Employees' Retirement System or the Public School Employee's Retirement System, as of the date of the approval of such benefits.
- 2) For a defined contribution retirement plan employee, recall rights are forfeited when the furloughed employee receives a full distribution from his or her defined contribution plan, as of the date of such distribution. A furloughed employee who receives less than a full distribution from his or her defined contribution plan shall not forfeit his or her recall rights under this Section.

k. A permanent part-time employee shall only have recall rights under this Section to part-time positions (temporary or permanent).

Section 10. An employee desiring to transfer to another position in the same, equivalent or lower level classification shall submit a written request to the human resource office for the employee's seniority unit stating the reasons for the requested transfer. Prior to filling a vacancy, all written requests received for the position from employees within the same geographical/organizational limitation as the seniority unit will be considered. If the Employer in its sole discretion agrees to such transfer, the employee shall be entitled to maintain appropriate seniority rights. Nothing in this Section shall supersede the seniority rights of employees under this Article.

Section 11. In making shift assignments to shift openings preference shall be granted on a seniority basis unless the Employer feels it is necessary to assign otherwise in order to protect the efficiency of operation. Seniority status in this regard shall be Master Agreement seniority. If Master Agreement seniority is equal, the assignment will be made by lot.

Section 12. If an employee is unable to execute a bump as provided by Article 29, Section 7, and is placed on a furlough list, the Commonwealth will attempt to place the employee in a budgeted, available, uncommitted vacancy in a classification covered by the Master Agreement to which there are no seniority claims in the following manner:

a. Placement will be made to positions in classifications covered by the Master Agreement to which an employee has bumping rights in any agency under the jurisdiction of the Governor provided the employee possesses the requisite skill and ability. In addition, placement will be made to entrance level vacancies in any classification covered by the Master Agreement in the same or lower pay scale group in the agency from which the employee was furloughed, provided the employee meets the minimum requirements and qualifications essential to the work of the vacancy.

If an employee is unable to be placed under Paragraph one of this Subsection, placement will be made to entrance level vacancies in a classification in the same or lower pay scale group in the same bargaining unit from which the employee was furloughed in any agency under the jurisdiction of the Governor, provided the employee meets the minimum requirements and qualifications essential to the work of the vacancy.

b. Employees placed in entrance level vacancies which are not in the classification or classification series which an employee previously held will serve a six month probationary period during which time the provisions of Article 28, Section 1 shall not apply. Employees who are terminated for failure to successfully complete the probationary period shall retain recall rights under Section 9 of this Article.

c. Geographic limitations for the application of this Section will be designated by the employee by completing a placement questionnaire. The employee may choose up to ten counties in which the employee would be available for employment or a statewide availability.

d. Placement will be made in order of Master Agreement seniority; however, employees with an earlier furlough date will be placed in vacancies before employees with a later furlough date.

e. Civil service employees will have placement rights to both civil service and non-civil service vacancies consistent with the requirements outlined in Paragraph one of this Section.

Non-civil service employees will have placement rights only to non-civil service vacancies, except that if an appropriate vacancy in a non-civil service position is not available and the employee previously was a member of the classified service in a classification to which the employee would have rights under this Section, placement in that civil service classification will be attempted consistent with the requirements outlined in Paragraph one of this Section and in accordance with the Civil Service Act and Rules.

f. Employees will be offered placement in one vacant position. If an employee declines the offer of placement, the employee's rights under this Section cease. The furloughed employee shall retain recall rights as outlined in Article 29, Section 9.

g. If an employee accepts an offer of placement under this Section, any other placement rights to which an employee may be entitled under this Section cease.

h. In addition, employees shall complete an "Availability for Temporary Employment" questionnaire. If an employee indicates a desire not to be offered placement to temporary positions

no such offers will be made and placement rights to permanent positions will not be affected. However, if an employee indicates a desire to be offered a temporary position and refuses such an offer, the employee shall forfeit all placement rights.

i. Employees placed in vacancies in the same classification from which furloughed or in vacancies in other classifications at the same pay scale group of the classification from which furloughed will lose recall rights outlined by Article 29, Section 9. Those employees placed in a classification in a lower pay scale group will retain their recall rights under Article 29, Section 9.

j. The provisions of this Section will be implemented at the time the employee's completed placement questionnaires are received by the central human resource office of the appropriate agency and will continue for one year after the employee has been furloughed. When the one year period has expired, an employee's rights under this Section cease. However, the employee will retain recall rights under Article 29, Section 9, except as provided in Subsection i. The provisions of this Section will not be implemented on behalf of employees who do not return completed placement questionnaires.

k. A furloughed employee shall forfeit any placement rights under this Section under the following circumstance:

- 1) For a defined benefit retirement plan employee or a hybrid retirement plan employee, recall rights are forfeited when the furloughed employee applies for and receives retirement benefits from the State Employees' Retirement System or the Public School Employee's Retirement System, as of the date of the approval of such benefits.
- 2) For a defined contribution retirement plan employee, recall rights are forfeited when the furloughed employee receives a full distribution from his or her defined contribution plan, as of the date of such distribution. A furloughed employee who receives less than a full distribution from his or her defined contribution plan shall not forfeit his or her recall rights under this Section.

The provisions of this Section will also be applied within each of the independent agencies.

Section 13. The probationary period for promotions shall be 180 calendar days in length, or the length of the Civil Service probationary period, whichever is longer and the provisions of Article 28, Section 1 shall not be applicable if an employee is demoted within that time for failure to successfully complete the probationary period. In such case, employees shall have the right to return to their former classification during this period. Periods of leave without pay and periods of time during which an employee is using paid leave to supplement workers' compensation shall not count toward the probationary period.

If an employee works out of class and is subsequently promoted to the same classification in the same seniority unit, the employee shall have the time worked out of class in the preceding six months credited toward the probationary period.

Section 14. For the purpose of furlough, the number of union stewards and chair officers of the Union locals agreed to by the parties on November 19, 1975 shall have superseniority. The Union shall provide the Employer, on a quarterly basis, a list of all employees who have been granted superseniority in accordance with the provisions of this Section. The list shall contain the employee's name, union title, agency of employment, bargaining unit, work location and local union number.

Master Agreement seniority will be used to break ties among employees who have been granted superseniority. If Master Agreement seniority is equal, the employees will draw lots.

Section 15. Seniority unit means that group of employees in a classification within an affected institutional, bureau, agency or department operational structure in a given geographic work area as listed in Appendix F.

A seniority unit (furlough or promotion) listed in Appendix F may be renegotiated at the request of either party. If agreement is not reached, either party may submit a request for arbitration.

Section 16. Grievances relating to the interpretation, application and implementation of Sections 5, 6, 7, 8, 9, 12, 15, 19 and 20 of this Article shall be filed at the third step/Joint State Committee. Arbitration of grievances relating to these Sections shall be conducted by a panel of three Members – one to be appointed by the Office of Administration, one to be appointed by the Union and the third to be selected by the Employer from a list of five names to be mutually agreed upon by the Employer and the Union. Such third member shall not be affiliated, directly or indirectly, with any labor organization or be an employee of the Commonwealth of Pennsylvania.

The decision of the panel, hereinbefore described, shall be final and binding on the parties of this Agreement. The panel shall meet monthly for the purpose of adjusting grievances under this Section.

Section 17. When in the exercise of seniority rights provided hereunder, two or more employees are deemed relatively equal in skill and ability and have the same seniority, preferential rights shall be determined by lot.

Section 18. The provisions of this Article relating to promotions and filling of vacancies shall not be applicable to entrance level classifications.

Section 19. In the event of a furlough affecting employees who are now in First-Level Supervisory Units represented by AFSCME, such employees shall first bump laterally or downward into the classification occupied immediately prior to leaving a bargaining unit included in this Agreement, or if such a bump is not available, then into any lower classification in the same classification series, provided the classification is within the same geographical and organizational limitation as the seniority unit in which the furlough is occurring and provided that the employee has more Master Agreement seniority than the employee with the least amount of Master Agreement seniority in that classification and has the requisite skill and ability, and provided that the employee has not had a break in service as defined in Section 2 since leaving the bargaining unit. If a position cannot be obtained in this manner, the same procedure will be repeated for any position previously held within any bargaining unit included in this Agreement or if such a bump is not available then

into any lower classification in the same classification series, provided the classification is within the same geographical and organizational limitation as the seniority unit in which the furlough is occurring. Master Agreement and Classification seniority previously earned shall accrue to the employee upon return to the bargaining unit. Seniority earned by the employee while outside of bargaining units included in this Agreement shall not accrue to the employee upon movement back to the bargaining unit.

Employees who formerly occupied classifications within bargaining units included in this Agreement, and who are not now in bargaining/supervisory units represented by AFSCME and who are affected by furlough may not bump into classifications previously held in bargaining units included in this Agreement.

However, employees who formerly occupied classifications within bargaining units included in this Agreement who elected the voluntary demotion/transfer option contained in the 1991-1993 Master Agreement may exercise that option, if available, during the term of this Agreement.

Section 20. Permanent part-time employees will have the right to use their seniority to bid and be selected for permanent full-time vacancies that occur in the same classification within the seniority unit. The criteria of Sections 5 and 6 of this Article will be applicable.

Temporary employees who have been employed in both calendar years 1992 and 1993 and who were not terminated for unsatisfactory performance will be placed in temporary vacancies in the seniority unit and in the last classification held which occur on or after the effective date of this Agreement.

Temporary employees will have the right to bid and be selected for permanent vacancies that occur in the same or lower level classification within the class series within the seniority unit. The seniority criteria of Sections 5 and 6 of this Article will be applicable.

The employer may deviate from the process outlined in this section when required by Section 7104 of the Veteran's Preference Act (51 Pa.C.S. § 7104).

Section 21. When there are competing seniority claims for either a permanent or temporary budgeted available position which the Employer intends to fill, those claims will be ranked in the following order: Recall, in accordance with Section 9; Promotion, in accordance with Sections 5 and 6; Placement, in accordance with Section 12; Part-time employees bidding on full-time positions in the same classification, in accordance with Section 20; and temporary employees bidding on permanent positions, in accordance with Section 20.

ARTICLE 30 UNIFORMS, CLOTHING AND EQUIPMENT

Section 1. Where the Employer now provides devices, apparel or equipment necessary to protect employees from injury or exposure to extreme non-climatic heat or cold, the Employer shall continue to provide the level of protection in accordance with the practice now prevailing. Where

organizational performance through interest-based dialogue and problem-solving.

Section 23. The Commonwealth shall have the right to make corporate card deductions from the paycheck of an employee who has delinquent corporate card balances. Employees who have incurred unpaid corporate card balances which remain delinquent for more than 90 days without an acceptable explanation will be subject to payroll deductions for the delinquent amount consistent with the Commonwealth's Travel Policy Manual (M 230.1), Section 6.3. Deductions taken under this provision shall be in accordance with Article 35, Section 19, except that they shall also apply to amounts of less than \$300.

Employees who have submitted a timely request for reimbursement of travel expenses associated with the delinquent debt will not be subject to deductions until after they have received reimbursement.

ARTICLE 36 EQUAL EMPLOYMENT OPPORTUNITY

If any provision of this Agreement is in conflict with Federal Executive Orders 11246 and 11375, as amended, the Civil Rights Act of 1964, and all laws and rules, relating to the Commonwealth's Equal Employment Opportunity program, and the Americans with Disabilities Act, the provisions of the aforementioned Orders, laws and implementing regulations shall prevail.

Disputes regarding the application and implementation of the Orders, laws and implementing regulations shall be subject to arbitration.

This provision does not constitute a waiver of rights under Act 195.

ARTICLE 37 GRIEVANCES AND ARBITRATION/STANDARD GRIEVANCE PROCEDURE

Section 1. Where an employee has the right to process a grievance through either the procedure provided herein or through the Pennsylvania Civil Service Commission and files an appeal with the Commission, either the contract grievance procedure shall cease, if the employee has submitted a contract grievance, or the employee shall not be entitled to institute proceedings under the contract grievance procedure. If the appeal to the Commission is withdrawn by the employee or not accepted by the Commission within 15 working days of the date of the occurrence of the action giving rise to the grievance, the processing of a contract grievance filed within the time limits set forth in Section 2 shall be permitted.

Section 2. Any grievance or dispute which may arise concerning the application, meaning or interpretation of this Agreement shall be settled in the following manner:

STEP I. The employee, either alone or accompanied by the Union representative or the Union where entitled, shall present the grievance orally or in writing to the employee's immediate supervisor within 15 working days of the date of its occurrence, or when the employee knew or by

reasonable diligence should have known of its occurrence. The supervisor shall attempt to resolve the matter and report a decision to the employee, orally or in writing, within 15 working days of its presentation.

STEP II. In the event the grievance is not settled at Step I, the appeal must be presented in writing by the employee or Union representative to the head of the employee's division, bureau, institution, or equivalent organizational unit within 15 working days after the supervisor's response is due. The official receiving the written appeal, or the official's designated representative, shall respond in writing to the employee and the Union representative within 15 working days after receipt of the appeal.

STEP III. An appeal from an unfavorable decision at Step II shall be presented by the employee or Union representative to the agency head, within 15 working days after the response from Step II is due. The agency head, or designee, shall respond in writing to the employee and Union representative within 15 working days after receipt of the appeal.

STEP IV. In the event the grievance has not been satisfactorily resolved in Step III, written appeal may be made by the employee or Union representative within 15 working days of the Step III decision to the Bureau of Employee Relations, Office of Administration. The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov); such an appeal may also be mailed to the Office of Administration (Bureau of Employee Relations, 404 Finance Building, Harrisburg, PA 17120). In the case of the independent agencies, written appeal may be made to the agency head or the appropriate designee. The written appeal shall contain a copy of the grievance, as well as the Step II and Step III decisions. The Bureau of Employee Relations, Office of Administration, or in the case of the independent agencies, the agency head or the appropriate designee, shall issue a decision in writing to the Union within 15 working days after receipt of the appeal.

STEP V. An appeal from an unfavorable decision at Step IV may be initiated by the Union serving upon the Employer a notice in writing of the intent to proceed to arbitration within 15 working days after the response from Step IV is due. The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov). Said notice shall identify the provisions of the Agreement, the department and the employee involved, and shall include a copy of the grievance.

The arbitrator is to be selected by the parties jointly within seven working days after the notice has been given. If the parties fail to agree on an arbitrator, either party may request the Bureau of Mediation to submit a list of seven possible arbitrators.

The parties shall, within seven working days of the receipt of said list, meet for the purpose of selecting the arbitrator by alternately striking one name from the list until one name remains. The Employer shall strike the first name.

Each case shall be considered on its merits and the collective bargaining agreement shall constitute the basis upon which the decision shall be rendered. The decision at Steps I, II, and III shall not be used as a precedent for any subsequent case.

The arbitrator shall neither add to, subtract from, nor modify the provisions of this Agreement. The arbitrator shall be confined to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted.

The decision of the arbitrator shall be final and binding on both parties, except where the decision would require an enactment of legislation, in which case it shall be binding only if such legislation is enacted. The arbitrator shall be requested to issue the decision within 30 days after the hearing or receipt of the transcript of the hearing.

In the interest of expediting the resolution of grievances involving discharges, shift preference and the denial of annual leave requests, the parties agree to utilize alternative approaches and methods, including such procedures as the use of pre-selected arbitration panels, advance scheduling of fixed hearing dates with individual arbitrators, scheduling multiple cases with a single arbitrator on the same day, waiving the preparation of written briefs, and providing for the issuance of decisions within reduced periods of time including bench decisions.

All of the time limits contained in this Section may be extended by mutual agreement. The granting of any extension at any step shall not be deemed to establish precedence.

All fees and expenses of the arbitrator shall be divided equally between the parties except where one of the parties of this Agreement requests a postponement of a previously scheduled arbitration meeting which results in a postponement charge. The postponing party shall pay such charge unless such postponement results in a settlement of the grievance in which event the postponement charge shall be divided equally between the parties. A postponement charge resulting from a joint postponement request shall be shared equally by the parties. Each party shall bear the costs of preparing and presenting its own case. Either party desiring a record of the proceedings shall pay for the record and make a copy available without charge to the arbitrator.

Section 3. An employee shall be permitted to have a representative of the Union present at each step of the grievance procedure up to and including Step IV, subject, however, to Section 606, Article VI of the Public Employee Relations Act. Upon request by an employee or union representative, a grievance meeting will be rescheduled, if necessary, if Union representation is temporarily unavailable to the employee. Where this occurs, the time limits for response to the grievance will be suspended during the postponement period.

Employees selected by the Union to act as Union representatives shall be known as stewards. The Union shall furnish the Employer with the names and work locations of Union representatives and shall notify the Employer of any changes.

A reasonable number of witnesses, when required, shall be allowed to participate in the grievance procedure.

An aggrieved employee and Union representatives, if employees of the Employer, shall be granted reasonable time during working hours, if required, to process grievances in accordance with this Article without loss of pay or leave time.

Where such Union representatives represent employees in more than one agency, they shall be permitted to cross agency lines for this purpose.

The Union may present grievances concerning agency-wide decisions directly to Step III within 15 working days of the date of the occurrence or the date when the Union knew or by reasonable diligence should have known of its occurrence.

ARTICLE 38

GRIEVANCES AND ARBITRATION/ACCELERATED GRIEVANCE PROCEDURE

Section 1. The accelerated grievance procedure contained in this Article shall be utilized by agencies listed in Rule 1, Section 3 of the Rules of the Accelerated Grievance Procedure contained in Appendix G.

Section 2. Where an employee of the Commonwealth has the right to process a grievance through either the procedure provided herein or through the Pennsylvania Civil Service Commission and files an appeal with the Commission, either the contract grievance procedure shall cease, if the employee has submitted a contract grievance, or the employee shall not be entitled to institute proceedings under the contract grievance procedure. If the appeal to the Commission is withdrawn by the employee or not accepted by the Commission within the time limits prescribed in Section 3 of this Article, the processing of a timely filed contract grievance shall be permitted.

Section 3. Any grievance or dispute which may arise concerning the application, meaning, or interpretation of this Agreement shall be processed in the following manner:

STEP 1. The employee, either alone, or accompanied by a Union Representative, or the Union Representative, where entitled, shall present the grievance in writing to the Employer's worksite designee within fifteen (15) working days of the date of the occurrence giving rise to the dispute, or when the employee knew or by reasonable diligence should have known of the occurrence.

In addition, in order for a grievance to be discussed at Step 1, the respective Employer worksite designee must have received a written confirmation of the grievance at least fifteen (15) working days prior to the prescheduled Step 1 meeting. This period may, however, be modified by mutual agreement.

The parties agree the respective Employer designee and the Union counterpart must schedule and meet on a monthly Step 1 basis, if necessary, in order to attempt to resolve all outstanding grievances. At the Step 1 meeting, the parties will advise each other of all of the then known facts, including witnesses, and furnish copies of relevant reports or investigations upon which the party will rely in proving and/or supporting its respective position.

When special circumstances preclude the disclosure of confidential patient, resident, client, student, or inmate information at the Step 1 meeting, the case will be handled in accordance with the agreed upon procedures to be developed by the parties.

Any agreed upon final settlement of a grievance reached at Step 1 shall be reduced to writing and signed by the Union and the Employer designee. Decisions at Step 1 shall not be used as precedent for any subsequent case.

After the Step 1 meeting has been held, and the then known information the parties intend to rely on to support their respective positions has been discussed and exchanged, the respective Employer designee must, if the case is not settled at this point, make a written disposition of the matter to the Union within fifteen (15) working days from the date of the Step 1 meeting.

STEP 2. If the Step 1 response is not satisfactory, or a response has not been received by the Union within fifteen (15) working days of the Step 1 Meeting, the Union shall have fifteen (15) working days after the Commonwealth's response is received or due, to appeal the decision by filing its grievance with the appropriate Joint Area Committee referred to in Appendix G, Rule 1, Section 3 - Jurisdiction. The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov); such an appeal may also be mailed to the Office of Administration (Bureau of Employee Relations, 404 Finance Building, Harrisburg, PA 17120). Such submission shall be filed in accordance with the established procedures with the Office of Administration, Bureau of Employee Relations.

Failure of the Union to submit grievances to the appropriate Joint Area Committee within the fifteen (15) day appeal period specified above, shall be cause for the Commonwealth to consider the matter "settled and withdrawn." Any later discovered or developed evidence, not previously disclosed to the other party at the Step 1 meeting must be submitted to the other side as soon as practical after discovery and/or development, but in no event later than 48 hours (excluding holidays and Saturdays/Sundays) before the Step 2 hearing. (See Rule 4, Section 3 for Exceptions).

Decisions of the Joint Area Committees are final and binding and shall not operate as precedent.

Discharge cases that are deadlocked at Step 2 may be moved directly to arbitration upon written request by the Union, in accordance with the current practices.

STEP 3. Failure of the respective Joint Area Committees to resolve the grievance at Step 2 of this procedure (i.e. a "deadlock" result at the Area Committee Level) shall cause the matter to automatically move to Step 3 of this procedure. No additional appeal submission or filing shall be required for "deadlocked" cases to be docketed with the Joint State Committee. However, when such docketing occurs, the Office of Administration, Bureau of Employee Relations, will furnish official notice confirming the docketing of all cases scheduled to be heard by the State Committee, along with the date, place, and time of the scheduled meeting to the affected Commonwealth Agency (Division of Labor Relations) and Council 13 of AFSCME (Grievance Department – 150 South 43rd Street, Suite 3, Harrisburg, PA 17111).

The Committees at Steps 2 and 3 shall have the right to hear testimony from both parties, investigate all relevant facts and render a final and binding decision. Each case shall be considered on its merits and the collective bargaining agreement shall constitute the basis upon which the decision shall be rendered.

The Committees shall neither add to, subtract from, nor modify the provisions of the Master Agreement. The Committees shall be confined to the precise issue submitted, and shall have no authority to determine any other issues not so submitted.

A seventh panel member shall be added to the composition of the Joint State Committee. This seventh panel member shall be an impartial arbitrator selected from a panel of permanent arbitrators agreed upon by the parties for the specific purpose of serving on the Joint State Committee. The panel arbitrators will serve on a rotating basis. The arbitrators will only be eligible to serve as a panel member for Joint State Committee cases that would be eligible to advance to arbitration under the current language in the Master Agreement. All fees and expenses of the arbitrator will be divided equally between the parties, unless otherwise agreed upon by the parties. By agreement of the parties, contract interpretation cases docketed to the Joint State Committee may be moved directly to arbitration at any time during the procedure prior to the panel turning the decision over to the arbitrator.

If the Joint State Committee is unable to reach a decision by majority vote, the matter will be turned over to the panel arbitrator for a decision.

The arbitrator shall neither add to, subtract from, nor modify the provisions of the Master Agreement.

The arbitrator shall be confined to the precise issue submitted to the Joint State Committee as presented to the Joint State Committee and shall have no authority to determine any other issues not so submitted.

A decision of the Step 3 Joint State Committee or by the arbitrator shall be final and binding on both parties. The arbitrator shall be required to issue a decision and a brief explanation, to the Joint State Committee, at the conclusion of the executive session. If so requested by the parties, the arbitrator shall be required to issue a written decision submitted to the co-chairs within thirty (30) days after the close of the Joint State Committee.

Should the arbitrator indicate to the co-chairs of the Joint State Committee that the presentation of facts before him/her would be better served by proceeding to a traditional arbitration hearing and therefore, the arbitrator does not feel a decision from the Joint State Committee is in the best interest of the parties, the grievance will be considered deadlocked and would proceed to arbitration as outlined in Step 4 below.

STEP 4. An appeal from a deadlocked decision for a termination grievance at Step 2 or a deadlock from the Joint State Committee or, any grievance the parties mutually agree to move direct to arbitration during any step of the process may be initiated by the Union, by written notice of the intent to proceed to arbitration. This notice must be sent within fifteen (15) working days after the deadlocked decision from Step 2, Step 3 or the date the parties agreed to move to arbitration. The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov); such notice may also be mailed to the Office of Administration (Bureau of Employee Relations, 404 Finance Building, Harrisburg, PA 17120), and the affected Commonwealth Agency (Division of Labor Relations).

Arbitration

The impartial arbitrator is to be selected by agreement between the respective Co-Chairpersons of the Joint State Committee within fifteen (15) working days after the notice has been given. If the parties fail to agree on an impartial arbitrator, either party may request the Bureau of Mediation to submit a list of seven (7) possible arbitrators to the respective Co-Chairpersons.

The Co-Chairpersons shall, within fifteen (15) working days of the receipt of said list, select the arbitrator by alternately striking one name from the list until one name remains. The Employer Chairperson shall strike the first name.

Each case shall be considered on its merits and the collective bargaining agreement shall constitute the basis upon which the decision shall be rendered.

The arbitrator shall neither add to, subtract from, nor modify the provisions of the Master Agreement.

The arbitrator shall be confined to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted.

A decision of the Step 2 and Step 3 Joint Committees or by the arbitrator shall be final and binding on both parties. The arbitrator shall be required to issue a decision within thirty (30) days after the close of the hearing.

Time Limits

All of the time limits contained in this Section may be modified by mutual agreement. The granting of any modification at any step shall not be deemed to establish a precedent.

Costs

Each party shall bear the costs of preparing and presenting its own case. All fees and expenses of the arbitrator shall be divided equally between the parties, except where one of the parties to this Agreement request a postponement of a previously scheduled arbitration hearing which results in a postponement charge. The postponing party shall pay such charge unless such postponement results in a settlement of the grievance, in which event the postponement shall be divided by the parties.

A postponement charge resulting from a joint postponement request shall be shared equally by the parties.

Either party desiring a record of the proceedings shall pay for the record and make a copy available without charge to the arbitrator.

Section 4. An employee shall be permitted to have a representative of the Union present at each step of the grievance procedure, up to and including Step 3; subject, however, to Section 606, Article VI of the Public Employee Relations Act. Upon request by an employee or Union representative, a

Step 1 grievance meeting will be postponed or rescheduled, if necessary, if a Union Representative is temporarily unavailable to the employee. Where this occurs, the time limits for response to the grievance will be suspended during the postponement period.

Employees selected by the Union to act as Union representatives shall be known as stewards. The Union shall furnish the Commonwealth with the names and work locations of grievance representatives and shall notify the Commonwealth of any changes.

Where such Union representatives represent employees in more than one agency, they shall be permitted to cross agency lines for the purpose of processing grievances.

A reasonable number of witnesses shall be permitted to attend Committee meetings without suffering the loss of any pay, when their presence is required because of the Commonwealth's refusal to accept the witnesses' written statements, as provided for in the attached Rules of Procedure. Grievants shall be treated in exactly the same manner as witnesses under this procedure.

An employee who presents a grievance or sits on a Joint Area Committee Panel, shall do so with pay, provided the Union has indicated their desire to have that person participate in the procedure. The number of employees so designated shall not be abused.

The Union may present grievances concerning agency-wide actions or state-wide actions directly to Step 3 within fifteen (15) working days of the date of the occurrence giving rise to the dispute, or the date when the Union knew, or by reasonable diligence should have known, of its occurrence. However, the Union will meet with the official Agency or Office of Administration designee prior to any hearing on such grievances, in order to resolve any factual disputes relating to such Agency-wide or State-wide grievances.

Section 5. The Joint Area Committee and the Joint State Committee will function under the Rules of Procedure in Appendix G.

ARTICLE 39 SAFETY AND HEALTH

Section 1. The Employer is responsible to provide employees with a safe work environment in which to carry out their job duties and the training necessary to carry out those duties safely. Managers and supervisors at all levels are to maintain safe working conditions by ensuring job-appropriate safety-related education and training are provided, and by enforcing applicable safety policies and procedures. Managers and supervisors are to give due consideration to employee safety when making decisions concerning office closings and/or delays. Employees are responsible to perform their duties safely and adhere to applicable safety rules, procedures and work practices. These safety efforts shall be ongoing and have a goal of continuous improvement. However, the provisions of this Article are not intended to ensure that employees are not exposed to those hazards and risks that are an ordinary characteristic of their work or are reasonably associated with the performance of their responsibilities and duties.

Exhibit B

Relevant Portions of the Supervisor Collective Bargaining Agreement
Between Commonwealth of Pennsylvania and AFSCME, Council 13
(July 1, 2023–June 30, 2027)

MASTER MEMORANDUM

BETWEEN

COMMONWEALTH OF PENNSYLVANIA

AND

**COUNCIL 13, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**

July 1, 2023 to June 30, 2027

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PREAMBLE

The Public Employee Relations Act, in Section 704, requires public Employers "to meet and discuss with first level supervisors as their representatives, on matters deemed to be bargainable for other public employees." This requirement is defined in the Act as the obligation of a public Employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employees. In fulfillment of this obligation, the Commonwealth of Pennsylvania has met with the American Federation of State, County, and Municipal Employees, AFL-CIO, the representatives of first level supervisors as specified in Recommendation 1, Recognition, and discussed in good faith recommendations submitted by such representative. As a result of meet and discuss sessions, the Commonwealth accepts the following recommendations.

RECOMMENDATION NO. 1 RECOGNITION

Section 1. Council 13 of the American Federation of State, County, and Municipal Employees, AFL-CIO, is recognized as the exclusive representative for meet and discuss purposes for employees within the classifications included under the following certifications of the Pennsylvania Labor Relations Board, more specifically referred to as PERA-R-13-C, Units II and IV, Maintenance and Trades; PERA-R-2686-C, Human Services; PERA-R-3521-C, Clerical, Administrative and Fiscal; PERA-R-3368-C, Technical Services; PERA-R-2573-C, Inspection, Investigation and Safety; PERA-R-3421-C, Law Enforcement, Fish and Game Laws; PERA-R-5060-C, Auditor General Department; PERA-R-5059-C, Treasury Department, PERA-U-81-388-E, Attorney General; PERA-R-08-84-E, Pennsylvania Gaming Control Board; and Pennsylvania State System of Higher Education.

Section 2. The term employee used in this Memorandum is defined as those persons in the classifications covered by the certifications referred to in Section 1 of this Recommendation.

RECOMMENDATION NO. 2 MANAGEMENT RIGHTS

Section 1. It is understood and agreed that the Employer, at its sound discretion, possesses the right, in accordance with applicable laws, to manage all operations, including the direction of the working force and the right to plan, direct, and control the operation of all equipment and other property of the Employer, except as modified by this or unit memoranda.

Matters of inherent managerial policy are reserved exclusively to the Employer. These include but shall not be limited to such areas of discretion or policy as the functions and programs of the Employer, standards of service, its' overall budget, utilization of technology, the organizational structure, and selection and direction of personnel.

Section 2. The listing of specific rights in this Recommendation is not intended to be nor should be considered restrictive or a waiver of any of the rights of management not listed and not specifically surrendered herein whether or not such rights have been exercised by the Employer in the past.

shall not count toward the initial 180 calendar days or any extension period.

Section 6. This Recommendation shall not apply to demotions resulting from an employee appeal, an Employer-initiated classification review or unsuccessful completion of a probationary period upon promotion.

Section 7. It is agreed that this Recommendation shall be binding and irrevocable during the term of this Memorandum.

Section 8. The Employer and the Union agree to expand the alternative forms of discipline in lieu of suspension actions program in accordance with the side letter dated January 27, 2017.

Section 9. An employee who is the subject of an Inspector General investigation will be notified when the investigation is concluded. The employee who is not being subject to disciplinary action will be notified at the conclusion of the investigation that the allegations were either "unfounded" or "unsubstantiated". An employee shall be deemed a subject of an investigation when the employee has been accorded a "subject interview".

Section 10. The Commonwealth agrees to meet and discuss at the request of the Union over the SEAP Program.

RECOMMENDATION NO. 29 SENIORITY

Section 1. Under the terms of this Memorandum, the term "seniority" means a preferred position for specific purposes which one employee within a seniority unit may have over another employee within the seniority unit because of a greater length of service within the state government or a particular organizational or occupational segment thereof.

a. Classification seniority standing shall be determined by the length of unbroken (as defined in Section 2) service with the Employer in the employee's current classification. An employee whose position has been downgraded will have service in the higher classification counted toward classification seniority in the lower classification.

b. Master Memorandum seniority standing for the purpose of promotion and furlough involving non-civil service covered positions and shift preference involving both civil service and non-civil service covered positions shall be determined by the length of unbroken (as defined in Section 2) service with the Employer in first-level supervisory classifications in all meet and discuss units included in this Memorandum.

c. Employees who served in the Armed Forces of the United States during periods of war in which the United States was or is engaged as listed below shall be responsible for providing proof of military service to their human resource officer within 60 days of their first day of work or 60 days after discharge or release from active duty during a current period of war in order to receive seniority credit in accordance with the Veteran's Preference Act 51 PA C.S. 7101. Failure to provide

the required proof of service during the time period shall bar the employee or union from claiming credit for such service at a later date.

Applicable periods of war are as follows:

- (1) World War II – December 7, 1941-September 2, 1945
- (2) Korea – June 25, 1950-July 27, 1953
- (3) Vietnam – August 5, 1964-January 28, 1973
- (4) Persian Gulf – August 2, 1990-August 31, 1991
- (5) War on Terrorism – September 11, 2001 to date determined by the Adjutant General (Department of Military and Veterans Affairs) pursuant to 51 PA C.S. 7101.

d. Seniority credit for each employee is maintained as a total number of days. Employees will accrue seniority in accordance with the following procedure: The number of regular hours paid each biweekly pay period plus the number of hours of military leave without pay; leave without pay for union business in accordance with Recommendation 17, Section 3; leave without pay for work-related injuries in accordance with Recommendation 26; and Family and Medical Leave Act (FMLA) leave in accordance with Recommendation 18, Section 1 will be accumulated. This total number of hours will be divided by 7.5 or 8 as applicable and rounded up to the next higher day. The result will be added to the employee's accumulated total.

Section 2. The following shall constitute a break in service: resignation, separation for just cause, retirement, absence without leave for five consecutive working days, failure to report within 10 consecutive working days of recall, expiration of recall period, failure to report after leave and acceptance of other permanent employment while on leave. This shall not restrict the Employer's right to take whatever personnel action it deems warranted for any of the above. If service is broken by any of the above, the employee shall lose Master Memorandum and Classification seniority. If an employee is returned within one year after such break in service, the employee shall be entitled to credit for seniority purposes the time accrued up to the time break in service occurred, but shall not be entitled to any credit for the time represented by such break in service.

Employees who are furloughed and who file applications for retirement benefits which are subsequently approved, will be considered to have a break in service as of the date of the approval of benefits by the State Employees' Retirement Board.

Section 3. Seniority lists shall be prepared for each seniority group and revised where necessary every six months. Appropriate service information shall be shown thereon to permit application of various seniority provisions. Such lists shall be posted on the appropriate bulletin boards. Seniority lists shall be provided to the local Union President upon request not more than once every six months. Grievances alleging a violation of this Section may be appealed directly to the fourth step of the grievance procedure or directly to the State Committee, where applicable. In the Pennsylvania State System of Higher Education grievances alleging a violation of this Section may be appealed directly to the third step of their grievance procedure or directly to the State Committee, where applicable.

Section 4. All vacancies which are to be filled within the seniority unit will be posted at

appropriate work locations prior to the filling of such vacancies for a period of at least 10 calendar days unless an emergency requires a lesser period of time. The Employer also agrees to post entrance level vacancies within the seniority unit at appropriate work locations prior to the filling of such vacancies for a period of at least five calendar days unless an emergency requires a lesser period of time. Such postings shall include the position number (Bureau Code, Class Code and serial number).

Virtual postings via NEOGOV or officially designated online platforms shall satisfy the requirements of this section without the need for a physical posting.

Section 5. Whenever the Employer deems it necessary to fill a non-civil service vacancy, vacancies shall be filled in the following manner:

- a. Employees in the classification immediately below the vacancy within the seniority unit wishing to bid for such vacancy shall submit to the Employer their name on a bidding form available from an agency office specified on the posting. Employees must submit a bid within the time period specified on the posting.
- b. Where it is determined that skill and ability are relatively equal among the bidding employees in the classification immediately below the vacancy within the seniority unit, the vacancy shall be filled by promoting the employee with the greatest Classification seniority except in the following instances:
 - (1) Where it is necessary to comply with the provisions of applicable law and rules relating to the Commonwealth's Equal Employment Opportunity Program.
 - (2) Where the job involved requires highly specialized skill, training and expertise and there are no employees in the classification immediately below the vacancy who possess such qualifications.
 - (3) Whenever a position is reclassified upward to correct an improper classification or to reflect an accretion of duties or reorganization of duties, then the incumbent shall be awarded the higher position.
- c. If an employee is promoted in accordance with this Section and was temporarily assigned, at the time the position was posted or thereafter, to work in that position, the employee will be promoted retroactive to the ending date of the posting.

Section 6. Whenever the Employer deems it necessary to fill a civil service vacancy, vacancies shall be filled in the following manner:

- a. Employees in the classification immediately below the vacancy within the seniority unit wishing to bid for such a vacancy shall submit their name to the Employer on a bidding form available from an agency office specified on the posting. Employees must submit a bid within the time period specified on the posting.

- b. When a vacancy is filled without examination and where it is determined that skill and ability are relatively equal among the bidding employees in the classification immediately below the vacancy within the seniority unit, the vacancy shall be filled by promoting the employee with the greatest Master Memorandum seniority subject to the exceptions noted in Subsections (1), (2) and (3) of Section 5.b. of this Recommendation.
- c. When a vacancy is filled by examination within a seniority unit, the bidding employee with the greatest Master Memorandum seniority in the classification immediately below the vacancy who is within five points of the seniority unit employee with the highest score shall be promoted unless a person outside the seniority unit receives a grade placing the person 10 points or more higher than the seniority unit employee with the highest score in which instance the person from outside the seniority unit may be appointed. An example of a five-point range would be 85-90, inclusive. An example of a 10-point range would be 80-90, inclusive. This Section is subject to the exceptions as set forth for non-civil service employees in Subsections (1), (2) and (3) of Section 5.b. of this Recommendation. For the purpose of this Section, persons outside the seniority unit whose names appear on the civil service list are not required to submit a bid in order to be considered for the vacancy.
- d. If an employee is promoted in accordance with this Section and was temporarily assigned, at the time the position was posted or thereafter, the work in that position, the employee will be promoted retroactive to the ending date of the posting.

Section 7. a. When the Employer determines that a furlough is necessary within a seniority unit, employees will be furloughed in the inverse order of Master Memorandum seniority. Employees affected by furlough who have the requisite seniority and skill and ability shall bump laterally or down in the following manner:

(1) If an employee is affected by furlough the employee shall bump down into the next lower classification within the classification series within the same geographical and organizational limitation as the seniority unit, provided the employee has more Master Memorandum seniority than the employee with the least Master Memorandum seniority in that classification and has the requisite skill and ability. If such a bump is not available, the employee shall bump into any other lower classification in the same classification series using the same procedure.

(2) If the affected employee is unable under Subsection (1) above to bump into a lower classification the employee shall bump laterally or down into any other classification previously held within the bargaining unit but within the same geographical and organizational limitation as the seniority unit, using the seniority procedure specified in (1) above. If such a bump is not available, the employee shall bump into any other lower classification in the classification series of the position previously held using the same procedure.

(3) If the affected employee is unable under Subsections (1) and (2) above to

bump into a position, the employee shall bump laterally or down into any classification previously held within any bargaining unit included in this Memorandum but within the same geographical and organizational limitation as the seniority unit in which the furlough is occurring using the seniority procedure specified in a. above. If such a bump is still not available, the employee shall bump into any other lower classification of the classification series of the position previously held using the same procedure.

(4) If the affected employee is unable to bump into any position as provided in Subsections (1), (2), and (3) above, and the employee formerly occupied a classification within any rank and file bargaining unit included in the Master Agreement between the Commonwealth of Pennsylvania and the American Federation of State, County, and Municipal Employees, AFL-CIO, such employee shall then first bump laterally or downward into the classification occupied immediately prior to leaving a bargaining unit included in that Agreement, or if such a bump is not available, then into any lower classification in the same classification series, provided the classification is within the same geographical and organizational limitation as the seniority unit in which the furlough is occurring and provided that the employee has more Master Agreement seniority than the employee with the least amount of Master Agreement seniority in that classification and has the requisite skill and ability, and provided that the employee has not had a break in service as defined in Section 2 since leaving the bargaining unit. If a position cannot be obtained in this manner, the same procedure will be repeated for any position previously held within any bargaining unit included in that Agreement or if such a bump is not available then into any lower classification in the same classification series, provided the classification is within the same geographical and organizational limitation as the seniority unit in which the furlough is occurring.

(5) If the affected employee is unable to bump into any position as provided in Subsections (1), (2), (3), and (4) above, the employee shall be furloughed, subject to the provisions of Section 12 of this Recommendation.

(6) If an employee refuses to exercise rights under this Section, the employee shall forfeit all further bumping rights under this Section, recall rights under Section 9 of this Recommendation to positions in all classifications except the one from which the employee was furloughed and placement rights under Section 12 of this Recommendation. However, if an employee refuses a bump to a position that is 50 miles or more from the employee's residence as measured by the shortest regularly travelled route, the employee shall retain all recall rights under Section 9 of this Recommendation and placement rights under Section 12 of this Recommendation.

(7) In cases where a seniority unit is comprised of more than one geographic work location, an affected employee, who in exercising his or her bump rights under Subsections (1), (2), (3), and (4) above, would otherwise be required to move into another geographic location within the seniority unit, may bump the employee in the affected employee's current geographic work location with the least amount of Master Memorandum seniority. The employee with the least Master Memorandum seniority in the affected employee's current geographic work location may then bump an employee in another

geographic location within the seniority unit, in accordance with Subsections (1), (2), (3), and (4) above.

b. For the purposes of the exercise of bumping rights under this Section, permanent full-time employees shall have bumping rights to both full-time and part-time positions. Permanent part-time employees shall have bumping rights to part-time positions only.

c. Where the need for furlough can be reasonably anticipated, the Employer will notify the Union one month in advance of any impending furlough.

Section 8. Before any furlough is implemented in a classification in the classified service in a seniority unit, all emergency employees will be separated before any temporary employees; temporary employees will be separated before any provisional employees; and all provisional employees will be separated before any probationary employees or any regular status members of the classified service are furloughed.

Before any furlough is implemented in a non-civil service classification, all temporary employees will be separated before any permanent employees are furloughed.

Section 9. The Employer shall establish a recall list by classification series using the same geographical and organizational limitation as the seniority unit in which the furlough occurred for those employees furloughed under Section 7 of this Recommendation in the inverse order of Master Memorandum seniority.

a. Employees on such recall lists shall have rights to a position in a classification within the seniority unit from which they were furloughed or to any lower-level classification in the same classification series in the same geographical and organizational limitation as the seniority unit in which the furlough occurred provided they have the requisite seniority and skill and ability.

b. Such recall lists will remain in effect for a furloughed employee for a period of three years after the effective date of the furlough.

c. In the event an employee on a recall list refuses an offer of employment in a lower classification for which the employee has seniority rights, the employee shall forfeit recall rights to such a classification; if the employee refuses an offer of employment in the classification from which the employee was initially furloughed, the employee shall forfeit all recall rights.

d. During the period that employees are on a recall list, they shall keep the Employer informed of any change of address. An employee who is not offered recall because of failure to notify the Employer of a change of address and who subsequently informs the Employer of the current address shall be returned to the recall list and shall be offered the next opportunity for recall, provided the employee's three year recall period has not expired.

e. During the recall period employees may be offered recall to either temporary or part-time positions. If an employee refuses an offer of either temporary or part-time recall, the employee forfeits all further recall rights to the type of employment refused. The employee would

retain recall rights to permanent, full-time employment for which the employee is eligible.

f. The recall period of a furloughed employee who, during the recall period, returns to the furloughing agency's payroll in a temporary capacity shall be extended by the amount of time the employee serves in the temporary capacity.

g. A furloughed employee who, during a recall period, returns to the Employer's payroll in a temporary capacity shall upon recall from the furlough to permanent employment, be credited with seniority for the amount of time spent in the temporary capacity.

h. A furloughed employee who, during a recall period, returns to the Employer's payroll in a temporary capacity shall be eligible for all benefits enjoyed by permanent employees, provided other applicable eligibility requirements are met.

i. The Employer will provide the Union with a copy of all recall lists.

j. A furloughed employee shall forfeit all recall rights under this Section under the following circumstance:

- 1) For a defined benefit retirement plan employee or a hybrid retirement plan employee, recall rights are forfeited when the furloughed employee applies for and receives retirement benefits from the State Employees' Retirement System or the Public School Employee's Retirement System, as of the date of the approval of such benefits.
- 2) For a defined contribution retirement plan employee, recall rights are forfeited when the furloughed employee receives a full distribution from his or her defined contribution plan, as of the date of such distribution. A furloughed employee who receives less than a full distribution from his or her defined contribution plan shall not forfeit his or her recall rights under this Section.

k. A permanent part-time employee shall only have recall rights under this Section to part-time positions (temporary or permanent).

Section 10. An employee desiring to transfer to another position in the same, equivalent or lower level classification shall submit a written request to the human resource office for the employee's seniority unit stating the reasons for the requested transfer. Prior to filling a vacancy, all written requests received for the position from employees within the same geographical/organizational limitation as the seniority unit will be considered. If the Employer in its sole discretion agrees to such transfer, the employee shall be entitled to maintain appropriate seniority rights. Nothing in this Section shall supersede the seniority rights of employees under this Recommendation.

Section 11. In making shift assignments to shift openings, preference shall be granted on a seniority basis unless the Employer feels it is necessary to assign otherwise in order to protect the efficiency of operation. Seniority status in this regard shall be Classification seniority. If Classification seniority is equal for competing employees, Master Memorandum seniority will be

used. If Master Memorandum seniority is also equal, the assignment will be made by lot.

Section 12. If an employee is unable to execute a bump as provided by Recommendation 29, Section 7, and is placed on a furlough list, the Commonwealth will attempt to place the employee in a budgeted, available, uncommitted vacancy in a classification covered by the Master Memorandum to which there are no seniority claims in the following manner:

a. Placement will be made to positions in classifications covered by the Master Memorandum to which an employee has bumping rights in any agency under the jurisdiction of the Governor provided the employee possesses the requisite skill and ability. In addition, placement will be made to entrance level vacancies in any classification covered by the Master Memorandum in the same or lower pay scale group in the agency from which the employee was furloughed, provided the employee meets the minimum requirements and qualifications essential to the work of the vacancy.

If an employee is unable to be placed under paragraph one of this Subsection, placement will be made to entrance level vacancies in a classification in the same or lower pay scale group in the same meet and discuss unit from which the employee was furloughed in any agency under the jurisdiction of the Governor, provided the employee meets the minimum requirements and qualifications essential to the work of the vacancy.

b. Employees placed in entrance level vacancies which are not in the classification or classification series which an employee previously held will serve a six month probationary period during which time the provisions of Recommendation 28, Section 1 shall not apply. Employees who are terminated for failure to successfully complete the probationary period shall retain recall rights under Section 9 of this Recommendation.

c. Geographic limitations for the application of this Section will be designated by the employee by completing a placement questionnaire. The employee may choose up to ten counties in which the employee would be available for employment or a statewide availability.

d. Placement will be made in order of Master Memorandum seniority; however, employees with an earlier furlough date will be placed in vacancies before employees with a later furlough date.

e. Civil service employees will have placement rights to both civil service and non-civil service vacancies consistent with the requirements outlined in paragraph one of this Section.

Non-civil service employees will have placement rights only to non-civil service vacancies, except that if an appropriate vacancy in a non-civil service position is not available and the employee previously was a member of the classified service in a classification to which the employee would have rights under this Section, placement in that civil service classification will be attempted consistent with the requirements outlined in paragraph one of this Section and in accordance with the Civil Service Act and Rules.

f. Employees will be offered placement in one vacant position. If an employee declines the offer of placement, the employee's rights under this Section cease. The furloughed employee

shall retain recall rights as outlined in Recommendation 29, Section 9.

g. If an employee accepts an offer of placement under this Section, any other placement rights to which an employee may be entitled under this Section cease.

h. In addition, employees shall complete an "Availability for Temporary Employment" questionnaire. If an employee indicates a desire not to be offered placement to temporary positions no such offers will be made and placement rights to permanent positions will not be affected. However, if an employee indicates a desire to be offered a temporary position and refuses such an offer, the employee shall forfeit all placement rights.

i. Employees placed in vacancies in the same classification from which furloughed or in vacancies in other classifications at the same pay scale group of the classification from which furloughed will lose recall rights outlined by Recommendation 29, Section 9. Those employees placed in a classification in a lower pay scale group will retain their recall rights under Recommendation 29, Section 9.

j. The provisions of this Section will be implemented at the time the employee's completed placement questionnaires are received by the central human resource office of the appropriate agency, and will continue for one year after the employee has been furloughed. When the one year period has expired, an employee's rights under this Section cease. However, the employee will retain recall rights under Recommendation 29, Section 9, except as provided in Subsection i. The provisions of this Section will not be implemented on behalf of employees who do not return completed placement questionnaires.

k. A furloughed employee shall forfeit any placement rights under this Section under the following circumstance:

- 1) For a defined benefit retirement plan employee or a hybrid retirement plan employee, recall rights are forfeited when the furloughed employee applies for and receives retirement benefits from the State Employees' Retirement System or the Public School Employee's Retirement System, as of the date of the approval of such benefits.
- 2) For a defined contribution retirement plan employee, recall rights are forfeited when the furloughed employee receives a full distribution from his or her defined contribution plan, as of the date of such distribution. A furloughed employee who receives less than a full distribution from his or her defined contribution plan shall not forfeit his or her recall rights under this Section.

The provisions of this Section will also be applied within each of the independent agencies.

Section 13. The probationary period for promotions shall be 180 calendar days in length, or the length of the Civil Service probationary period, whichever is longer and the provisions of Recommendation 28, Section 1 shall not be applicable if an employee is demoted within that time for failure to successfully complete the probationary period. In such case, employees shall have the

right to return to their former classification during this period. Periods of leave without pay and periods of time during which an employee is using paid leave to supplement workers' compensation shall not count toward the probationary period.

If an employee works out of class and is subsequently promoted to the same classification in the same seniority unit, the employee shall have the time worked out of class in the preceding six months credited toward the probationary period.

Section 14. For the purpose of furlough, the number of union stewards and chair officers of the Union locals agreed to by the parties on November 19, 1975 shall have superseniority. The Union shall provide the Employer, on a quarterly basis, a list of all employees who have been granted superseniority in accordance with the provisions of this Section. The list shall contain the employee's name, union title, agency of employment, bargaining unit, work location and local union number.

Master Memorandum seniority will be used to break ties among employees who have been granted superseniority. If Master Memorandum seniority is equal, the employees will draw lots.

Section 15. Seniority unit means that group of employees in a classification within an affected institutional, bureau, agency or department operational structure in a given geographic work area as listed in Appendix E.

Section 16. Grievances relating to the interpretation, application and implementation of Sections 5, 6, 7, 8, 9, 12, 15, 19 and 21 of this Recommendation shall be filed at the third step/Joint State Committee. Only those grievances relating to Sections 7, 9 and 12 shall be subject to arbitration which shall be conducted by a panel of three members – one to be appointed by the Office of Administration, one to be appointed by the Union and the third to be selected by the Employer from a list of five names to be mutually agreed upon by the Employer and the Union. Such third member shall not be affiliated, directly or indirectly, with any labor organization or be an employee of the Commonwealth of Pennsylvania.

The decision of the panel, hereinbefore described, shall be final and binding on the parties of this Memorandum. The panel shall meet monthly for the purpose of adjusting grievances under this Section.

Section 17. When in the exercise of seniority rights provided hereunder, two or more employees are deemed relatively equal in skill and ability and have the same seniority, preferential rights shall be determined by lot.

Section 18. The provisions of this Recommendation relating to promotions and filling of vacancies shall not be applicable to entrance level classifications.

Section 19. Employees who formerly occupied classifications within supervisory units included in this Memorandum, and who are not now in supervisory units represented by AFSCME and who are affected by furlough may not bump into classifications previously held in supervisory units included in this Memorandum.

However, employees who formerly occupied classifications within supervisory units included in this Memorandum who elected the voluntary demotion/transfer option contained in the 1991-1993 Master Memorandum may exercise that option, if available, during the term of this Memorandum.

Section 20. Section 7 of this Recommendation shall be binding and irrevocable during the term of this Memorandum.

Section 21. Permanent part-time employees will have the right to use their seniority to bid and be selected for permanent full-time vacancies that occur in the same classification within the seniority unit. The criteria of Sections 5 and 6 of this Recommendation will be applicable.

Temporary employees who have been employed in both calendar years 1992 and 1993 and who were not terminated for unsatisfactory performance will be placed in temporary vacancies in the seniority unit and in the last classification held which occur on or after the effective date of this Memorandum.

Temporary employees will have the right to bid and be selected for permanent vacancies that occur in the same or lower level classification within the class series within the seniority unit. The seniority criteria of Sections 5 and 6 of this Recommendation will be applicable.

The employer may deviate from the process outlined in this section when required by Section 7104 of the Veteran's Preference Act (51 Pa.C.S. § 7104).

Section 22. When there are competing seniority claims for either a permanent or temporary budgeted available position which the Employer intends to fill, those claims will be ranked in the following order: Recall, in accordance with Section 9; Promotion, in accordance with Sections 5 and 6; Placement, in accordance with Section 12; Part-time employees bidding on full-time positions in the same classification, in accordance with Section 21; and temporary employees bidding on permanent positions, in accordance with Section 21.

RECOMMENDATION NO. 30 UNIFORMS, CLOTHING AND EQUIPMENT

Section 1. Where the Employer now provides devices, apparel or equipment necessary to protect employees from injury or exposure to extreme non-climatic heat or cold, the Employer shall continue to provide the level of protection in accordance with the practice now prevailing. Where no such protection is now provided, the Employer shall provide whatever device, apparel or equipment is necessary to afford a level of protection provided by the agency for similar risks or exposure. Where special tools are required for accomplishing work assignments, the Employer shall be responsible for supplying the same. Where the tools customarily used in a trade or craft are now required to be supplied by the employee, such requirement shall continue; where such tools are presently supplied, the practice shall continue. Where uniforms are required and for so long as they may be required, the Employer agrees to furnish the uniforms so required. Uniform requirements are not to be confused with dress regulations required by the Employer.

organizational performance through interest-based dialogue and problem-solving.

Section 20. The Commonwealth shall have the right to make corporate card deductions from the paycheck of an employee who has delinquent corporate card balances. Employees who have incurred unpaid corporate card balances which remain delinquent for more than 90 days without an acceptable explanation will be subject to payroll deductions for the delinquent amount consistent with the Commonwealth's Travel Policy Manual (M 230.1), Section 6.3. Deductions taken under this provision shall be in accordance with Recommendation 35, Section 16, except that they shall also apply to amounts of less than \$300.

Employees who have submitted a timely request for reimbursement of travel expenses associated with the delinquent debt will not be subject to deductions until after they have received reimbursement.

RECOMMENDATION NO. 36 EQUAL EMPLOYMENT OPPORTUNITY

If any provision of this Memorandum is in conflict with Federal Executive Orders 11246 and 11375, as amended, the Civil Rights Act of 1964, and all laws and rules, relating to the Commonwealth's Equal Employment Opportunity program, and the Americans with Disabilities Act, the provisions of the aforementioned Orders, laws and implementing regulations shall prevail.

Disputes regarding the application and implementation of the Orders, laws and implementing regulations shall be subject to the grievance procedure.

This provision does not constitute a waiver of rights under Act 195.

RECOMMENDATION NO. 37 GRIEVANCES/STANDARD GRIEVANCE PROCEDURE

Section 1. Where an employee has the right to process a grievance through either the procedure provided herein or through the Pennsylvania Civil Service Commission and files an appeal with the Commission either the Memorandum grievance procedure shall cease, if the employee has submitted a memorandum grievance or the employee shall not be entitled to institute proceedings under the Memorandum grievance procedure. If the appeal to the Commission is withdrawn by the employee or not accepted by the Commission within 15 working days of the date of the occurrence of the action giving rise to the grievance, the processing of a memorandum grievance filed within the time limits set forth in Section 2 shall be permitted.

Section 2. Any grievance or dispute which may arise concerning the application, meaning or interpretation of this Memorandum shall be settled in the following manner:

STEP I: The employee, either alone or accompanied by the Union representative or the Union where entitled, shall present the grievance orally or in writing to the employee's immediate supervisor within 15 working days of the date of its occurrence, or when the employee knew or by reasonable diligence should

have known of its occurrence. The supervisor shall attempt to resolve the matter and report a decision to the employee, orally or in writing, within 15 working days of its presentation.

STEP II: In the event the grievance is not settled at Step I, the appeal must be presented in writing by the employee or Union representative to the head of the employee's division, bureau, institution, or equivalent organizational unit within 15 working days after the supervisor's response is due. The official receiving the written appeal, or the official's designated representative, shall respond in writing to the employee and the Union representative within 15 working days after receipt of the appeal.

STEP III: An appeal from an unfavorable decision at Step II shall be presented by the employee or Union representative to the agency head, within 15 working days after the response from Step II is due. The agency head, or designee shall respond in writing to the employee and Union representative within 15 working days after receipt of the appeal.

STEP IV: In the event the grievance has not been satisfactorily resolved in Step III, written appeal may be made by the employee or Union representative within 15 working days of the Step III decision to the Bureau of Employee Relations, Office of Administration. The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov); or in the case of the independent agencies, the agency head or the appropriate designee and shall contain a copy of the Step II and III decisions. The Bureau of Employee Relations, Office of Administration, or in the case of the independent agencies, the agency head or the appropriate designee, shall issue a decision in writing to the Union within 15 working days after receipt of the appeal.

Upon request of the Union, a meeting will be held at Step IV of the grievance procedure.

Section 3. An employee shall be permitted to have a representative of the Union present at each step of the grievance procedure up to and including Step IV, subject, however, to Section 606, Article VI of the Public Employee Relations Act.

Upon request by an employee or union representative, a grievance meeting will be rescheduled, if necessary, if Union representation is temporarily unavailable to the employee. Where this occurs, the time limits for response to the grievance will be suspended during the postponement period.

Employees selected by the Union to act as Union representatives shall be known as stewards. The Union shall furnish the Employer with the names and work locations of union representatives and shall notify the Employer of any changes.

A reasonable number of witnesses, when required, shall be allowed to participate in the grievance procedure.

An aggrieved employee and Union representatives, if employees of the Employer, shall be granted reasonable time during working hours, if required, to process grievances in accordance with this Recommendation without loss of pay or leave time.

In the interest of expediting the resolution of grievances involving shift preference and the denial of annual requests, the parties agree to utilize alternative approaches and methods, including such procedures as reducing the number of grievance steps and providing for the issuance of Employer responses within reduced periods of time.

All of the time limits contained in this Section may be extended by mutual agreement. The granting of any extension at any step shall not be deemed to establish precedence.

Where such Union representatives represent employees in more than one agency, they shall be permitted to cross agency lines for this purpose.

The Union may present grievances concerning agency-wide decisions directly to Step III within 15 working days of the date of the occurrence or the date when the Union knew or by reasonable diligence should have known of its occurrence.

RECOMMENDATION NO. 38 GRIEVANCES/ACCELERATED GRIEVANCE PROCEDURE

Section 1. The accelerated grievance procedure contained in this Recommendation shall be utilized by agencies listed in Rule 1, Section 3 of the Rules of the Accelerated Grievance Procedure contained in Appendix G.

Section 2. Where an employee of the Commonwealth has the right to process a grievance through either the procedure provided herein or through the Pennsylvania Civil Service Commission and files an appeal with the Commission, either the contract grievance procedure shall cease, if the employee has submitted a contract grievance, or the employee shall not be entitled to institute proceedings under the contract grievance procedure. If the appeal to the Commission is withdrawn by the employee or not accepted by the Commission within the time limits prescribed in Section 3 of this Recommendation, the processing of a timely filed contract grievance shall be permitted.

Section 3. Any grievance or dispute which may arise concerning the application, meaning, or interpretation of this Memorandum shall be processed in the following manner:

STEP 1. The employee, either alone, or accompanied by a Union Representative, or the Union Representative, where entitled, shall present the grievance in writing to the Employer's worksite designee within fifteen (15) working days of the date of the occurrence giving rise to the dispute, or when the employee knew or by reasonable diligence should have known of the occurrence.

In addition, in order for a grievance to be discussed at Step 1, the respective Employer worksite designee must have received a written confirmation of the grievance at least fifteen (15) working days prior to the prescheduled Step 1 meeting. This period may, however, be modified by mutual agreement.

The parties agree the respective Employer designee and the Union counterpart must schedule and meet on a monthly Step 1 basis, if necessary, in order to attempt to resolve all outstanding grievances. At the Step 1 meeting, the parties will advise each other of all of the then known facts, including witnesses, and furnish copies of relevant reports or investigations upon which the party will rely in proving and/or supporting its respective position.

When special circumstances preclude the disclosure of confidential patient, resident, client, student, or inmate information at the Step 1 meeting, the case will be handled in accordance with the agreed upon procedures to be developed by the parties.

Any agreed upon final settlement of a grievance reached at Step 1 shall be reduced to writing and signed by the Union and the Employer designee. Decisions at Step 1 shall not be used as precedent for any subsequent case.

After the Step 1 meeting has been held, and the then known information the parties intend to rely on to support their respective positions has been discussed and exchanged, the respective Employer designee must, if the case is not settled at this point, make a written disposition of the matter to the Union within fifteen (15) working days from the date of the Step 1 meeting.

STEP 2. If the Step 1 response is not satisfactory, or a response has not been received by the Union within fifteen (15) working days of the Step 1 Meeting, the Union shall have fifteen (15) working days after the Commonwealth's response is received or due, to appeal the decision by filing its grievance with the appropriate Joint Area Committee referred to in Appendix G, Rule 1, Section 3 - Jurisdiction. The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov); such submission shall also be made in writing, and shall be filed in accordance with the established procedures with the Office of Administration, Bureau of Employee Relations (OA-BER - 404 Finance Building, Harrisburg, PA 17120).

Failure of the Union to submit grievances to the appropriate Joint Area Committee within the fifteen (15) day appeal period specified above, shall be cause for the Commonwealth to consider the matter "settled and withdrawn." Any later discovered or developed evidence, not previously disclosed to the other party at the Step 1 meeting must be submitted to the other side as soon as practical after discovery and/or development, but in no event later than 48 hours (excluding holidays and Saturdays/Sundays) before the Step 2 hearing. (See Rule 4, Section 3 for Exceptions).

Decisions of the Joint Area Committees are final and binding and shall not operate as precedent.

Discharge cases that are deadlocked at Step 2 may be moved directly to arbitration upon written request by the Union, in accordance with the current practices.

STEP 3. Failure of the respective Joint Area Committees to resolve the grievance at Step 2 of this procedure (i.e. a "deadlock" result at the Area Committee Level) shall cause the matter to automatically move to Step 3 of this procedure. No additional appeal submission or filing shall be required for "deadlocked" cases to be docketed with the Joint State Committee. However, when such docketing occurs, the Office of Administration, Bureau of Employee Relations, will furnish official notice confirming the docketing of all cases scheduled to be heard by the State Committee, along with the date, place, and time of the scheduled meeting to the affected Commonwealth Agency (Division of Labor Relations) and Council 13 of AFSCME (Grievance Department - 150 South 43rd Street, Suite 3, Harrisburg, PA 17111).

The Committees at Steps 2 and 3 shall have the right to hear testimony from both parties, investigate all relevant facts and render a final and binding decision. Each case shall be considered on its merits and the memorandum of understanding shall constitute the basis upon which the decision shall be rendered.

The Committees shall neither add to, subtract from, nor modify the provisions of the Master Memorandum. The Committees shall be confined to the precise issue submitted, and shall have no authority to determine any other issues not so submitted.

A seventh panel member shall be added to the composition of the Joint State Committee. This seventh panel member shall be an impartial arbitrator selected from a panel of permanent arbitrators agreed upon by the parties for the specific purpose of serving on the Joint State Committee. The panel arbitrators will serve on a rotating bases. The arbitrators will only be eligible to serve as a panel member for Joint State Committee cases that would be eligible to advance to arbitration under the current language in the Master Memorandum. All fees and expenses of the arbitrator will be divided equally between the parties, unless otherwise agreed upon by the parties. By agreement of the parties, contract interpretation cases docketed to the Joint State Committee may be moved directly to arbitration at any time during the procedure prior to the panel turning the decision over to the arbitrator.

If the Joint State Committee is unable to reach a decision by majority vote, the matter will be turned over to the panel arbitrator for a decision, in accordance with Recommendation 39.

The arbitrator shall neither add to, subtract from, nor modify the provisions of the Master Memorandum.

The arbitrator shall be confined to the precise issue submitted to the Joint State Committee as presented to the Joint State Committee and shall have no authority to determine any other issues not so submitted.

A decision of the Step 3 Joint State Committee or by the arbitrator shall be final and binding on both parties. The arbitrator shall be required to issue a decision and a brief explanation, to the Joint State Committee, at the conclusion of the executive session. If so requested by the parties, the arbitrator shall be required to issue a written decision submitted to the co-chairs within thirty (30) days after the close of the Joint State Committee.

Should the arbitrator indicate to the co-chairs of the Joint State Committee that the presentation of facts before him/her would be better served by proceeding to a traditional arbitration hearing and therefore, the arbitrator does not feel a decision from the Joint State Committee is in the best interest of the parties, the grievance will be considered deadlocked and would proceed to arbitration as outlined in Step 4 below.

STEP 4. In accordance with Recommendation 39, an appeal from a deadlocked decision for a termination grievance at Step 2 or a deadlock from the Joint State Committee or, any grievance the parties mutually agree to move direct to arbitration during any step of the process may be initiated by the Union, by written notice of the intent to proceed to arbitration. This notice must be sent within fifteen (15) working days after the deadlocked decision from Step 2, Step 3 or the date the parties agreed to move to arbitration to the Office of Administration (Bureau of Employee Relations, 404 Finance Building, Harrisburg, PA 17120). The preferred method is to send an email to the Office of Administration, Bureau of Employee Relations grievance resource account (RA-oaber-grievance@pa.gov); such notice may also be mailed to the Office of Administration (Bureau of Employee Relations, 404 Finance Building, Harrisburg, PA 17120), and the affected Commonwealth Agency (Division of Labor Relations).

Section 4. An employee shall be permitted to have a representative of the Union present at each step of the grievance procedure, up to and including Step 3; subject, however, to Section 606, Article VI of the Public Employee Relations Act. Upon request by an employee or Union representative, a Step 1 grievance meeting will be postponed or rescheduled, if necessary, if a Union Representative is temporarily unavailable to the employee. Where this occurs, the time limits for response to the grievance will be suspended during the postponement period.

Employees selected by the Union to act as Union representatives shall be known as stewards. The Union shall furnish the Commonwealth with the names and work locations of grievance representatives and shall notify the Commonwealth of any changes.

Where such Union representatives represent employees in more than one agency, they shall be permitted to cross agency lines for the purpose of processing grievances.

A reasonable number of witnesses shall be permitted to attend Committee meetings without suffering the loss of any pay, when their presence is required because of the Commonwealth's refusal to accept the witnesses' written statements, as provided for in the attached Rules of Procedure. Grievants shall be treated in exactly the same manner as witnesses under this procedure.

An employee who presents a grievance or sits on a Joint Area Committee Panel, shall do so with pay, provided the Union has indicated their desire to have that person participate in the procedure. The number of employees so designated shall not be abused.

The Union may present grievances concerning agency-wide actions or state-wide actions directly to Step 3 within fifteen (15) working days of the date of the occurrence giving rise to the dispute, or the date when the Union knew, or by reasonable diligence should have known, of its occurrence. However, the Union will meet with the official Agency or Office of Administration designee prior to any hearing on such grievances, in order to resolve any factual disputes relating to

such Agency-wide or State-wide grievances.

Section 5. The Joint Area Committee and the Joint State Committee will function under the Rules of Procedure in Appendix G.

RECOMMENDATION NO. 39
ARBITRATION

Section 1. An appeal from Step IV/Joint State Committee of the grievance procedure in the preceding Recommendations may be submitted to arbitration within fifteen (15) working days after the response from Step IV is due or the Joint State Committee has deadlocked only in the following circumstances:

- a. To determine whether there was just cause for a discharge, demotion or suspension which has not occurred as the result of a strike.
- b. To determine whether employees are engaged in a "strike" which is prohibited under Recommendation 34; provided, however, that the Employer retains the sole discretion of determining the appropriate disciplinary action for employees engaged in a strike as provided in Section 2 of Recommendation 34.
- c. To determine whether there has been a violation of the seniority provisions set forth in Section 7, 9 and 12 of Recommendation 29.
- d. To determine whether there has been a violation of Health and Safety Recommendation 40. This will not include grievances over appropriate staffing levels.

The arbitrator is to be selected by the parties jointly within fifteen (15) working days after the notice has been given. If the parties fail to agree on an arbitrator, either party may request the Bureau of Mediation to submit a list of seven possible arbitrators.

The parties shall, within fifteen (15) days of the receipt of said list, meet for the purpose of selecting the arbitrator by alternately striking one name from the list until one name remains. The Employer shall strike the first name.

Each case shall be considered on its merits and the Memorandum shall constitute the basis upon which the decision shall be rendered. The decision at Steps I, II and III shall not be used as a precedent for any subsequent case.

The arbitrator shall neither add to, subtract from, nor modify the provisions of this Memorandum. The arbitrator shall be confined to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted.

The decision of the arbitrator shall be final and binding on both parties, except where the

decision would require an enactment of legislation, in which case it shall be binding only if such legislation is enacted. The arbitrator shall be requested to issue the decision within thirty (30) days after the hearing or receipt of the transcript of the hearing.

In the interest of expediting arbitration of disputes involving discharges, the parties agree to utilize alternative approaches and methods, including such procedures as the use of pre-selected arbitration panels, advance scheduling of fixed hearing dates with individual arbitrators and providing for the issuance of decisions within reduced periods of time.

All of the time limits contained in this Section may be extended by mutual agreement. The granting of any extension at any step shall not be deemed to establish precedence.

All fees and expenses of the arbitrator shall be divided equally between the parties except where one of the parties of this Memorandum requests a postponement of a previously scheduled arbitration meeting which results in a postponement charge. The postponing party shall pay such charge unless such postponement results in a settlement of the grievance in which event the postponement charge shall be divided equally between the parties. A postponement charge resulting from a joint postponement request shall be shared equally by the parties. Each party shall bear the costs of preparing and presenting its own case. Either party desiring a record of the proceedings shall pay for the record and make a copy available without charge to the arbitrator.

Section 2. This Recommendation shall be binding and irrevocable during the term of this Memorandum.

RECOMMENDATION NO. 40 SAFETY AND HEALTH

Section 1. The Employer is responsible to provide employees with a safe work environment in which to carry out their job duties and the training necessary to carry out those duties safely. Managers and supervisors at all levels are to maintain safe working conditions by ensuring job-appropriate safety-related education and training are provided, and by enforcing applicable safety policies and procedures. Managers and supervisors are to give due consideration to employee safety when making decisions concerning office closings and/or delays. Employees are responsible to perform their duties safely and adhere to applicable safety rules, procedures and work practices. These safety efforts shall be ongoing and have a goal of continuous improvement. However, the provisions of this Article are not intended to ensure that employees are not exposed to those hazards and risks that are an ordinary characteristic of their work or are reasonably associated with the performance of their responsibilities and duties.

Section 2. The Employer will take positive action to assure compliance with laws and regulations concerning the health and safety of employees working in state owned or leased buildings and to assure compliance with all lease provisions affecting the safety or health of employees.

Section 3. The Employer agrees to establish a health and safety committee at each agency. Multi-agency committees may be established by mutual agreement. The committee shall be

Exhibit C

Vacancy Notice



pennsylvania

Commonwealth of Pennsylvania

1402-C22-Utility Complaints Investigator Supervisor 2 -

BCS Only

SALARY	\$66,250.00 - \$100,636.00 Annually	LOCATION	Dauphin County, PA
JOB TYPE	Civil Service Permanent Full-Time	JOB NUMBER	I-2024-89890
DEPARTMENT	Public Utility Commission	DIVISION	PU Astnc and Cmplnc
OPENING DATE	07/25/2024	CLOSING DATE	8/8/2024 11:59 PM Eastern
JOB CODE	G5230	POSITION NUMBER	00230577
UNION	AFSCME	BARGAINING UNIT	G2
PAY GROUP	ST08	BUREAU / DIVISION CODE	1402
BUREAU / DIVISION	Bureau of Consumer Services	WORKSITE ADDRESS	400 North Street
CITY	Harrisburg	ZIP CODE	17120
CONTACT NAME	Shannon Marciano	CONTACT PHONE	7177878714
CONTACT EMAIL	ra-puchhr@pa.gov		

THE POSITION

This position serves as a supervisor responsible for the day-to-day operations of intake and/or investigative staff in the Customer Assistance and Complaints Division. Overseeing day-to-day operations within the CACD to ensure staff are performing their job duties effectively and efficiently and ensuring compliance with regulations, Commission and BCS procedures and policies.

DESCRIPTION OF WORK

Ensure staff understand and adhere to the applicable statutes, regulations, policies, and procedures.

Work closely with their staff/team to ensure the quality and productivity of their work meets the required performance standards.

Use all tools available to monitor the performance of their individual staff and team.

Monitor the call volume and assist on the ACD system helpline to provide guidance to staff taking calls on the hotline.

Monitor team members caseload to ensure that cases are worked in a timely and efficient manner and that all required processes and procedures are being followed to ensure due process.

Routinely conduct case/intake reviews/call monitoring reviews for their team.

Work with the new staff to help onboard, mentor, train and assist with case reviews.

Continually look for ways to improve processes and efficiency whenever possible.

Track each team member's performance and maintain a personnel file for all staff for each rating period.

Conduct coaching with team members and take corrective action when necessary.

Prepare annual performance evaluations for each employee in accordance with Commission policies.

Assist the CACD Division Chiefs in identifying problem areas within the CACD and make recommendations for improvements.

Maintain routine communication with team members.

Conduct team meetings and regular touchpoint meetings with team members.

Share knowledge/information with staff and co-workers.

Ensure staff understand the PUC telework policy and ensure they comply with the terms of that policy when teleworking.

Provide timely responses and acknowledgements to emails received.

Track leave time (annual, sick, FMLA) for staff and ensure leave slips are being submitted timely. Keep a tracking sheet to ensure leave is being submitted.

Maintains a small case load and investigates cases when directed.

Performs other related duties as required.

Essential Functions:

Ability to plan, control and direct employees.

Ability to learn, understand and enforce agency and bureau policies and procedures, the union contract and other related information concerning management of employees.

Ability to enter, retrieve and research information contained in a database.

Ability to learn how to research, understand and report information contained in utility tariffs, Commission and Federal agency regulations, Commission and Federal agency orders and state and federal laws in a logical and understandable manner.

Ability to effectively communicate both verbally and in writing with staff, BCS customers (i.e. consumers, utilities and media as directed), other Commission employees, other Commonwealth employees and contracted agents of the PUC.

Ability to logically present facts both verbally and in writing.

Ability to interact with different personality types maintaining a professional demeanor.

Ability to facilitate settlements between a variety of divergent parties minimizing the expense of dispute resolution to all parties.

Ability to prepare and direct the preparation of written decisions used to close informal complaints.

Ability to travel as needed.

Regular attendance at your headquarters worksite or any assigned work location.

Work Schedule and Additional Information:

- Full-time employment.
- Work hours are 8:00 a.m. to 4:30 p.m. with a 60-minute lunch. Monday through Friday.
- **Telework:** This position is headquartered in Harrisburg. Part-time telework is a potential feature of this position. Successful candidates are required to report to the headquarters worksite daily, unless the employee meets eligibility requirements and telework has been approved by the BCS Director.
 1. To be eligible to participate in telework, the employee's Alternate (telework) Worksite must meet the following requirements. The telework worksite must be located: 1) within a reasonable travel distance of Harrisburg, and 2) within the Commonwealth of Pennsylvania.
 2. Direct all questions regarding reasonable distance and the type of available telework to the PUC Human Resource Office at ra-puchr@pa.gov or (717) 787-8714.
 3. Management may discontinue any telework arrangement at any time, for any reason.
 4. Candidates who do not wish to telework or are not eligible to telework, will work from the headquarters office in Harrisburg.
- **Salary:** In some cases, the starting salary may be non-negotiable.
- You will receive further communication regarding this position via email. Check your email, including spam/junk folders, for these notices.
- BCS Only

REQUIRED EXPERIENCE, TRAINING & ELIGIBILITY

One year as a Utility Complaints Investigator Supervisor 1;

or

One year as a Utility Complaints Investigator 2;

or

Two years as a Utility Complaints Investigator 1;

or

Seven years of experience in investigating and evaluating information which included interpreting and enforcing rules, regulations, and statutes or in conducting audits to determine compliance with established rules, regulations, and statutes. College or postgraduate level training may be substituted for the required experience on a year for year basis;

or

An equivalent combination of experience and training.

Additional Requirements:

- Willing and able to work in Harrisburg, Pennsylvania.
- You must be able to perform essential job functions with or without accommodations.

This position is subject to the promotion provisions of a collective bargaining agreement or memorandum of understanding.

You must be eligible for selection in accordance with merit system employment regulations.

Civil Service – recruitment methods being used :

1. Promotion Without Exam
2. Reassignment (*Only current civil service employees in the same agency who hold the same or similar job title, with the same maximum salary and comparable minimum qualifications, will qualify for reassignment.*)
3. Transfer (*Only current civil service employees who hold the same job title will qualify for transfer to another agency.*)
4. Voluntary Demotion
5. Reinstatement (*Former civil service employees may only be reinstated to the job title from which they resigned. Current civil service employees are not eligible through reinstatement.*)

Promotion Without Examination (PWOE):

- Class Restrictions for Promotion Without Examination Only - You must have or have held regular civil service status in one of the following classifications:
 1. Utility Complaints Investigator

Or in a class at Pay Scale Group 6 or 7 where there is clear linkage between the knowledge, skills, and abilities required to perform the duties of that class and the knowledge, skills, and abilities required of the Utility Complaints Investigator Supervisor 2 class. Applications submitted will be reviewed to determine if an applicant's current or previous class has a logical occupational, functional, or career development relationship to the Utility Complaints Investigator Supervisor 2 class.

- Employees who previously held regular civil service status in the job title of the position being filled are also eligible for promotion without examination.
- The promotion without examination requirements are issued in accordance with merit system employment regulations.
- Meritorious service is defined as (a) the absence of any discipline above the level of written reprimand during the 12 months preceding the closing date of the posting, and (b) the last regular or probationary performance evaluation showing an overall rating of satisfactory or higher.
- Applicants must have a minimum of one year in the next lower classes by the posting closing date with no break in service.

How to apply:

- Resumes, cover letters, and similar documents will **not** be reviewed, and the information contained therein will not be considered for the purposes of determining your eligibility for the position. Information to support your eligibility for the position must be provided on the application (i.e., relevant, detailed experience/education).

- If you are claiming education in your answers to the supplemental application questions, you must attach a copy of your college transcripts for your claim to be accepted toward meeting the minimum requirements. Unofficial transcripts are acceptable.
- Your application must be submitted by the posting closing date. Late applications and other required materials will not be accepted.
- **Failure to comply with the above application requirements will eliminate you from consideration for this position.**

Veterans:

- Pennsylvania law (51 Pa. C.S. §7103) provides employment preference for qualified veterans for appointment to many state and local government jobs. TO learn more about employment preferences for veterans, go to <https://www.employment.pa.gov/Pages/default.aspx> and click the Veterans' Preference tab or contact us at ra-cs_vetpreference@pa.gov.

Telecommunications Relay Service (TRS):

- 711 (hearing and speech disabilities or other individuals).

If you are contacted for an interview and need accommodations due to a disability, please discuss your request for accommodations with the interviewer in advance of your interview date.

The Commonwealth is an equal employment opportunity employer and is committed to a diverse workforce. The Commonwealth values inclusion as we seek to recruit, develop, and retain the most qualified people to serve the citizens of Pennsylvania. The Commonwealth does not discriminate on the basis of race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, disability, or any other categories protected by applicable federal or state law. All diverse candidates are encouraged to apply.

Agency

Commonwealth of Pennsylvania

Address

613 North Street

Harrisburg, Pennsylvania, 17120

Website

<http://www.employment.pa.gov>

CERTIFICATE OF SERVICE

I hereby certify that I will be serving the foregoing Petition for Review and related exhibits upon the persons listed below as follows, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 1514(c) and the Pennsylvania Rules of Civil Procedure:

Via personal service:

American Federation of State, County and Municipal Employees, Council 13
150 South 43rd Street, Suite 3
Harrisburg, Pennsylvania 17111

Via certified mail:

Pennsylvania Public Utility Commission
Keystone Building
400 North Street, Suite 3
Harrisburg, Pennsylvania 17120

Via certified mail:

Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Dated: March 7, 2025

By: /s/ Jonathan R. Vaitl
Jonathan R. Vaitl
Pa. Attorney I.D. No. 324164
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Counsel for Petitioner