

Under the Administration of the
PENNSYLVANIA LABOR RELATIONS BOARD

In the Matter of Arbitration Between:

**PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION**

and

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS AND
DEPARTMENT OF HUMAN SERVICES**

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**Case No. PERA-A-20-231-E
(Act 195 Interest Arbitration)**

Presenters

For the PSCOA:

Christopher J. Cook, Esquire
Richardson Todd Eagen, Esquire
Welby, Stoltenberg, Cimballa & Cook, LLC

For the Commonwealth:

Patrick J. Harvey, Esquire
Paul N. Lalley, Esquire (Brief Only)
Campbell Durrant, P.C.

Vincent Champion, Esquire
Champion Law Office, LLC

Edward P. Phillips, Director
PA O/A, Bureau of Employee Relations

Arbitration Panel

William W. Lowe
Neutral Arbitrator & Panel Chair

Eric C. Stoltenberg, Esquire
PSCOA-Appointed Arbitrator

Michael A. Palombo, Esquire
Commonwealth-Appointed Arbitrator

Background and Introduction

The Pennsylvania State Corrections Officers Association (“PSCOA”) and the Commonwealth of Pennsylvania, Department of Corrections and Department of Human Services (“Commonwealth”), are parties to a collective bargaining agreement that expired on June 30, 2021. During negotiations on a successor agreement, an impasse occurred between the parties on a number of issues. As a result, the PSCOA requested the initiation of interest arbitration proceedings pursuant to provisions of Section 805 of the Pennsylvania Public Employe Relations Act (“Act 195”) of July 23, 1970, 43 P.S. § 1101.805 and the procedures of the Pennsylvania Labor Relations Board.

The Panel was convened pursuant to the terms of the Act, and the parties agreed to waive time limits under the Act. Hearings were held in Harrisburg, Pennsylvania on May 24-27, 2021, (PSCOA presentation) and June 16-18, 2021, (Commonwealth presentation). During the party presentations, a number of bargaining unit personnel, led by PSCOA President John Eckenrode, and a number of subject matter experts from both sides and Commonwealth professionals presented in support of their respective issues in dispute.

At the hearings the parties were provided a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The Panel held multiple Executive Sessions in September, October and November 2021 to discuss issues in dispute as well as Commonwealth concerns about the state of its budget, its current shortfall of reserves, the critical importance of the H-1 bargaining unit jobs, the effect of the Covid-19 pandemic, and the recent changes made to inmate treatment.

The Panel met in Executive Sessions and considered all the submissions and proposals offered by the parties during the seven days of hearings in May/June 2021.

Codification. The parties shall create a new codified Agreement to incorporate this Award within 120 days of the date of this Award. The panel shall retain jurisdiction over

implementation issues and any issues that arise regarding the codification of the Agreement for 120 days after the date of this Award.

Below is the panel's Award for the parties.

AWARD

1. ARTICLE 7– MEAL PERIODS – Sections 2 & 4

Compensation for meals is increased from the current \$8 to \$12.

2. ARTICLE 10 – LEAVES – Sections 12 & 16

Section 12: Amend language to include grandchildren and step parents on the list of family members for the purpose of using non-pre-scheduled leave.

Section 16 (1): Amend language to include niece and nephew as qualifying individuals for granting bereavement leave (3 days).

3. ARTICLE 11 – STRESS DAY – Section 1

Amend and replace with language that provides that all bargaining unit members shall be provided one stress day per calendar year for use, without regard to years of service prior to leave usage. This change will become effective January 1, 2022.

4. ARTICLE 15 – LEAVES OF ABSENCE – Section 3 #8

Revise to replace CUSA Corrections Conference with COPF Project or another corrections conference in lieu of COPF provided that it is not more than one conference quarterly.

5. ARTICLE 17 – SALARY AND WAGES – Sections 3 & 4.

Amend to provide the following:

A. For FY 2021/2022:

1.5% general pay increase effective July 1, 2021

One step service increment and/or one step longevity increment, as applicable (the first day of the first full pay period in the Employee’s anniversary/longevity month).

B. For FY 2022/2023:

2.0% general pay increase effective July 1, 2022

One step service increment and/or one step longevity increment, as applicable (the first day of the first full pay period in the Employee’s anniversary/longevity month).

C. For FY 2023/2024:

2.0% general pay increase effective July 1, 2023

One step service increment and/or one step longevity increment, as applicable (the first day of the first full pay period in the Employee’s anniversary/longevity month).

6. ARTICLE 18 – OVERTIME – Section 5.a

Amend Section 5.a to add at the end of the second paragraph the following:

Employees who accept a voluntary overtime assignment, whether it be through normal voluntary overtime procedures or through volunteering to work the mandatory assignment of another employee, shall only be excused from working the assignment for good and sufficient reasons. Employees who fail to provide a good and sufficient reason for not working a voluntary overtime assignment they previously accepted may be subject to discipline in accordance with Article 26.

7. ARTICLE 22 – LIFE INSURANCE – Section 1

Change “\$40,000” to \$50,000. This change will become effective January 1, 2022.

8. ARTICLE 23 – HEALTH BENEFITS – Sections 1 & 3

Section 1.c: Change to read as follows:

The Employer shall contribute to the Fund the amounts indicated below on behalf of each permanent full-time employee eligible for benefits and covered by this Agreement effective on the first pay date in July of each fiscal year specified below:

FY 2021 - \$519.00 biweekly per employee

FY 2022 - \$536.00 biweekly per employee

FY 2023 – Amount equal to DOC managerial employees participating in the PEBTF.

The contribution for permanent part-time employees, who are eligible for benefits and expected to be in an active pay status at least 50% of the time every pay period, will be 50% of the above referenced rates.

Section 3.a & 3.b will be revised to read as follows:

Section 3.a. Subject to the provisions of Section 3.b, employees will contribute 2.5% of their biweekly gross base salary toward the cost of coverage as provided below.

(Biweekly gross salary as used throughout this Article excludes premium or supplemental payments such as overtime, shift differential, higher class pay, etc.)

Section 3.b. An employee will be eligible for an Employee Contribution Waiver if the employee and his/her qualifying dependents, as determined by the Trustees, participate in the Get Healthy Program as established from time-to-time by the Fund. In accordance with Section 1.b., the Fund shall be solely responsible for establishing all requirements and conditions of the Get Healthy Program, including rules and policies for the requirements for qualifying for the Employee Contribution Waiver and for making determinations regarding whether an employee and dependents have fulfilled the conditions for such Waiver.

The Employee Contribution Waiver will consist of a waiver of a portion of the employee’s required contribution to the cost of health care as a percentage of biweekly gross base salary as follows:

<u>Period</u>	<u>Waiver Amount</u>	<u>Employee Contribution with Waiver</u>	<u>Employee Contribution without Waiver</u>
7/1/2021 to 6/30/2024	2.5%	2.5%	5.0%

Employee Contribution Waivers shall be effective the first full pay period in July of the period specified above.

9. ARTICLE 25 – CLASSIFICATION

Section 1. The position classification plan, as established and maintained by the Employer, consists of a schedule of classification titles with classification specifications for each classification which define and describe representative duties and responsibilities and set forth the minimum requirements and qualifications essential to the work of the classification. If employees consider their permanent position or the Association considers a position to be improperly classified, the employees or the Association may process an appeal for a reallocation of the position through the grievance procedure as set forth in Section 2 of this Article.

If a determination is made by the Employer in the course of an appeal that a position should be upgraded, the employee shall be promoted retroactively to the date the grievance was filed in writing except where a Correction Officer 1 position is being upgraded to a Correction Officer 2 position and the Correction Officer 1 did not receive the position through Article 33, Section 18. In this case a Correction Officer 2 position will be posted and filled in accordance with Article 27, Seniority, Section 5.c. However, the incumbent of the Corrections Officer 1 position will be compensated for working out of class in accordance with Section 3 from the date the grievance was filed in writing until the position is permanently filled by a promotion to a Corrections Officer 2.

If a final determination is made by the Employer in the course of an appeal filed by the Association that a position should be upgraded, the position will be posted and filled in accordance with Article 27, Section 5.

If a final determination is made by the Employer in the course of an employee appeal or an Employer-initiated classification review that a position should be downgraded, the employee shall be demoted to the proper classification and pay range without any reduction in salary. The effective date of the classification change shall be the first day of the first pay period subsequent to the response.

If a final determination is made by the Employer in the course of an employee appeal or an Employer-initiated classification review that a position should be reclassified to another class in the same pay range, the effective date of the classification change shall be the first day of the first pay period subsequent to the response.

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

Step 1. The employee or Association Representative, as appropriate may, present the grievance to the Office of Administration, Bureau of Organization Management, preferably via email to the Office of Administration's Classification Grievances resource account (RA-OAClassGrievances@pa.gov). The employee or the Association, as appropriate shall attach to the grievance a description of the job and all other relevant documents. The Grievance and Arbitration Division shall have 15 working days to contact the employee or Association, as appropriate to schedule a hearing.

In the case of grievances involving a downward reclassification or a temporary working out of classification assignment under Section 3 of this Article, the employee shall present the grievance within 15 working days of the date of the occurrence giving rise to the dispute, or when the employee knew or by reasonable diligence should have known of this occurrence.

The employee and an Association representative may be present at the hearing. The 15-working day period may, however, be modified by mutual agreement. Within 45 days of the completion of the audit and hearing, the Grievance and Arbitration Division will issue a grievance response to the employee or the Association, as appropriate.

Step 2. In the event the grievance has not been satisfactorily resolved at Step 1, the Association may file a written notice of its intent to proceed to arbitration to the Office of Administration, Bureau of Organization Management, preferably via email to the Office of Administration's Classification Grievances resource account (RA-OAClassGrievances@pa.gov), within 15 working days after the response from Step 1 is issued or due. Such appeals will be reviewed by a panel which shall consist of three members: one member appointed by the Employer, one member appointed by the Association, and a third member selected by the parties jointly from a list of five names to be mutually agreed upon by the Employer and the Association. If the parties fail to agree on an impartial arbitrator, either party may request the American Arbitration Association to submit a list of seven possible arbitrators to the parties. The parties shall, within 15 working days of the receipt of said list, select the arbitrator by alternately striking one name from the list until only one name remains. The Employer designee shall strike the first name. The third

member shall not be affiliated, directly or indirectly, with any labor organization or be an employee of the Commonwealth and must be knowledgeable in the field of position classification.

The panel shall neither add to, subtract from nor modify the provisions of this Article nor recommend any alterations or revisions to the Commonwealth's classification and compensation plans. The panel shall be confined to deciding the proper classification in the then existing classification plan for the position or the temporary assignment in dispute.

The findings of the panel shall be submitted to the parties within 30 days after the hearing or receipt of transcript when taken. The determination of the panel shall be final and binding in those cases where an employee's position is downgraded as a result of an employee appeal or an Employer-initiated classification review. In all other cases, the decision of the panel shall be advisory only as to the Employer.

The panel shall meet monthly if necessary for the purpose of hearing appeals under this Section.

Working days as referred to in this Section will exclude holidays and Saturdays/Sundays.

Grievances not scheduled for arbitration within two years of the notice of intent to proceed to arbitration will be considered withdrawn. (Note: for any pending grievance that would reach this 2-year time limit within 60 days of the issuance of this award, or for any grievance that is already at or beyond this 2-year time limit, the union shall have 60 days to decide whether to schedule such grievance or it shall be considered withdrawn. This provision is intended to direct the parties as to intended implementation of this revised language but is not to be included in the integrated collective bargaining agreement.)

Section 3. The Association recognizes the right of the Employer to direct its working force, which includes the assignment of work to individual employees and it further recognizes that such assignments may include work outside an employee's classification. However, it is understood that assignments outside of classification shall be made in a manner consistent with the Employer's operations and organizational requirements.

Whenever an employee temporarily is charged to perform in general the duties and responsibilities of a position in a higher rated classification, in accordance with the higher level job specification, that are separate and distinct from those of the employee's own position for a period of any five full cumulative days in a calendar quarter, the employee shall be compensated, retroactive to the time the assignment took place, at an amount equal to the minimum step of the pay range for the temporary position or at 4.5% above the employee's current rate of pay,

whichever is greater. Employees who are charged to perform higher class work for a full day and who take leave for a portion of that day will be compensated, in increments of ¼ hour, for the partial day worked in the higher class after the five-full day threshold has been met. Such employee while temporarily working and being paid in a higher class will also be paid at the higher rate for a holiday provided the employee is charged to perform the higher-level duties on the scheduled workday immediately before and immediately after such holiday and is paid at the higher rate on those days. The holiday shall not count toward the requirement for five full cumulative days in a quarter. Once the requirement for the five-full cumulative day threshold has been met, payment will be included in the biweekly paycheck. If the position is filled permanently by other than the employee temporarily filling the position, the employee temporarily assigned shall be returned to their previous position and compensation, but shall receive any increments and service credits for such increments to which they would have been entitled had they remained in their normal assignment. An employee or employees shall not be temporarily assigned to perform in general the duties and responsibilities of a position in a higher rated classification for more than nine continuous months or the length of the leave of absence of the employee being replaced, whichever is greater.

A temporary assignment to a higher classification within the bargaining unit which lasts or is anticipated to last more than 20 days will be offered to employees pursuant to the provisions of Article 27, Sections 5 and 6.

In addition, if the Employer assigns an employee on a temporary basis to a lower classification or if an employee temporarily performs some duties and functions assigned to a lower classification, the employee so assigned shall receive the compensation of the higher level to which the employee is regularly assigned. The Employer, however, at any individual work site shall make such assignments on a non-discriminatory basis so as to equalize the same among the persons within the classification from which assignments are made, so long as such equalization does not interfere with efficient operating procedures.

For the purpose of this Section, the calendar quarters shall be defined as beginning with the first full pay period in January through March 31, April 1 through June 30, July 1 through September 30, and October 1 through the last full pay period of the leave calendar year, which is the pay period that includes December 31.

FILING OF GRIEVANCES

Grievances arising from the provisions of this Section shall be submitted in writing and the employee shall attempt to include the dates on which the alleged out of class work occurred and a description of the alleged higher-level work performed. The failure of the employee to provide the required information will not affect the validity of the grievance.

Grievances pertaining to this Section may be processed through the procedure set forth in Section 2 above.

The decision of the arbitration panel shall be final and binding.

Section 4. Under Section 2 and 3 above, all fees and expenses of the arbitrator shall be divided equally between the parties except where one of the parties of this Agreement requests a postponement of a previously scheduled arbitration meeting which results in a postponement charge. The postponing party shall pay such charge unless such postponement results in a settlement of the appeal in which event the postponement charge shall be divided equally between the parties. A postponement charge resulting from a joint postponement request shall be shared equally by the parties. Each party shall bear the costs of preparing and presenting its own case. Either party desiring a record of the proceedings shall pay for the record and make a copy available without charge to the arbitrator.

Section 5. The Employer shall notify the Association of class specification and pay range revisions to all classes that are presently in the certified bargaining unit for which the Association is the representative and of class specifications and pay ranges of proposed classes that the Employer may reasonably anticipate will be placed in the certified bargaining unit, prior to the submission of these changes to the Executive Board of the Commonwealth. The Association will submit acknowledgement of the receipt of the proposed changes and its comments, in writing, to the Employer within 15 working days of receipt of the notification. If written comments are not received from the Association within 15 working days, the Employer will contact the Association, by telephone, before submitting the proposals to the Executive Board. Reasonable written requests by the Association for time extensions will be granted.

Section 6. The Employer shall issue a job description or post orders for the various jobs performed by employees at the various institutions/boot camps.

Also, as a housekeeping matter, all references in the Classification article to “pay range” shall be changed to “pay scale group.” Also, all references to “step” shall be changed to “pay scale level.”

10. ARTICLE 30 – DISCRIMINATION

Add “gender identity or expression” to the listing of protected classes.

11. ARTICLE 33 – MISCELLANEOUS PROVISIONS – Section 31 & (New) Section 34

- A. Section 31, Line 1: After “shall notify” insert “the Pennsylvania State Police” before “in addition to the appropriate District Attorney.”
- B. (New) Section 34: DHS may require bargaining unit employees to utilize Employee Self Service (ESS) to submit leave requests and input overtime hours worked after conducting a meet and discuss with the Association.

**12. ARTICLE 35 – H-1 ALTERNATIVE DISPUTE RESOLUTION PROCESS
GRIEVANCES AND ARBITRATIONS – Sections 2 and 3.b.**

Section 2: Add additional sentence to the end of Section 2 to read, “Paid administrative leave will be provided for the grievant, any testifying witnesses and two local PSCOA officials.

Section 3.b.: Remove the name “Lynne Mountz” and add the name “Robert Barron.”

13. ARTICLE 41 – LEAVE DONATION PROGRAM

Change Article 41, Leave Donation Program, to read as follows:

Section 1. Effective April 1, 2006, the Commonwealth will implement and administer a Leave Donation Program. Permanent employees may donate combined leave to a designated permanent employee in the employee’s agency who has used all accrued paid leave and anticipated combined leave for the current leave calendar year. The leave is to be used for the recipient’s own catastrophic injury or illness or for the catastrophic injury or illness of a family member or for absences related to an organ donation by the recipient. The leave also may be used as bereavement leave if the employee’s family member dies and the employee has no accrued or anticipated sick leave or combined leave available, subject to the limitations in Article 10, Section 16.

Section 2. Recipients

a. Recipients must be permanent employees in bargaining units that have agreed to participate in this program.

b. Family member is defined as a husband, wife, child, foster child, step-child, or parent of the employee or any other person qualifying as a dependent under IRS eligibility criteria.

c. An organ donation, or catastrophic illness or injury that poses a direct threat to life or to the vital function of major bodily systems or organs, and would cause the

employee to take leave without pay or terminate employment, must be documented on a Family and Medical Leave Act Serious Health Condition Certification form. Donated leave may not be used for work-related injuries or illnesses, minor illnesses, injuries, or impairments, sporadic, short-term recurrences of chronic, non-life threatening conditions, short-term absences due to contagious diseases, or short-term recurring medical or therapeutic treatments, except for conditions such as those listed above.

d. The absence due to an organ donation, or to the catastrophic illness or injury of the employee or a family member must be for more than 20 workdays in the current leave calendar year. The 20-workday absence may be accumulated on an intermittent basis if properly documented as related to the organ donation or the same catastrophic illness or injury. Combined leave, sick (for employee's own serious health condition), sick family (for the serious health condition of a family member), holiday, compensatory, or unpaid leave may be used during the accumulation period. A separate accumulation period must be met for each organ donation, or catastrophic illness or injury and for each leave calendar year in which donated leave is used. Donated leave may not be applied to the required 20 workday accumulation period.

e. Organ donation is defined as a living donor giving an organ (kidney) or part of an organ (liver, lung, or intestine) to be transplanted into another person.

f. All accrued leave must be used as follows before any donation may be received.

(1) For an employee's organ donation, or own catastrophic injury or illness, all accrued combined leave, sick, holiday, and compensatory leave and all anticipated combined leave for the current leave calendar year must be used.

(2) For the organ donation, catastrophic injury or illness of a family member, all accrued combined leave, holiday, and compensatory leave and all anticipated combined leave for the current leave calendar year must be used. All of the employee's sick family allowance must be used in accordance with Article 10, Section 20.

g. Up to 12 weeks of donated leave per leave calendar year may be received for all conditions of the employee and family members cumulatively, but donations may not be received in more than two consecutive leave calendar years. Donated leave is added to the recipient's sick leave balance on a biweekly basis. Recipients do not repay the donor for donated leave. Leave usage is monitored closely to ensure that donated leave is used only for absences related to the organ donation, catastrophic illness or injury.

h. The recipient's entitlement to leave under the Family and Medical Leave Act will be reduced by donated leave that is used. Entitlements to sick leave without pay (for an employee's own illness) or family care leave without pay (for a family member's illness) will also be reduced.

i. Donated leave may be used on an intermittent basis. However, each absence may be required to be medically documented as due to the organ donation, or the same catastrophic illness or injury.

j. An employee is not eligible to receive donations of leave if, during the previous six months, the employee has been placed on a written leave restriction, or has received a written reprimand or suspension related to attendance.

k. Donated leave that remains unused once the employee is released by the physician for full-time work, when the family member's condition no longer requires the employee's absence, or at the end of the leave calendar year, must be returned to the donors in inverse order of donation. However, if at the end of the year, the absence is expected to continue beyond the greater of 20 workdays or the amount of combined and sick leave that could be earned and used in the following leave calendar year, donated leave may be carried into the next year.

Section 3. Donors

a. A donor may voluntarily donate combined leave to an employee within the donor's agency who meets the requirements of the Leave Donation Program. Donations may be made to multiple employees, as long as the minimum donation is made to each employee.

b. Donations must be made in increments of one day (7.5 or 8.0 hours), but not more than five days can be donated to any one employee in the same leave calendar year. The donor's combined leave balance after donation cannot be less than the equivalent of five workdays of leave (37.5 or 40.0 hours). Anticipated combined leave may not be donated.

c. The donation is effected by the completion and submission of a Request to Donate Leave to the agency Human Resource Office. Leave is deducted from the donor's combined leave balance at the time of donation and transferred to the recipient in order by the date and time the Request to Donate Leave form is received.

d. Unused donations are returned to the donor if: the recipient or family member recovers, dies, or separates before the donor's leave is used; or if the recipient does not use the leave by the end of the leave calendar year, and is expected to either return to work within 20 workdays or to have sufficient anticipated combined leave available in the new year to cover the absence. In accordance with Section 1 above, an employee whose family member dies and who does not have accrued or anticipated sick leave available, may use donated leave as bereavement leave, subject to the limitations in Article 10, Section 16.

Section 4. The provisions of this Article are not grievable under Article 35 of this Agreement.

Section 5. Notwithstanding the requirement in Sections 1 and 3 of this Article that combined leave, annual and personal leave donations be from a permanent employee in

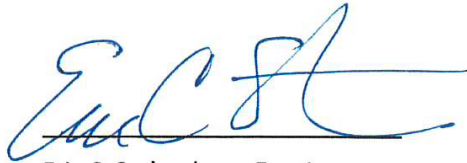
the employee's agency, in the event that an employee does not receive sufficient donations from employees within the employee's own agency, the employee needing donations will be permitted to seek donations from permanent employees in other agencies under the Governor's jurisdiction within a reasonable geographic distance through the requesting employee's designated local Human Resource contact. An exception to the reasonable geographic distance limitation will be allowed for relatives of the employee who wish to make donations.

ARTICLE 42 – TERM AND TERMINATION – Sections 1, 2 and 3

Change provision to read as follows:

This Agreement shall be effective July 1, 2021, except where the award specifically provides that a particular provision will be effective on another date. This Agreement shall continue in full force and effect up to and including June 30, 2024. It shall automatically be renewed from year to year thereafter, unless either party shall notify the other in writing by such time as would permit the parties to comply with the bargaining schedule established under the Public Employee Relations Act.

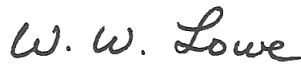
The decision of the Arbitration Panel represents assent by a majority of the panel members on every issue but does not necessarily represent the assent of every panel member on every issue. All other provisions of the Collective Bargaining Agreement not specifically changed herein shall remain “as is”. The Panel shall retain jurisdiction for 120 days from the issuance of this Award to address any issues of implementation or codification which may arise finalizing this Award. Except as otherwise provided, the provisions of this Award shall be effective upon signing.



Eric C. Stoltenberg, Esquire
PSCOA-Appointed Arbitrator



Michael A. Palombo, Esquire
Commonwealth-Appointed Arbitrator



William W. Lowe
Neutral Arbitrator and Panel Chairman

Date: December 10, 2021