

**Agreement  
Between  
The State of New Mexico  
and  
New Mexico Motor  
Transportation  
Employee's Association**

**August 12, 2009  
Through  
December 31, 2011**

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## **AGREEMENT**

This Agreement is made and entered into this August 12, 2009 between the State of New Mexico, hereinafter “Employer” or “the State” and the New Mexico Motor Transportation Employee’s Association (hereinafter referred to as the NMMTEA or the “Association”) of the Fraternal Order of Police and is applicable to all eligible employees in the collective bargaining unit of the Employer described in the Recognition Article of this Agreement.

## **ARTICLE 1. COMMITMENT TO CITIZENS OF NEW MEXICO**

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

## **ARTICLE 2. PURPOSE**

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

### ARTICLE 3. RECOGNITION

**Section 1.** The Employer recognizes NMMTEA as the exclusive representative, as that term is defined in the Public Employee Bargaining Act [hereinafter referred to as “PEBA”], for employees in the bargaining unit where it has been certified or recognized. Appendix A contains a list of classifications in the bargaining unit.

**Section 2.** Employees not now represented by the Association will be covered by the provisions of this Agreement if the Association is certified as the exclusive bargaining representative of those employees pursuant to the PEBA and if those employees have a sufficient community of interest with the employees currently covered by the provisions of this Agreement. Disagreements over the inclusion or exclusion from the bargaining unit of a specific employee(s) based on supervisory, management, or confidential employee status will be resolved by the PELRB unless otherwise agreed by the parties.

## **ARTICLE 4. PRINTING AND DISTRIBUTION OF MASTER AGREEMENT**

The Employer shall print this Agreement within thirty (30) days of receipt of written notice of the ratification by the Association membership. Consistent with law, the parties shall make reasonable accommodation, where needed, for persons with disabilities. The Employer and the Association shall each pay one-half the cost of such printing, distribution, and accommodation. A letter sized or smaller copy shall be distributed by the Employer to each employee covered by this Agreement.

## **ARTICLE 5. NON-INTERFERENCE**

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

## **ARTICLE 6. NON-DISCRIMINATION AND COMPLIANCE WITH LAWS**

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

**Section 2.** Written personnel policies and procedures shall be applied consistently in similar circumstances to the employees to whom the policies and procedures apply. Accommodations made to persons determined by the Employer to be qualified individuals with a disability shall not serve as precedent for other employees.

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

## **ARTICLE 7. APPROPRIATIONS**

The parties recognize that in accordance with the PEBA, any provision of this Agreement that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature. By entering into this Agreement, the State agrees to cooperate with the Association in efforts to obtain appropriate budget and appropriations by the legislature to implement this Agreement. Any subsequent Agreement requiring the expenditure of funds shall be subject to specific appropriation of funds.

## **ARTICLE 8. PROVISION OF INFORMATION**

If requested by the Association, the Employer shall furnish it with documents every calendar quarter this Agreement is in effect containing the name, most recent address and telephone number on file, and the information on the OL report for each employee represented by the Association. The Association shall provide the Employer with information necessary for purposes of administration and application of this Agreement.

## ARTICLE 9. ASSOCIATION RIGHTS

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

**Section 2.** The Association shall provide the Employer with a written list of the names, addresses and telephone numbers of the trustees and other Association representatives who are authorized to act on behalf of the Association and the extent of their authority. The list shall be updated when necessary. Trustees shall have full power on behalf of the Association to resolve all disputes and disagreements through Step 2 of the grievance procedure set forth in Article 14 of this Agreement.

**Section 3.** The Employer shall allow Association officials and trustees who are employees [hereinafter referred to as “employee officials”] to attend, on paid status, meetings agreed to by the parties for purposes of administration of this Agreement including grievance meetings within the parameters set forth in the succeeding paragraph and attend hearings representing employees before the State Personnel Board (SPB) and meetings to respond to Notices of Contemplated Action. In addition, a total of four hours of Association time shall be allotted to prepare and investigate each disciplinary appeal.

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

Association time shall count as hours worked for purposes of overtime computation but shall not qualify for payment of mileage or per diem unless an employee is otherwise assigned to a per diem status by the Employer. An employee official shall use Association time within assigned work hours to investigate and process grievances in the most efficient and effective manner possible so as to minimize operational impairment. Time spent investigating and processing grievances outside of assigned work hours shall not be compensated. Where an employee official desires to consult with another employee concerning a grievance on work time, both employees shall request and obtain prior permission to do so.

The parties shall each designate a centralized point of contact to coordinate the use of time and address any issues related to the use, or allegations of misuse, of time. If there are concerns related to the use or alleged misuse of time, the Employer designee shall provide as much specific information as possible, and any supporting documentation, to the Association designee and the Association shall seek to resolve the concern as expeditiously as possible. In the event the Employer is not satisfied with the Association's resolution of the issue(s), the Employer may reopen this Section of the Agreement dealing with reasonable time. If no agreement is reached during such negotiations, the Employer may use the impasse resolution procedures provided for in the Public Employee Bargaining Act. This paragraph shall not preclude the Employer from taking disciplinary action to address the abuse of time.

**Section 4.** Association staff shall have reasonable access to visit any Employer agency or worksite as necessary for purposes of administration of this Agreement. Such consultation shall not unreasonably interfere with the operations of the Employer. The Employer may designate a management representative through whom all such visits must be coordinated. If an Employer facility is secured, then reasonable notice shall be given and the Employer shall provide a reasonable place where Association staff can talk with an employee in private.

**Section 5.**

- A. The Employer shall approve reasonable written request for annual leave, accrued comp time, and for leave without pay [hereinafter referred to as "LWOP"] for up to fourteen (14) calendar days, if requested by employee officials, in order to participate in Association executive board meetings, Association conventions, and employment as Association staff.
  
- B. The Employer shall approve reasonable requests for annual leave, accrued comp time, and or LWOP in excess of fourteen (14) calendar days and less than twelve (12) months for the above purposes and shall assure an employee the right to return to a position of like status and pay, at the same geographic location, unless the agency has a reasonable basis to believe that the employee, upon providing fourteen (14) days notice, cannot be placed in such a position. In such an event the Employer shall grant the leave provided the employee signs a written waiver of his/her right to return. A plan must be agreed to by the employee and Employer to preserve all job related certifications that were in effect prior to the leave being granted. An employee who signs such a waiver shall be returned to a position of like status and pay, at the same geographic location, upon providing fourteen (14) days notice provided such a position is available. If such a position is not available, he/she will be placed in an available position that is closest to salary range, status, duties and worksite as possible. Upon the availability of a position of like status and pay, at the same geographic location, the employee shall be placed in that position. Approval of requests for extensions of LWOP status for additional twelve (12) month periods shall not be unreasonably withheld and shall be provided on the same basis as the original request.
  
- C. Employees returning to state service after LWOP shall receive any general salary increases implemented that they would have been entitled to had they not taken LWOP. Application of any missing requirements related to said general salary increases will be provided by the State Personnel Director.

**Section 6.** Except at facilities with 24-hour operations, employee officials who are on non-work time, or Association staff, may distribute Association literature on Employer facility grounds in public areas, in non-public non-work areas, and in work areas where the distribution does not interfere with Employer operations or present a security or confidentiality breach. At facilities with 24-hour operations, employee officials who are on non-work time, or Association staff, may distribute Association literature in public areas and in non-public non-work areas, but not in work areas (due to security, safety, privacy and confidentiality concerns) except the Association shall have the right to place literature in areas adjacent to where paychecks are initially distributed so that employees may take a copy of the literature.

The Association shall have exclusive use of separate bulletin boards of an equal size near every bulletin board used by the Employer to give information to employees. The Association will provide the bulletin board and the Employer will install it unless the Employer agrees to allow the Association to use existing bulletin board space. Postings on Association bulletin boards shall be confined to internal Association business, including notices and announcements of meetings, news items, labor-management news, but shall not include materials of a partisan, political, defamatory or obscene nature or personal criticism of any individual. Distribution of Association literature at worksites shall not include materials of a defamatory or obscene nature or personal criticism of any individual. The Employer shall not authorize the posting of notices critical of the Association or its representatives on the Employer's official bulletin boards.

**Section 7.** Within 180 days of the effective date of this Agreement, the Association will be afforded up to one (1) hour of work time to jointly participate with management in agency meetings in order to present and explain this agreement to employees. As an exception to the above, at those agencies or institutions that have annual in service training, the one hour meeting may occur during the annual training.

**Section 8.** Except as limited by law or this Agreement, each employee shall have the right to join and assist the Association freely,

without fear of penalty or reprisal, or refrain from doing so, and the Employer and the Association shall assure that each employee shall be protected in the exercise of such right. Allegations concerning violations of these rights shall be filed with the PELRB.

**Section 9.** Association representatives may request the use of state property to hold Association meetings. Upon prior notification, the Employer will provide meeting space where feasible. Association meetings will not interrupt state work and will not involve employees who are working. The Employer shall make space available for Association representatives to have confidential discussions with employees on an as-needed basis subject to availability.

**Section 10.** Employee officials (as defined by Section 3) are authorized to make reasonable use of copiers, FAX machines, computers (including e-mail) and other office equipment for purposes of investigating and processing grievances and communicating with the Employer and other Association representatives regarding official labor-management business, provided such use does not interfere with official State business.

**Section 11.** The Association shall be permitted to use internal State mail systems, including computer/electronic mail, for bargaining unit mailings in accordance with applicable executive policies. The Association shall give the Employer reasonable notice in advance of any mass mailings. Mass mailings shall be confined to internal Association business, including notices and announcements of meetings, news items, labor-management news, but shall not include materials of a partisan, political, defamatory or obscene nature or personal criticism of any individual.

**Section 12.** The Association will provide the Department with the names and addresses of authorized Association representatives who will be provided with notice of each orientation meeting held by the Department. The notice will be sent as soon as such meetings are scheduled and will include date, time and location. During orientation meetings, the Association will be permitted to give a fifteen (15) minute presentation which may include an enrollment in

supplemental Association benefits and programs. The Association shall participate in the orientation meetings using the same medium as the Employer (e.g., telephone, videoconference, face-to-face meeting). In the event an orientation meeting is not held, the Association will be permitted to provide information to be included in the orientation package that the Employer mails to the employee.

## ARTICLE 10. DEDUCTIONS

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

The standard form to be used, following the execution of this agreement, authorizing dues deductions shall be attached as Appendix C2.

**Section 2.** All money deducted from wages under this Article shall be remitted to the Association promptly after the pay day covering the pay period of deduction. If an employee has insufficient earnings for the pay period, no dues or other deduction will be made for that employee for that pay period. The Employer shall provide the Association with a list of the names of each of the employees from whom the Employer is making deductions under this Article and the amount deducted. This listing may be made available in an electronic format. The Association shall certify to the Employer, in writing, by a duly authorized officer, the amount per pay period to be deducted for Association membership dues under deduction authorizations.

**Section 3.** The duty of the Employer to honor membership dues deduction authorizations shall continue until the employee instructs the Employer and the Association in writing to end such deduction, as long as such employee instruction to end membership is made during the first two full calendar weeks of December of any year that this Agreement is in effect.

**Section 4.** It is specifically agreed that the State assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Association agrees that it will indemnify and hold the State harmless from and against any claims, actions or proceedings arising from deductions made by the State pursuant to this Article. Once the funds are remitted to the Association, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Association.

## ARTICLE 11. FAIR SHARE

**Section 1.** Employees who have completed their probationary period and who are not members of the Association shall, as a condition of continuing employment, pay to the Association each pay period a “fair share” payment in an amount certified by the Association. The “fair share” payment shall be a percentage of Association membership dues calculated based on United States and New Mexico Statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the bargaining unit, servicing such contract and representing all such employees in grievances and disciplinary actions.

**Section 2.** Employees who are required to make “fair share” payments may do so by voluntary payroll deduction authorization which may be revoked at any time. Authorizations and revocations shall be submitted in writing by the employee to Agency Human Resources offices. Upon receipt, the Agency HR offices shall send the Association a copy of such forms. The Employer will forward the monies so deducted to the Association together with a list of bargaining unit members from whose wages such monies were deducted. The Employer shall deduct from bargaining unit members’ wages for “fair share” only that amount of money which the Association has certified in writing is the correct amount of semi-monthly “fair share” payments.

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

- A. The Association shall notify the bargaining unit member of the amount of money that he/she is in arrears. The notice shall inform the bargaining unit member of impending discharge if the

full amount owed is not paid to the Association within fifteen (15) working days after receipt of the notification. A copy of the notification shall be mailed simultaneously to the State Personnel Director. For the purposes of this Section, the date of notification is the date of certified receipt at the member's last known address, or twenty (20) working days following the postmarked certificate of mailing, whichever is earlier.

- B. The Association shall tender to the State Personnel Director a written request for termination of the bargaining unit member on the basis that the bargaining unit member has not complied with the "fair share" provisions of this Article within the time period specified in A, in that he/she has not paid the arrearage and has not documented that the money is not owed. Upon receipt of such notice, the State shall issue to the employee a notice of contemplated action for dismissal and commence the termination process in accordance with the rules of the State Personnel Board.

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

## ARTICLE 12. PAY

### Section 1. Salary Increases for Motor Transportation Officers.

- A. Fiscal Year 2010. In accordance with state statute, the Governor's Budget Recommendation will not include a request for a general wage increase. In the event the legislature appropriates a general wage increase for employees in Fiscal Year 2010 the Employer agrees to implement the legislative appropriation as directed by the legislation.
- B. Fiscal Year 2011. By giving written notice of its desire to do so on or before October 1, 2009 either party may reopen this agreement for purposes of negotiating increases in general wages. In accordance with state statute, the Governor's Budget Recommendation shall include the wage increase negotiated by the parties. Any increase in general wages agreed to shall be subject to legislative appropriation and to impasse resolution procedures mandated by the Public Employee Bargaining Act in effect at the time notice is given. All other terms of this agreement shall remain in full force and effect. If notice of desire to reopen the Agreement is not given by either party, then the matter will be considered closed for Fiscal Year 2011.
- C. Fiscal Year 2012. By giving written notice of its desire to do so on or before October 1, 2010 either party may reopen this agreement for purposes of negotiating increases in general wages. In accordance with state statute, the Governor's Budget Recommendation shall include the wage increase negotiated by the parties. Any increases in general wages agreed to shall be subject to legislative appropriation and to impasse resolution procedures mandated by the Public Employee Bargaining Act in effect at the time notice is given. All other terms of this Agreement shall remain in full force and effect. If notice of desire to reopen the Agreement is not given by either party, then the matter will be considered closed for Fiscal Year 2012.

Probationary employees entering a bargaining unit position subsequent to the effective date of the general wage increase for that fiscal year, shall receive the general wage increase effective the first full period they obtain career status and enter the bargaining unit provided the employee had not received the general salary increase previously.

**Section 2. Call-Back Pay.** Employees who are called to report to work on their regular day off or that have been recalled to work after having left the Employer's premises shall be guaranteed a minimum of one (1) hour of pay for actual hours worked at the applicable straight time or overtime rate. For employees called back to work, paid time shall commence at the time the employee begins travel to report for work and ends at the completion of travel back from work.

**Section 3. Report Pay.** An employee who is pre-scheduled to work overtime and reports to duty will be paid the actual hours worked and will be paid at the appropriate rate. The employer shall notify employees as soon as practical prior to their scheduled start time in the event the employee is not required to report for prescheduled overtime.

**Section 4. Additional Compensable Work Time.** Employees who are authorized by the Employer to perform work via the telephone in an emergency or non-emergency situation, before or after their regularly assigned shift, in excess of de minimis time, shall be compensated at straight time or overtime rate as appropriate. The Employer reserves the right to verify calls and require documentation of the call, including but not limited to: date, time and length of call; time spent addressing the emergency or required work; name of client or contact; reason for the emergency or required work; and signature of employee.

**Section 5. On-Call Status.** If the department determines that an On-Call program is needed, the matter will be negotiated with the Association.

**Section 6. Unrestricted Call-Back Status.** On-call pay shall not be paid to employees who are placed on stand by status and who are provided with a pager, cell phone or other electronic device and required to return to the work site as soon as practical from the time contact is made, so long as the employee is not required to remain in any specific geographical area or required to return to work within a specific time period. Employees on such status may decline to return to work if contacted, without penalty, discipline or other reprisal if they acknowledge they are not fit to report to duty.

**Section 7. Assignment To A Higher Rated Classification.** Employees assigned to perform the duties of a higher rated classification on a temporary basis for ten (10) consecutive work days or for twenty (20) days or more in any calendar year, shall receive the pay applicable to the higher rated classification in an amount not less than 5% but not to exceed 15% of the employee's base pay for the entire period of the assignment; provided, employees who, in connection with voluntary participation in supervised training, are assigned to perform duties normally assigned to employees in a higher rated classification, shall not receive the rate of pay applicable to the higher rated classification. The amount of acting capacity pay shall be not less than 5% but not to exceed 15%.

**Section 8. Multi-Lingual Pay.** In facilities or offices where it is deemed necessary to have on staff multi-lingual employees to facilitate communications with members of the public, and employees on staff assigned to the facility are available and capable of fulfilling such need, the Employer may designate a sufficient number of employees in the assigned work force to perform such duties and such employees shall be entitled to a differential in the amount \$.10 per hour.

**Section 9. Lead Worker Pay.** An employee assigned to lead worker duties shall receive the pay applicable to the greater responsibility/accountability in an amount not less than 5% but not to exceed 15% of the employee's base pay for the entire period of the assignment provided employees who, in connection with voluntary

participation in supervisor training are assigned to perform duties normally assigned to the supervisor shall not receive lead worker pay.

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

## **ARTICLE 13. NEW OR ALTERED CLASSIFICATIONS**

**Section 1.** The Employer may establish new job classifications, or abolish, merge, or change existing job classifications of employees covered by this Agreement in accordance with the Personnel Act [Section 10-9-1, et seq. NMSA 1978]. At the time of such action, the Employer shall identify the employees covered by this Agreement to be included in any new or altered job classification and shall identify the old job classification(s), if any, which in whole or in part are being replaced. Unless it is supervisory, confidential, or managerial, as defined in PEBA, any new or altered job classification that, in whole or in part, replaces a job classification already represented by the Association, shall be included in the bargaining unit. Any issues concerning whether or not such newly created or altered job classification remains in the bargaining unit shall be determined in accordance with the PEBA.

**Section 2.** The Director of the State Personnel Office shall designate an ex-officio representative of the Association in any job evaluation committee established with regard to positions in the bargaining unit.

**Section 3.** The Association shall have the right to propose positions for evaluation by job evaluation committees.

**Section 4.** Nothing in this Article shall be deemed a waiver of any right to negotiate salary rates assigned to job classifications to the extent consistent with the PEBA.

## **ARTICLE 14. GRIEVANCE AND ARBITRATION PROCEDURE**

### **Section 1. Scope**

- A. Allegations of violation, misapplication, or misinterpretation of this Agreement except for Article 1 and 2 shall be subject to this negotiated grievance procedure. For purposes of this Article, “day” means calendar day unless otherwise specified. In the event the day an action or response is due is a Saturday, Sunday, or legal Holiday (as defined by the SPB), the action or response shall be due the following workday.
  
- B. Allegations of violation, misapplication, or misinterpretation of applicable SPB regulation may be grieved through Step 3 (Agency Level) of this negotiated procedure. If the matter is not satisfactorily resolved at Step 3, the Association or the employee may appeal to the State Personnel Director within thirty (30) days of the Step 3 response in accordance with applicable regulations of the SPB. If in the future it becomes permissible under applicable statutes and regulations to do so, then the Association may pursue such complaints through arbitration in accordance with this Agreement.
  
- C. In accordance with the Personnel Act NMSA 10-9-18, an employee who has completed the probationary period and has been dismissed, demoted or suspended has the right to an appeal. The employee may have the appeal decided by the State Personnel Board in accordance with SPB Regulations or may make an irrevocable election to have the appeal decided by an Arbitrator, but not both. No later than 30 calendar days from the effective date of the dismissal, demotion or suspension, a notice of appeal and irrevocable election must be made in writing and filed with the State Personnel Director. The notice must indicate whether the employee is choosing to have the State Personnel Board or an Arbitrator decide the appeal and must be accompanied with a copy of the final action.

An appeal indicating that an irrevocable election for SPB Hearing has been made will proceed in accordance with SPB regulations. An appeal indicating that an irrevocable election for Arbitration has been made will proceed in accordance with Appendix A.

- D. The parties agree that this Section shall not be used by either party as a waiver, or concession of position, as to the interpretation of the PEBA.

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

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

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

### **Steps in the Grievance Procedure**

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

**Step 1. Immediate Supervisor Level.** Grievances must be initiated by presenting a written grievance to the grievant's immediate

supervisor promptly and no later than fifteen (15) calendar days after the grievant or the Association was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged grievance.

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

1. The employee's name, job title, and worksite;
2. The name, address, and telephone of the Association representative, if any;
3. The Article(s) of this Agreement alleged to have been violated;
4. A description of the alleged violation;
5. The relief requested;
6. The signature of the grievant or of the Association representative.

The immediate supervisor shall respond in writing within ten (10) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 2 by filing with the Secondary Supervisor Grievance Representative [hereinafter referred to as "SGR"] within ten (10) calendar days of the time for response of the immediate supervisor.

**Step 2. Secondary Supervisor Level.** The Association or grievant shall submit the grievance to the SGR in each Agency or Department in writing. The SGR is a person designated by the Employer, under the terms of this Agreement, to be the recipient of Step 2 grievances on behalf of the Employer in each Agency or Department. If no SGR has been designated, then the supervisor of the grievant's immediate supervisor shall be considered the SGR. The SGR shall respond in writing within ten (10) calendar days of receipt of the written

grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 3 by filing with the Agency Grievance Representative [hereinafter referred to as "AGR"] within ten (10) calendar days of the time for response of the SGR.

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

### **Grievance Arbitration**

The Union may invoke arbitration by serving a written demand for arbitration upon the Employer within thirty (30) calendar days from the time for response of the AGR. Within seven (7) calendar days of the written demand for arbitration, the Union shall make a request for a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), unless the parties within such time period can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. Within seven (7) calendar days of the receipt of a list of arbitrators by both parties or agreement to an alternative panel, the parties will meet to select the arbitrator. The selection shall be made by the Union and the Employer alternately eliminating names. The last name remaining shall be the arbitrator. The parties shall flip a coin to determine who shall strike the first name. Each party shall pay one-half of the cost of obtaining the panel of arbitrators from FMCS, except that the Employer may elect not to pay one-half of the cost of obtaining a panel of arbitrators on the condition that it strikes the first name from the panel of arbitrators.

The decision of the arbitrator shall be based upon the facts established by the testimony and documents presented in the case. The arbitrator shall have no power to add to, subtract from, alter, or modify any of the terms of the Agreement, but may give appropriate interpretation or application to such terms and provide appropriate relief. The arbitrator shall not have authority to make an award which includes a fine or other punitive damages or award of attorney's fees. Each party shall pay one-half of the arbitrator's fees and expenses. The arbitrator's decision shall be final and binding on the parties subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.

### **Miscellaneous - Grievance Arbitration**

1. Tape recorders or other electronic recording devices shall not be used by any party participating in the grievance, except by mutual written agreement of the parties. This provision shall not apply to Grievance Arbitration hearings.
2. Any of the time limits or steps set out in this Article, with the exception of Appendix A, may be extended, waived, or otherwise modified by written agreement of the parties.
3. If the Employer fails to respond within the designated time limits, the grievance shall be deemed denied and the Union may advance the grievance to the next step in accordance with the procedures set forth in this Article.
4. The issue of non-grievability may be properly raised at any step of the grievance procedure. The arbitrator shall decide all issues regarding the grievability of grievances.
5. Grievances may be withdrawn by the Union at any step of the grievance procedure without prejudice except as to objections to timeliness.
6. The arbitration procedure set forth in this Article shall not apply to events which occur before the effective date of this Agreement.

7. The two parties to this Agreement may be represented by counsel at any step of the grievance and arbitration procedure.

## ARTICLE 15. PERFORMANCE EVALUATION

**Section 1.** Employees shall receive written performance evaluations on an annual basis.

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

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

**Section 3.** When possible, the employee's supervisor will prepare the annual performance appraisal. If such is not the case, the second level supervisor shall prepare the appraisal. If the evaluating supervisor is not the direct supervisor, he/she must have actually reviewed the employee's performance. In conjunction with the transfer of an employee or his/her supervisor, the supervisor shall prepare an evaluation of the employee which shall be considered with other evaluations received during the year in order to develop the annual summary rating.

**Section 4. End-Of-Year Appraisal.** The end-of-year appraisal shall include at least the following:

- A. performance rating for the year;
- B. performance expectations applicable to the next period which may be changed only after review with the employee;
- C. modifications to the employee's job description, if any; and
- D. recommendations, if any, for training to enhance the employee's skills.

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

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

## ARTICLE 16. HEALTH BENEFITS

**Section 1. Contributions For Health Benefits.** The Governor shall also request sufficient appropriations to implement the costs of the Health Plan. The parties agree that implementation of the recommendations are contingent upon legislative approval of the recommendations and appropriations.

The State shall contribute amounts towards the cost of employee health benefits in accordance with State Statute. As of July 1, 2006 those amounts are:

Employee Base Pay -----State Contribution

Up to \$50,000 -----80%

\$50,001 to \$60,000 ----- 70%

\$60,001 and above ----- 60%

The 2% salary adjustment in January 2005 shall not serve to lower the state contribution to an employee's health benefits despite the fact that the pay increase may result in the employee being placed in a higher base pay bracket.

**Section 2. Group Benefits Committee.** The Governor shall appoint one employee nominated by the Association to the Group Benefits Committee at his earliest opportunity to fill vacancies with employees from state agencies.

## ARTICLE 17. PERSONNEL RECORDS

### Section 1. Maintenance of Records.

- A. The Employer shall maintain all records concerning an employee under secure conditions. The Employer shall maintain at least two official sets of records concerning an employee [hereinafter referred to as "Personnel Records"]. One set shall be kept at the SPO and up to two sets at the agency where the employee is employed. Both sets of records may contain "confidential" documents, as defined in this Article. Any confidential documents maintained at the SPO shall also be maintained at the agency. Except as otherwise provided by law, an employee shall have a right of access to any document filed in either set of their official Personnel Records after such document is filed. Employees may respond in writing to any matter contained in their file, and the responses shall be included at the employee's request. Nothing in this section shall require duplicate sets of records to be maintained at both the Agency and the SPO. With the exception of files on conduct or performance maintained by an employee's immediate supervisor in accordance with subsection B below or confidential investigatory files in accordance with subsection C below, all other files maintained by the Employer and its managers which contain performance or conduct information specific to an employee shall be made available by inspection and copied by the employee upon request.
- B. Except in matters related to Giglio, Brady or similar State or Federal disciplinary inquiry, and required by court order, files maintained by an employee's immediate supervisor shall not be considered an official state record, but shall be considered as an extension of the supervisor's memory. If maintained, such files shall be disclosed in accordance with the following:
1. Except as modified below, the supervisor may, but is not required to disclose the files to the employee upon request;

2. The supervisor is required to disclose such files to the employee if the supervisor takes a tangible employment action based in part on the information in the files;
  3. Except in matters related to Gigilo, Brady or similar State and Federal disciplinary inquiry, and required by court order, the supervisor may not disclose the files, or any portion thereof to any other party unless also disclosed to the employee;
  4. Except in matters related to Gigilo, Brady or similar State and Federal disciplinary inquiry, and required by court order, the supervisor may not transfer custody or copy the files, or any portion thereof, to any other party;
  5. The supervisor shall maintain only timely and relevant material.
- C. Records of confidential investigations that do not result in an adverse employment action shall only be disclosed by an agency pursuant to a court order that have been obtained as part of an official investigation or as part of litigation. Such records shall only be accessible to the general counsel, executive management, or those authorized to conduct investigations on the behalf of the agency on a need to know basis. Employees who are the subject of a confidential investigation may pursue remedies exclusive of this contract for unauthorized disclosure of records of the investigation but, shall have no remedy under this contract for unauthorized disclosure.

## **Section 2. Confidentiality of Records.**

In accordance with applicable SPB regulations, the following documents shall be regarded as confidential: any documents pertaining to an employee's physical and/or mental examinations and/or medical treatment; any documents maintained for purposes of the Americans with Disabilities Act; letters of reference concerning employment, licensing, or permits; any documents containing

statements of opinion about an employee; documents concerning alleged or proven infractions and disciplinary actions; performance appraisals and/or evaluations whether formal or not; opinions as to whether an employee should be re-employed; college transcripts; military discharge, if other than honorable; information on the race, color, religion, national origin, ancestry, political affiliation, sexual orientation, or disability of an employee; and laboratory reports or test results concerning an employee.

Except as otherwise provided by law, confidential documents are not subject to inspection by the general public without written release by the employee whom they concern or pursuant to a court order. The Employer will make such documents available to the Association, with the prior written consent of the employee, if necessary for and relevant to a grievance pursuant to the grievance and arbitration provisions hereof as determined by an arbitrator selected under the provisions of this Agreement, but only upon agreement of the Association to maintain the confidentiality of such material to the greatest extent possible while pursuing the grievance.

The Employer shall not provide references or disclose any information from confidential documents or the documents themselves, by any means of communication, to any person or organization, except with the prior written release by the employee to whom the employment reference and document disclosure pertains. Grievances over allegations of violation, misapplication, and misinterpretation of this Section shall be filed in accordance with Section 1.B. of the Grievance and Arbitration Article of this Agreement.

### **Section 3. Removal of Reprimands.**

One year after an employee has received a letter of reprimand, the employee may request that the letter of reprimand be removed from the employee's personnel file. If the employee has not committed any further infractions of work rules during the preceding year, the Employer shall not use the reprimand as the basis for further discipline, and shall remove the letter of reprimand from the

employee's personnel file, unless such action could subject the Employer to potential liability to third parties or should be preserved for purposes of Giglio, Brady, or similar State and Federal disciplinary based inquiry. In such case, the letter of reprimand should be removed from the employee's personnel file and shall be maintained in a separate confidential file accessible only by General Counsel of the agency. Denial of an employee's request under this section shall be explained to the employee in writing. Such explanation shall include an indication of when the Employer may be willing to remove the reprimand, which shall normally be within five (5) years of the date of issuance. In cases of denial, an employee may reinitiate a request for removal at a later date.

## ARTICLE 18. MANAGEMENT RIGHTS

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

1. direct the work of, hire, promote, assign, evaluate, transfer, demote, suspend, dismiss, or otherwise discipline employees;
2. determine qualifications for employment and the nature and content of personnel examinations;
3. take actions as may be necessary to carry out the mission of the State in emergencies;
4. determine the size and composition of the work force;
5. formulate financial and accounting procedures;
6. make technological or service improvements and change production methods;
7. relieve an employee from duties because of lack of work or other legitimate reason;
8. determine methods, means, and personnel by which the Employer's operations are to be conducted;
9. determine the location and operation of its organization;
10. provide reasonable rules and regulations governing the conduct of employees; and
11. provide reasonable standards and rules for employees' safety.

**Section 2.** Prior to implementing any change in existing terms or conditions of employment relating to items 9, 10 or 11 of Section 1 above, the Employer shall provide the Association with reasonable notice under the circumstances of such contemplated action and, if requested to do so, shall bargain with the Association in good faith to impasse prior to implementing such changes.

## ARTICLE 19. MID-CONTRACT BARGAINING

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

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

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

- A. the number of management representatives involved in bargaining;
- B. three (3) employee representatives.

## ARTICLE 20. ANNUAL AND PERSONAL LEAVE

**Section 1. Use.** At any time, but no more than one year in advance, employees may request the use of accrued short-term leave (annual leave, compensatory time use, or personal leave). Such request shall be in writing and shall be approved or denied by the Employer as soon as practical after the request is made. If the employee makes the request at least twice as long in advance as the length of the leave requested, (e.g. twenty days in advance for ten days of leave), the supervisor shall approve/deny the requested leave within five days, or one day prior to the beginning of the leave requested, whichever is sooner. In unanticipated situations, or when the employee is out of the office, an employee may make requests verbally. The Employer will only deny leave requests for specific and legitimate operational needs which shall be fully explained if requested by the employee. Previously approved leave requests may be cancelled only in case of a reasonably unforeseen circumstance which may require cancellation of the leave. Unless the parties negotiate otherwise during supplemental negotiations, leave shall be granted on a first come - first serve basis subject to the specific and legitimate operational needs of the Employer.

**Section 2. Vacation Schedules.** Where operational needs preclude the routine approval of leave for vacation periods (40 or more consecutive hours), the approval and scheduling of vacation periods shall be on a first come-first serve basis unless changed in facilities operating twenty-four (24) hours per day and seven (7) days a week by mutual agreement during supplemental negotiations. Employees, who believe they will lose accrued vacation in any calendar year because they will have accrued more than two hundred and forty (240) hours and because of scheduling difficulties they have been unable to schedule vacation to utilize such hours in excess of two hundred and forty (240), shall confer with their supervisor on or before July 1 of each calendar year and the employee and the supervisor shall develop a schedule providing for contiguous leave time consistent with the employee's original request which will permit the employee to use such excess hours by the end of the

calendar year. In the event that the scheduled leave is cancelled by the Employer, preventing the employee from reducing his/her accrual to less than 240 hours by the end of the last full pay period ending in December, then the Employer shall approve paid time off in the same amount of lost time in the next calendar year, to be used by the last full pay period ending in March.

## ARTICLE 21. SICK LEAVE

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

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

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

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

- A. If the sick leave is for more than three (3) consecutive work days. In these instances the employer has the option of waiving the health care provider certification requirement.

- B. If an employee habitually maintains a low sick leave balance without providing evidence of the need for such relatively high utilization or when the supervisor has a reasonable suspicion that the employee is utilizing sick leave for purposes other than those authorized by Section 2 above. In such circumstances, the Employer shall first counsel the employee that the employee's utilization may lead to a practitioner certification requirement. If the employee does not show improvement in utilization or does not provide evidence of the need for relatively heavy utilization, the Employer may provide the employee with a written instruction notifying the employee of the requirement of health care provider certification, or other acceptable documentation, for sick leave absences. The certification requirement will be reviewed after six months and if the employee substantially complies with requirements for documentation or uses substantially less sick leave, the certification requirement shall be rescinded.
  
- C. Employees (and dependants) with chronic health conditions that may reasonably require frequent absences and charges to sick leave, may provide the employee with an annual certification in order to meet the requirements of this section. A "health care provider" means a doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) in the state in which the doctor practices or any other person determined to be capable of providing health care services under regulations promulgated under the Family and Medical Leave Act of 1983, 29 U.S.C., Section 201 et.

**Section 5. Sick Leave Incentive.** An employee who does not utilize sick leave for a calendar quarter shall receive credit for four (4) hours of administrative leave.

## ARTICLE 22. OTHER PAID LEAVE

**Section 1. Interview Leave.** Current practices regarding grant of administrative time for interviews shall be maintained. In addition, employees shall be provided with a reasonable opportunity to flex time work schedule within the work week without charge to leave to permit them to participate in interviews for a job with the State.

**Section 2. Administrative Leave.** In the event the Governor elects to grant general administrative leave for any purpose other than by reason of inclement weather, all employees shall have such leave approved on a fair and equitable basis.

**Section 3. Physical Fitness Leave.** The Employer shall permit non-commissioned employees a reasonable opportunity to flex their work schedule within the work week up to 1.5 hours to enable them to participate in exercise programs. This time shall not be taken at the beginning or end of the work day. Physical Fitness time for commissioned personnel will be in accordance with ADM:16:00.

**Section 4. Bereavement Leave.** In the event of a death in the employee's family the employee may use sick leave in accordance with SPB Rules and Regulations.

## ARTICLE 23. HOLIDAYS

**Section 1. Holiday Falling During Sick Leave.** Holidays that occur during an employee's sick leave will not be charged to sick leave, and will be recorded and paid as holidays.

**Section 2. Religious Observances.** Upon fifteen (15) days advance notice, the employer shall approve an employees' request for annual leave, personal leave, and/or compensatory time off for religious observances when the employees' personal religious beliefs require that the employee abstain from work during certain periods of the workday or work week.

**Section 3.** Holidays will be observed in accordance with the annual holiday schedule established by the State Personnel Board.

A Copy of this schedule will be provided to each employee annually and posted on the DPS Intranet.

## **ARTICLE 24. DISCIPLINE AND DISCHARGE**

### **Section 1. Discipline.**

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

Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral warning or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline. All reminders and oral warnings will be documented by the Employer and signed as received by the employee; if the employee refuses to sign it shall be noted.

Whenever appropriate, the agency shall utilize alternative methods to resolve conflicts or improper employee performance or behavior.

An employee who has completed the probationary period required by SPB Rules may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the agency. Just cause includes, but is not limited to: inefficiency; incompetence; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in SPB Rules; failure to comply with any provisions of SPB Rules; falsifying official records and/or documents (NMSA 1978, Section 10-9-22 (1953)); failure to pay fair share fees in accordance with the procedures and requirements of this Agreement; or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act, NMSA 1978, Sections 28-2-1 to 28-2-6 (1974) apply.

## **Section 2. Pre-Disciplinary Investigations and Meetings.**

Employees shall have the following rights in addition to those rights established by the SPB rules:

- A. At any meeting where the employer is investigating any employee for possible disciplinary actions, the Employer shall:
  - 1. notify the employee at the outset of the meeting that the employee is being investigated for possible disciplinary action;
  - 2. on request by the employee, allow the employee the opportunity for an Association representative to be present; and
  - 3. if the Employer elects to proceed with the interview, provide the employee with a reasonable amount of time to confer with his/her representative.
  - 4. The Employer may not make a verbatim record of such interview unless it notifies the employee at the outset of the meeting of its intention to do so. If the Employer does elect to make a verbatim record of the meeting, the employee shall be provided with a true and correct copy of the record if requested. In the event the Employer records the meeting, said recording will be done in accordance with Appendix D.
- B. Unless the employee is compelled to answer questions pursuant to Agency Adm:04, an employee may refuse to answer questions of a superior that probe possible criminal conduct until the employee has obtained legal advice and or counsel. The employee shall be given a reasonable period of time to secure counsel; and
- C. If a superior needs to talk to an employee concerning the employee's performance or conduct, the meeting shall be held in private. In all cases, the confidentiality of the disciplinary process

shall be maintained by the Employer and its representatives as well as the Association and its representative as required by law, SPB Rules and this Agreement.

**Section 3. Reduction of Pay in Lieu of Suspension.** The Employer shall propose and support a change in SPB rules to eliminate the practice of reducing pay in lieu of suspension from the work site as a disciplinary action.

**Section 4. Time Limits.** Except for disciplinary actions related to performance which are governed by Article 25 and/or cases where outside agencies or divisions are involved in the investigation, the Employer may impose any disciplinary action or issue a notice of contemplated action no later than 90 days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time. Agency will inform Association of any time overruns.

## **ARTICLE 25. DISCIPLINARY ACTIONS RELATED TO UNSATISFACTORY EMPLOYEE PERFORMANCE**

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

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

### **Section 3. Procedures.**

A. When an employee has been placed on notice that he/she has not met his/her performance expectations, and the Employer decides to pursue a performance-based action, the employee's supervisor shall inform the employee that the employee has 120 days from issuance of the rating to improve to an acceptable level. This shall not preclude the Employer from taking performance based disciplinary actions against the employee during the 120 day period if the employee exhibits a critical failure to perform, substantially fails to comply with the employee development plan or exhibits deteriorating work performance. The Employer shall create an employee development plan to identify the following:

1. an identification of the job assignments and performance skills for which performance is unsatisfactory;
2. a description of what the Employer will do to assist the employee and a description of what the employee must do to improve the unsatisfactory performance during the 120 day opportunity period;
3. a statement as to how often the supervisor and the employee will meet during the 120 day opportunity period to provide the employee with coaching and feedback; and

4. a statement indicating that failure to meet standards at the end of the 120 day period may result in disciplinary action up to and including termination.
- B. An employee may not receive an overall rating of less than acceptable on the employee's annual performance appraisal unless the employee has been advised, in writing, that he/she is not meeting performance standards. An employee shall be informed of performance deficiencies that may lead to a less than acceptable performance rating within reasonable proximity of when the Employer became aware of the deficiency, but always within thirty (30) days.
- C. If, at the conclusion of the opportunity period, the Employer elects to initiate discipline against an employee for unsatisfactory performance, the Employer shall notify the employee in writing by a notice of Contemplated Action of the Employer's decision to initiate disciplinary action. The notice of contemplated action shall include:
1. Specific instances of unsatisfactory performance by the employee on which the action is based;
  2. the job assignments/skills involved in each specification of unsatisfactory performance;
  3. a description of the efforts made by the Employer to assist the employee in improving performance during the opportunity period; and
  4. an explanation of the how the Employer provided the employee with a reasonable opportunity to improve performance.

**Section 4.** If the Employer decides not to take action based on unsatisfactory performance, the records will be treated in accordance with Article 17, Section 1B and Article 17, Section 3.

**Section 5.** The Employer shall fully consider a demotion, in appropriate circumstances in lieu of termination for unsatisfactory performance.

**Section 6.** Cautionary letters may be grieved through Step 3 (Agency Level) of the negotiated grievance procedure. If the Association or employee is dissatisfied with the response at Step 3, the Step 3 decision may be appealed within ten (10) calendar days to the Director of the State Personnel Office or his/her designee. At his/her option the Director or designee may meet with the agency representative, the employee and his/her representative or conduct a paper review of the agency decision. In any event, the Director or designee shall issue a final and binding decision on the appeal within twenty-one (21) calendar days.

## ARTICLE 26. CONTRACTING OF WORK

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

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

that the work can be more economically, efficiently and qualitatively performed by employees in the bargaining unit, the parties shall jointly develop a plan to return such work to State service.

## **ARTICLE 27. PHYSICAL EXAMINATIONS**

Whenever the Employer requires a physical examination from a physician selected or approved by the Employer, and where applicable law allows such an examination, the employee will be on paid status for the amount of time to complete the examination and the Employer will pay the cost of such examination. The Employer shall also pay any costs and provide duty time to employees required to undergo testing and physical examinations in connection with the renewal of Commercial Drivers Licensing if the Employer utilizes the CDL.

## ARTICLE 28. SCHEDULES AND STAFFING

### Section 1. Work Week.

The work week for personnel will be designated by State Personnel Rules. This shall not be a guarantee of any minimum number of hours worked. No regular work shift shall be split into more than two (2) segments with an unpaid break of greater than one (1) hour.

The Division shall use the necessary scheduling to address the operational needs of the division and the mission of the department. These shifts may include 8 hour, 9 hour, 10 hour, 12 hour shifts or combinations thereof for all Motor Transportation Officers and Transportation Inspectors as established by the District Commanders.

**Section 2. Establishment of Schedules.** The employer may change established work schedules in order to meet legitimate public service and operational needs. Assignment of overtime shall not constitute a change in the work schedule. Prior to implementing such changes the Employer shall provide written notice to the Association and affected employees as follows:

- A. 60 days when adding one or more workdays to the work week (i.e. Saturday and/or Sunday) work;
- B. 45 days when changing the length of the workday (e.g. from eight (8) hours to ten (10) hours) or changing starting/quitting times by more than two (2) hours; and
- C. 21 days when changing starting/quitting time by two (2) hours or less.

The written notice of changes in 1 and 2 above shall be executed by the head of the agency. The Association may request bargaining over the change within ten (10) days of receipt of the notice. The failure of the parties to reach Agreement shall not require the Employer to delay implementation of the change. In the event of an impasse in bargaining, the parties shall resolve the impasse in accordance with

the PEBA or any other expedited impasse resolution procedures mutually agreed upon by the parties; provided, however, the impasse resolution shall be limited to proposals relating to the impact and implementation and not the decision to make the change.

**Section 3. Shift Work Scheduling.** For employees who perform shift work, the Employer shall post employees' work schedules at least seven (7) calendar days prior to the beginning of a new or revised schedule. Changes in such schedules may be made only to meet the legitimate, critical or unanticipated operational needs of the agency and will be made in accordance with the restrictions in Article 29, Section 1, and will be for no more than 20 work days.

**Section 4. Flextime.** Employees may apply for a schedule that deviates from a worksite's normally scheduled work hours and workdays [hereinafter referred to as "flextime" or "compressed work schedule" (CWS)]. The Employer shall not unreasonably deny or rescind an employee's requested flextime or CWS schedule. If an employee's application cannot be approved because another employee is also requesting or is on the same or similar schedule, then Agency seniority shall be the determining factor as to which employee shall be granted or maintained on their requested flextime or CWS schedule.

**Section 5. Breaks.** The Employer shall provide employees a reasonable number of rest periods during the work day, consistent with the situation at any particular assigned worksite.

**Section 6. Staffing and Workload Standards.** The Employer shall assign workloads to treat employees as equitably as possible. The Employer shall consider re-distribution of staff or positions among an agency's programs, shifts, or work sites or other means of alleviating excess workload and shall specifically consider hiring additional staff where there are chronic workload problems.

**Section 7. Make Up Time.** When an employee is occasionally late for work and has called in or made a reasonable attempt to do so, the Employer, if possible, shall allow them to make-up up to one (1) hour of the lost work time within the same work week.

**Section 8. Job Sharing.** Employees may share the same job position and the Employer shall approve reasonable job sharing provisions proposed by employees wishing to share a job.

**Section 9. Worksite.** Where practicable, the Employer will provide reasonable alternative worksite accommodation due to a temporary medical condition.

**Section 10. Parent-Teacher Conferences.** The Employer shall approve written, timely requests to use annual leave, accrued comp time, and/or leave without pay so the employee may attend parent-teacher conferences; provided, however, employees shall be limited to the use of eight (8) hours of annual leave, accrued comp time, and leave without pay per calendar year for parent-teacher conferences. A “parent-teacher conference” includes regularly schedule meetings between parents and teachers to review a student’s progress, as well as other conferences requested by school officials to address disciplinary concerns or academic issues. Excused time shall include reasonable travel time to and from the worksite to the school. An employee shall notify his/her supervisor at least forty-eight (48) hours in advance of the need to be excused for a parent-teacher conference. The Employer shall make a good faith effort to accommodate requests that are untimely due to unforeseen circumstances.

**Section 11. Workload Management.** The following defenses may be asserted by an employee in response to disciplinary action for failure to complete workload assignments as required:

- A. the worker was unable to complete workload activities on assigned cases because there was not sufficient time available to take actions required by policy and regulations; and/or

- B. the worker was unable to complete workload assignments in a timely manner because of the actions of others over which the employee has no control.

The employee shall have the burden of establishing these defenses.

**Section 12. Staffing.** Upon request no more frequently than once each calendar year, the Employer shall meet with the Association at a mutually agreed upon time and place to discuss staffing related issues. In anticipation of such a meeting, on written request, the Employer shall provide the Association with all relevant staffing related information within the possession or control of the Employer, including information related to the methodology it used to determine staffing levels, that is permissibly released under law.

**Section 13.** Paid Holiday Leave, Annual Leave, and Administrative Leave for voting will be counted as time worked for the purpose of computing overtime.

## **ARTICLE 29. OVERTIME AND COMPENSATORY TIME**

**Section 1. Overtime.** The Employer shall compensate FLSA non-exempt employees at the rate of one and one-half times the employee's regular hourly rate of pay for hours worked in excess of forty (40) hours during the employee's designated work period or after 83 hours during a two (2) week period for commissioned officers/recruits (hereinafter referred to as "Overtime Pay"). The Employer may not adjust the length of an employee's work week to avoid payment of overtime or accrual of Comp Time by non-exempt employees.

**Section 2. Overtime Scheduling.** If overtime is required that is not within the specific job assignment of an individual employee, the supervisor shall first offer overtime to the employees under his/her supervision who are qualified to perform the necessary tasks. If more than one qualified employee volunteers to work overtime, the supervisor shall assign overtime based on seniority (measured by the length of continuous service within rank, including a probationary period in the employee's current agency assignment) within the work group that he/she supervises and rotate overtime assignments in a fair and equitable manner. If no volunteers are available, then the supervisor will designate employees capable and qualified to perform the work based on reverse agency seniority and mandatory overtime shall be rotated in a fair and equitable manner. The Employer shall have the right to require employees to work overtime consistent with this section

**Section 3. Compensatory Time for Non-Exempt Employees.** FLSA non-exempt employees including commissioned officers/recruits may accrue up to 40 hours of compensatory time off (hereinafter referred to as "Comp Time") at the rate of one and one-half hours for each hour of time worked where such time worked would otherwise be compensated by Overtime Pay. Overtime will be paid in cash or Comp Time at the employee's election, unless the employee is informed at the time the overtime is assigned that only

Comp Time is being offered. When only Comp Time is offered, the employee may refuse the overtime assignment without penalty. The date to be taken as Comp Time off shall be scheduled by agreement between the supervisor and the employee and supervisory approval for the use of Comp Time will be granted in a fair and equitable manner. All unused Comp Time will be paid upon an employee's leaving the agency or a department, division or other subgroup which has an individual budget, or upon death, to the employee's estate, at the final regular rate received by the employee.

## **ARTICLE 30. CONTINUATION OF BENEFITS**

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

## **ARTICLE 31. FURLOUGH AND REDUCTION IN FORCE**

**Section 1.** In the event an agency contemplates a furlough or reduction in force (RIF), prior to submitting its furlough or reduction in force plans to the SPB, the agency shall notify and meet with the Association to discuss the furlough or reduction in force plan and consider alternatives.

**Section 2.** In the event of a furlough, other than a furlough implemented because of a temporary loss of federal funds, the Employer may not furlough an employee in a manner that results in the loss of more than 80 hours of pay during a twelve month period or more than 53 hours of pay in any pay period, unless agreed to by the Association or there are no other alternatives available.

**Section 3.** Employees to be affected by a reduction in force shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements at the same or lower midpoint than the midpoint of the position the employee currently holds unless there is an actual layoff candidate exercising RIF rights for that position. All reasonable efforts shall be made to ensure that an employee shall not receive a pay reduction. However, if the pay band of the position to which the employee is claiming is lower than the employee's current pay band, the employee shall be paid at a rate no higher than the maximum rate for the pay band of the position to which the employee is claiming unless approved by SPO.

## ARTICLE 32. FILLING OF VACANCIES

**Section 1.** The Employer shall advertise all bargaining unit job vacancies which the Employer intends to fill in a reasonable manner, including posting a notice on all bulletin boards at the location where the vacancy exists, for a period of at least fourteen (14) calendar days prior to selection.

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

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

SPO is developing Classification/Occupation Guidelines that will, among other things, outline targeted qualifications for each occupation and/or job. Any deviations from those targeted qualifications must have SPO approval prior to recruitment.

**Section 3.** If multiple applicants are substantially equally qualified, then Agency Seniority (measured by the length of continuous service in a career or term position, including a probation period in the employee's current agency assignment) shall govern the applicant selection for vacancies within the bargaining unit covered by this Agreement. If Agency Seniority does not break the tie, then State Seniority (measured by the length of continuous service in a career or term position, including a probationary period in classified service), shall govern the applicant selection.

**Section 4. Transfers.** The Employer may only involuntarily transfer an employee to a post of duty that is more than thirty-five (35) miles

from his/her current post of duty, for just cause in order to meet the legitimate, critical and unanticipated operational needs of the agency, and in accordance with the State Personnel Board Rules. All relocation expenses will be managed in accordance with DPS Policy ADM. 27.

## ARTICLE 33. JOB CLASSIFICATIONS

**Section 1. Right to Job Description.** The Employer shall provide an employee with a Position Assignment Questionnaire (PAQ) within a reasonable period of time after he or she requests it. If the Employer does not already have a PAQ that describes the tasks an employee is required to perform, then the Employer shall provide the employee with a PAQ to be completed by the employee and the supervisor as soon as practical.

**Section 2. Requesting Reclassification.** Any employee covered by this Agreement who believes his or her actual position assignment in the classified service is not assigned to the class that best represents the duties assigned by the Employer and performed by the employee may initiate a request for a new position classification assignment through procedures established by the SPO and the Department of Finance and Administration. If the employee's position is subsequently assigned to a different classification, the employee shall be paid the appropriate rate of pay for the new job classification prospectively as provided by SPB Rules.

## ARTICLE 34. HEALTH AND SAFETY

The Agency believes that the safety and health of its employees are prime considerations in every phase of its activities. The Employer is concerned for the human value of life, health and physical well-being, and it is convinced that good safety and health practices are essential to efficient services to the public.

It is the Employer's intent to provide and maintain safe and healthy working conditions for its employees. In order to ensure this, the Employer will:

1. Instill in its employees an awareness of the need to promote safety and healthy working habits and attitudes on a continuous basis.
2. Provide safety equipment and procedures, provide protection against health hazards in the work place, and to insure the safety of employees.
3. Comply with the federal Occupational Safety and Health Act (OSHA) and all other applicable federal, state and local laws and regulations, including departmental safety rules and regulations.

**Section 1. Administrative Leave for Duty Injury.** Employees who, during the performance of their duties, sustain a serious injury as a result of an Aggravated Battery, a serious motor vehicle accident or a mechanical failure during a vehicle safety inspection, upon approval by the Duty Injury Review Board, may be granted a reasonable period of administrative leave, under the conditions of this Article, with pay to recover from the immediate impact of any physical or psychological harm caused by the action.

The duty injury benefit, once approved by the Duty Injury Review Board, will be provided as follows:

- A. The employee will be provided up to 40 hours of administrative leave during the first week of the injury/illness.

- B. If the employee is out for more than 1 week, and is receiving a 66 2/3<sup>rd</sup> indemnity benefit under the Workers Compensation Act, the Department may authorize administrative leave, in accordance with SPB rules, for 13.5 hours per week for the 2<sup>nd</sup> – 4<sup>th</sup> weeks, so that the injured employee would not have to use annual leave, sick leave or leave without pay during this time period.
- C. If the employee is out for 4 full weeks, and the employee is covered by workers compensation indemnity for the first week, then the first week of administrative leave will be reduced to 13.5 hours with 27.5 hours reverted back to the department via payroll adjustment.
- D. A maximum of 77.8 hours of paid administrative leave will be provided under this benefit.
- E. The Director of the State Personnel Office would have the discretion to approve or disapprove these hours of pay for each injured employee on a case-by-case basis.

**Section 2. Duty-Injury Review.**

- A. A Duty-Injury Review Board (herein, “Board”) shall review reported duty-injuries that may qualify under section A. This Board will be comprised of the MTD Division Director or designee, 1 representative from the Personnel Management Bureau and 1 NMMTEA member appointed by the NMMTEA Board.
- B. The Board shall meet within three working days from the receipt of Notice of Accident and Employer’s 1<sup>st</sup> Report of injury or illness by the Personnel Management Bureau. The Board will review relevant duty-injury information for the purpose of recommending the employee’s eligibility for duty-injury leave. Recommendation will be based on consistently-applied standards using the following guidelines:
  - 1. Is the injury or illness work-related?

2. Does the injury or illness meet the definition and causes defined as qualifying under this article?
  3. Were any prohibited practices, policies or regulations violated during the incident that caused the alleged injury?
  4. Was the injury a result of gross negligence or misconduct on the employee's part?
- C. The Deputy Secretary/Chief, taking into consideration the recommendation from the Board, will approve or disapprove the usage of duty-injury leave by an employee.
  - D. An employee who has been denied duty-injury leave will be notified in writing and may request an opportunity for an oral response or provide written documentation in appeal of the decision within 11 calendar days of receipt of the notice.
  - E. The Deputy Secretary/Chief will respond to the appeal within 11 calendar days. The Chief's decision will be final.

**Section 3. Administrative Issues.**

- A. An employee who returns to work on a part-time, light-duty or limited-duty status who wishes to take vacation or needs to take time-off due to an unrelated medical condition must use accrued sick or vacation time or request time-off without pay.
- B. In the event of denial, any duty-injury leave that may have been paid will be charged against any other available leave, compensatory time accrued by the employee, or the employee may be repay from personal funds.
- C. Employees who are found to falsely claim a duty-injury leave or mis-use of duty injury leave may be subject to disciplinary action up to and including dismissal.
- D. Refusal of light duty terminates duty injury benefit and workers compensation benefit.

## ARTICLE 35. TRAINING

**Section 1. New Technology.** In the event the Employer makes technological or service improvements or changes production methods, the Employer will provide employees affected by such changes with adequate training, during normal working hours, to learn to use the new technology, services or production methods. The Employer will provide employees affected by substantial changes with at least fifteen (15) work days advance notice prior to the changes being implemented unless impossible due to emergency or unforeseen circumstances. The Employer recognizes that relevant training opportunities should be made available to employees on a fair and equal basis. Accordingly, where feasible before selecting employees for training, interest shall be solicited among all employees in the work unit in which the training is to be offered and selection of candidates made by agency seniority in the work unit where all other factors are equal.

**Section 2. Labor Management Training.** The Employer shall permit eight hours of Association time in a trustee's initial year of appointment and four hours each fiscal year thereafter for purposes of Labor Management Training.

## **ARTICLE 36. LABOR MANAGEMENT COMMITTEE**

**Section 1. Statewide Committee.** The parties shall establish a Labor Management Committee [hereinafter referred to as “LMC”] which shall be a standing committee for the duration of this Agreement. The LMC shall consist of four (4) Association representatives and four (4) Management representatives. The LMC shall meet at least quarterly at a mutually agreed upon time and place on paid status for all members. The Association and the Employer shall each appoint one co-chairperson and one member from each agency at which the Association represents employees unless mutually agreed to the contrary. The LMC shall be free to address, without restriction, any topic of mutual interest or concern which affects working conditions of bargaining unit employees. It is understood and agreed that while the parties shall not be restricted in the topics to be addressed other than set forth above, neither the discussions, nor the outcome thereof shall be considered or treated as constituting a binding agreement between the parties unless reduced to writing, specifically identified in the body thereof as constituting such an agreement, and signed and dated by the authorized representatives of the parties respectively.

Any provisions of this Agreement may be opened for re-negotiations by mutual agreement of the parties.

**Section 2.** The LMC shall study issues related to pay equity. The recommendations shall be forwarded to the DPS Cabinet Secretary and the Governor for consideration and action.

## ARTICLE 37. CONDITIONS OF APPOINTMENT

### Section 1. Term Employees.

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

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

## **ARTICLE 38. WHISTLEBLOWER PROTECTION**

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

## **ARTICLE 39. WHOLE AGREEMENT**

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

## **ARTICLE 40. GENERAL SAVINGS CLAUSE**

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

## ARTICLE 41. WAIVER

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

**Section 2.** In addition to changes initiated pursuant to its Management Rights (Article 18 of this Agreement), the Employer reserves the right to propose other reasonable changes in the terms and conditions of employment of employees to meet legitimate public service and operating needs, and such changes are subject to negotiation in accordance with the PEBA or any other expedited impasse resolution procedures mutually agreed upon by the parties at the time of such negotiations.

## ARTICLE 42. EXPIRATION

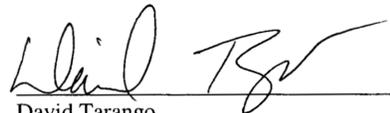
This agreement shall take effect on August 12, 2009 and shall expire on December 31, 2011. If either party wished to modify, annul or terminate this Agreement or negotiate a successor, it shall give notice of its desire to reopen this Agreement for negotiations no later than July 1 of the year of expiration. Negotiations shall convene promptly after notice, but no later than August 1. If either party provides notice to reopen for negotiations, this Agreement will continue in full force and effect until it is replaced by a subsequent written agreement in accordance with the PEBA.

For the Association:

For the State of New Mexico:

  
David L. Heshley  
Chief Negotiator

  
Bill Richardson  
Governor

  
David Tarango  
NMMTEA-FOP

  
Sandra K. Perez  
State Personnel Director

### ASSOCIATION BARGAINING COMMITTEE

David Heshley

Louisa Paiz

David Tarango

Chris L. Molyneaux

Teresa E. Carrillo

James R. Nolen

## APPENDIX A

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

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

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

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

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

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

### **HEARINGS:**

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

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

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

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

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

**RECORD OF THE HEARING:**

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

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

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

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

**DECISIONS OF THE ARBITRATOR:**

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

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

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

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

**REINSTATEMENT:**

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

**COST of ARBITRATION:**

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

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

## APPENDIX B

List of Classifications included in the Bargaining Units.

The following list is subject to amendment by the parties and the PELRB. Users should consult appropriate Association or Management representatives for the most accurate list.

Bargaining Unit 1 shall include all regular non-probationary employees designated as Sergeant and Patrolman.

Bargaining Unit 2 shall include all regular non-probationary employees designated as WIPP Program Manager; Permit Office Supervisor; Port Supervisor; Port Revenue Agent; Permit Office Clerk; Financial Specialist; Computer Technician; District Administrator; Administrative Support; DPS Dispatcher; Transportation Inspector and Groundskeeper.

# APPENDIX C



## Application / Information New Mexico Motor Transportation Employees' Association Santa Fe, New Mexico

Please Print

I wish to apply for:  "Active"  "Fair Share" Membership with the New Mexico Motor Transportation Employees' Association.

NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
(MAILING)

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

TELEPHONE: (H) \_\_\_\_\_ (W): \_\_\_\_\_

POSITION/TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
(MAILING)

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SHARE #: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

I certify that the above answers are true and correct.

APPLICANT: \_\_\_\_\_  
Signature Date

\*\*\*\*\*

I certify that this document was received with the Union dues/Fair Share Fee form signed and attached.

SECRETARY: \_\_\_\_\_  
Signature Date

# APPENDIX C1

## Fraternal Order of Police APPLICATION FOR MEMBERSHIP



(Type or Print)

To the officers of the Fraternal Order of Police:

I, the undersigned, a full-time, regularly employed law enforcement officer, do hereby make application for Active Membership in \_\_\_\_\_ S.P. F.O.P. \_\_\_\_\_ Lodge Number: \_\_\_\_\_ 100 \_\_\_\_\_

If my membership should be revoked or discontinued for any cause other than retirement while in good standing, I do hereby agree to return to said Lodge my membership card and any other material bearing the F.O.P. insignia, such as auto emblem, lapel pin, etc.

(Signed) \_\_\_\_\_ (Date) \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Birth date: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Initiation Fee: \_\_\_\_\_ Received by: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

Grand Lodge, Fraternal Order of Police

(Rev. 6/97)

## Fraternal Order of Police APPLICATION FOR MEMBERSHIP

(Type or Print)

To the officers of the Fraternal Order of Police:

I, the undersigned, a full-time, regularly employed law enforcement officer, do hereby make application for Active Membership in \_\_\_\_\_ S.P. F.O.P. \_\_\_\_\_ Lodge Number: \_\_\_\_\_ 100 \_\_\_\_\_

If my membership should be revoked or discontinued for any cause other than retirement while in good standing, I do hereby agree to return to said Lodge my membership card and any other material bearing the F.O.P. insignia, such as auto emblem, lapel pin, etc.

(Signed) \_\_\_\_\_ (Date) \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Birth date: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Initiation Fee: \_\_\_\_\_ Received by: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

Grand Lodge, Fraternal Order of Police

(Rev. 6/97)

# APPENDIX C2

## Union Membership Dues Form or Fair Share Union Fees Authorization Form

Instructions: Please fill out only one section below either the Union Membership Dues Form or Fair Share Union Fees Authorization Form.	
<b><u>Authorization for Payroll Deduction of Union Membership Dues</u></b>	
I, _____, accept membership in NMMTEA. I request and authorize the State of New Mexico to deduct Association dues from my pay and transmit them to NMMTEA. The amount of dues deduction shall be the amount approved by NMMTEA's membership as set forth in the NMMTEA constitution and certified in writing to my employer. This authorization shall be revocable only during the first two weeks of every December.	
Name (print) _____	
Department/Agency _____	
Employee ID Number: _____	
_____ Signature	_____ Date
<b><u>Authorization for Payroll Deduction of Fair Share Union Fees</u></b>	
I, _____, as a non-member who is represented by NMMTEA authorize the State of New Mexico to deduct fair share fees from my pay each pay period and to transmit them to NMMTEA on my behalf. The fees deducted shall be in an amount legally permissible and certified by NMMTEA. I understand that this authorization is voluntary and for my convenience. I may revoke this authorization at any time by providing written notice in accordance with the provisions of the Agreement. I further understand that as a condition of continuing employment with the State of New Mexico, in a position covered by the Agreement, I must pay fair share fees and if I fail to pay fair share fees I may be terminated from employment with the State of New Mexico.	
Name (print) _____	
Department/Agency _____	
Employee ID Number: _____	
_____ Signature	_____ Date

## APPENDIX D

### SHIFT BIDDING:

Persons above the rank of Sergeant are not eligible to participate in shift bidding.

Shift bidding is limited to personnel assigned to those operations that require shift work.

Bidding will be done by seniority.

Bid will pertain to shift, district assignment and days off.

This language shall not limit Management's right to create new areas, delete areas or alter existing areas. Management shall make every effort to make such changes prior to Shift Bidding process.

Will be done every four months in November, March and July for Sergeants, or Supervisors, then Officers and civilians, with the new shifts to take effect the first pay period following each January 1, May 1, and Sept. 1.

After shift bids have been completed and employees have been assigned their days off, any employee who transfers from another shift at the employee's personal request, may not bump another employee from his/her days off or shift on the basis of seniority over that employee.

If an employee is transferred at the Department's initiative, he/she may bump on the basis of seniority.

Should a position become available on a shift after the yearly shift bidding has taken place, the position must be offered to the other personnel in accordance with their seniority.

Any transfer resulting in a change of work hours or days off shall require five (5) days written notice unless mutually waived or unless emergency needs of the Department dictate otherwise.

“Bumping” will not be permitted when a temporary days off change, on the same shift, (not to exceed twenty (20) working days) is made to accommodate staffing demands.

## **SENIORITY**

- A. Seniority is defined as follows: The Sergeant, Supervisor or officer/civilian with the most continuous service within rank is senior within that given rank. For the purpose of breaking a tie on seniority, the first criteria to be applied shall be continuous service with MTD, with the officer/civilian with the most continuous time being senior. Should the continuous service with the MTD be identical, then the tie will be broken by the use of the employee numbers or lottery numbers, whichever is applicable. The officer with the lowest number is senior. The term continuous service shall be interpreted to mean total service from the date of last hire at MTD.
- B. When section cut backs occur, the mandatory transfers between Districts should be made in such a way as to maximize the efficiency and effectiveness of MTD. In making such transfer decisions, the following facts shall be considered:
  - 1. the nature of the transfer and the skill it calls for within the unit being transferred to;
  - 2. the availability of pre-qualified personnel;
  - 3. the stated assignment preferences; and
  - 4. all other factors being equal, seniority of members of the bargaining unit.

- C. Nothing in this Appendix shall prevent a District Commander from permitting employees to mutually exchange bid slots for hardship reasons.

## APPENDIX E

AN ACT RELATING TO LAW ENFORCEMENT; CREATING THE PEACE OFFICER'S EMPLOYER-EMPLOYEE RELATIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

### **Section 1. Short Title.**

Sections 1 through 11 of this act may be cited as the "Peace Officer's Employer-Employee Relations Act".

### **Section 2. Findings and Purpose.**

- A. The legislature finds and declares that effective law enforcement is dependent upon the maintenance of stable relations between peace officers and their employers. Moreover, the existence of stable relations between peace officers and their employers will enhance law enforcement services provided to the citizens of New Mexico.
- B. The purpose of the Peace Officer's Employer-Employee Relations Act is to prescribe certain rights for peace officers, particularly when they are placed under investigation by their employer.
- C. Provisions of this act only apply to administrative actions and shall not apply to criminal investigations of a peace officer except as provided in Section 8 of this act.

### **Section 3. Definition.**

As used in the Peace Officer's Employer-Employee Relations act, "peace officer" or "officer" means any employee of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the state.

**Section 4. Investigations of Peace Officers requirements.**

When any peace officer is under investigation by his employer for alleged actions that could result in administrative sanctions being levied against the officer, the following requirements shall be adhered to:

- A. any interrogation of an officer shall be conducted when the officer is on duty or during his/her normal waking hours, unless the urgency of the investigation requires otherwise;
- B. any interrogation of an officer shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise;
- C. prior to commencement of any interrogation session:
  - 1. an officer shall be informed of the name and rank of the person in charge of the interrogation all other persons who will be present during the interrogation;
  - 2. an officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief administrator of the officer's employer determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity or security of the investigation; and
  - 3. a reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation;
- D. during any interrogation session, the following requirements shall be adhered to:
  - 1. each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;
  - 2. there shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent

to additional sessions, provided that there shall be at least a one-hour rest period between the sessions;

3. the combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise;
  4. there shall not be more than two interrogators at any given time;
  5. an officer shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and
  6. an officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session.
- E. any interrogation of an officer shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript; provided that any recesses called during the interrogation shall be noted in the transcript; and
- F. an accurate copy of the transcript or tape shall be provided to the officer, upon his/her written request, no later than fifteen working days after the investigation has been completed.

**Section 5. Polygraph Examinations.**

After reviewing all the information collected in the course of an investigation of a peace officer, the chief administrator of the officer's employer may order the officer to submit to a polygraph examination administered by a licensed polygraph examiner, provided that:

- A. all other reasonable investigative means have been exhausted; and
- B. the officer has been advised of the administrator's reasons for ordering the polygraph examination.

**Section 6. Investigation of Administrative Matters.**

When any peace officer is under investigation for an administrative matter, the officer shall be permitted to produce any relevant documents, witnesses or other evidence to support his/her case and he/she may cross examine any adverse witnesses during any grievance process or appeal involving disciplinary action.

**Section 7. Personnel Files.**

- A. No document containing comments adverse to a peace officer shall be entered into his/her personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him/her, the document may be entered into an officer's personnel file if:
  - 1. the officer's refusal to sign is noted on the document by the chief administrator of the officer's employer; and
  - 2. the notation regarding the officer's refusal to sign the document is witnessed by a third party.
- B. A peace officer may file a written response to any document containing adverse comments entered into his/her personnel file and the response shall be filed with the officer's employer within thirty days after the document was entered into the officer's personnel file. A peace officer's written response shall be attached to the document.
- C. All personnel files related to any administrative investigation conducted by a department shall remain confidential within that department, unless ordered by a competent court by court order to release the files.

**Section 8. Constitutional Rights; Notification.**

When any peace officer is under administrative investigation and a determination is made to commence a criminal investigation, he/she shall be immediately notified of the investigation and shall be afforded all the protections set forth in the bill of rights of the United States and New Mexico constitutions.

**Section 9. Forced Disclosure of Financial Status Prohibited.**

A peace officer shall not be required by his/her police or sheriff's department employer to disclose information regarding his/her financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

**Section 10. Political Activity.**

- A. A peace officer shall not be prohibited by his/her police or sheriff's department employer from engaging in any political activity when the officer is off duty, except as otherwise required by law.
- B. Notwithstanding the provisions of Subsection A of this section, any peace officer employed by the New Mexico state police department shall be governed by the provisions of regulations adopted by the department regarding political activity.

**Section 11. Exercise of Rights.**

A peace officer shall not be subjected to any retaliation by his/her employer due to the officer's lawful exercise of his/her rights under the Peace Officer's Employer-Employee Relations Act.

**Section 12. Effective Date.**

The effective date of the provisions of this act is July 1, 1991.