

**IN THE MATTER OF THE ARBITRATION**

**Between**

**COMMONWEALTH OF PENNSYLVANIA**

**And**

**PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION**

**ACT 195 INTEREST ARBITRATION AWARD**

**BOARD OF ARBITRATION**

**Michael E. Zobrak  
Chairman**

**Thomas W. Jennings, Esquire  
Arbitrator for the Union**

**Brian D. Pedrow, Esquire  
Arbitrator for the Commonwealth**

## **BACKGROUND AND INTRODUCTION**

An impasse occurred in the negotiations between the Pennsylvania State Corrections Officers Association ("PSCOA" or the "Association") and the Commonwealth of Pennsylvania (Department of Corrections and Department of Public Welfare) regarding the terms and conditions of the parties' July 1, 2008 collective bargaining agreement. As a result thereof, the Union requested the initiation of interest arbitration proceedings pursuant to Section 805 of the Pennsylvania Public Employe Relations Act ("Act 195"), 43 P.S. §1101.805.

The PSCOA designated Thomas W. Jennings, Esq. to serve as its party-designated arbitrator. The Commonwealth of Pennsylvania designated Brian D. Pedrow, Esq. to serve as its party-designated arbitrator. Those two party representatives then designated Michael E. Zobrak to serve as the Impartial Chairman of the Panel of Arbitrators.

The parties engaged in an Interest Arbitration proceeding pursuant to the provisions of Act 195 to determine the terms of a collective bargaining agreement to take effect on or after July 1, 2008. The Panel heard testimony of witnesses and received documentary evidence from both parties on February 14, 15, 21, 22 and 29; and April 3, 4, 10 and 17, 2008. Each party had a full opportunity to present its respective evidence and took full advantage of this opportunity. The parties submitted post-hearing briefs, which included rebuttal evidence. After fair and deliberate consideration of all testimony, exhibits, and briefs, the panel engaged in executive sessions on June 4, 11, and 27, 2008.

Having fully considered the evidence and arguments of the parties, the following constitutes the Award of the Board of Arbitration:

## AWARD

### 1. DURATION AND EFFECTIVE DATE

Three (3) years, effective July 1, 2008 through June 30, 2011. Accordingly, Article 43 shall be amended to read as follows:

“This Agreement shall be effective July 1, 2008 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, 2011. 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 collective bargaining schedule established under the Public Employee Relations Act.”

### 2. LEAVES OF ABSENCE WITHOUT PAY – ARTICLE 15 PARENTAL LEAVE – ARTICLE 16 FAMILY CARE LEAVE – ARTICLE 39

Effective January 1, 2009, modify the language in these Articles to provide the following:

#### Unpaid Leave with Benefits (SPF)

Employees may be eligible for one aggregate 6-month period of unpaid leave with benefits for all three categories of leave in a given Leave Year -- sick, parental, and family care (“SPF absence”). The initial 12 weeks of this leave entitlement in any given Leave Year may be used on an intermittent or reduced work schedule basis (collectively “intermittent”). Use of SPF absence for any one or more of these purposes, whether on an intermittent or continuous basis, will reduce that Leave Year’s entitlement of six months (aggregate) and 12 weeks (intermittent and aggregate) leave.

A Leave Year consists of the rolling 12-month period measured backward from the commencement of an absence, as defined by the Family and Medical Leave Act. An Employee’s entitlement to some or all of the six-month entitlement (and 12-week intermittent entitlement) is measured by looking backward 12 months from the date the leave is to commence and determining if the Employee has used any of the applicable entitlement already. To qualify for SPF leave, the Employee or family member must have a qualifying leave event, as defined in the FMLA, such as a medically certified serious health condition or becoming a parent. In addition, the FMLA’s eligibility criteria must be met, i.e. 12 months of employment with the Commonwealth and 1250 hours of actual work in the 12 months preceding the commencement of the leave.

Combined leave (to the extent required by Article 10, Section 1), paid sick leave, sick family and additional sick family, to the extent otherwise available, must be used concurrently with unpaid SPF leave and will reduce that entitlement. An Employee may opt to use other

forms of paid leave, e.g., the remaining balance of combined leave or holiday or compensatory leave, during an otherwise unpaid SPF leave, provided that each such paid leave day used for the employee's personal illness will also run concurrently with unpaid SPF leave and will reduce that entitlement.

### **Unpaid Leave without Benefits (ESPF)**

In addition to unpaid SPF leave *with benefits*, Employees may be eligible for one aggregate six-month period of extended unpaid leave *without benefits* for sick, personal or family care purposes ("ESPF absence"). To be eligible for ESPF absence, the Employee must opt to use such leave immediately upon expiration of SPF absence for the same leave event (i.e. as an extension of the SPF absence). This leave may be used only on a continuous basis and may not be used intermittently. This leave will be granted upon request (rather than being granted at the discretion of the agency), provided however that return to work rights for ESPF absence shall be governed by Article 15, Section 6, as revised herein.

### **Modified Contract Language**

A. Modified contract language reflecting the provisions of this award is attached as Exhibit

### **3. SALARIES AND WAGES -- ARTICLE 17**

Amend to provide for the following:

#### **Fiscal Year 2008/09:**

3.0% general pay increase effective July 1, 2008

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).

#### **Fiscal Year 2009/10:**

3.0% general pay increase effective July 1, 2009.

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).

#### **Fiscal Year 2010/11:**

4.0% general pay increase effective July 1, 2010.

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).

**Modified Contract Language**

B. Modified contract language reflecting the provisions of this award is attached as Exhibit

**4. HEALTH BENEFITS – ARTICLE 24**

A majority of the Panel concludes that it is in the best interests both of the members and the Commonwealth to continue this units' participation in the PEBTF and the REHP. As such, the Panel has awarded an increase both in employer and employee contributions. The Panel recognizes that it remains within the discretion of the PEBTF Board of Trustees to determine the extent and level of medical plan benefits, supplemental benefits and other benefits to be extended by the Fund.

**Commonwealth PEBTF Contributions:**

The Commonwealth's contribution rate to PEBTF on behalf of each permanent full-time Employee eligible for benefits and covered by this Agreement shall be as follows:

<b>Fiscal Year</b>	<b>Biweekly Contribution</b>
FY 08/09	\$365
FY 09/10	\$400
FY 10/11	\$440

Commonwealth contributions shall be effective the first pay date in July of the respective fiscal years.

The contributions 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.

**Employee Contributions:**

Employees who elect health care coverage will be required to contribute a percentage of their biweekly gross base salary toward the cost of coverage as provided below:

<b>Fiscal Year</b>	<b>Employee Contribution</b>	<b>Get Healthy Waiver (if eligible)</b>	<b>Net Contribution</b>
FY 08/09	1.5%	0.5%	1.0%
FY 09/10	2.0%	1.0%	1.0%
FY 10/11	3.0%	1.5%	1.5%

Employee contributions and Get Healthy waiver amounts shall be effective the first full pay period in July of fiscal years 08/09, 09/10, and 10/11. While it is beyond the Panel's

jurisdiction to order the PEBTF to offer again the Health Assessment to members of this bargaining unit and their eligible dependents, the neutral Arbitrator believes it is in the best interests of the parties to provide this unit with another opportunity to take the health Assessment and to qualify for the get healthy waiver within ninety (90) Calendar days of the issuance of the Award.

**Retired Employees Health Program (REHP):**

**Annuitant Contributions.** An Employee who retires on or after July 1, 2009, and who elects REHP coverage, shall be required to contribute to the cost of annuitant health coverage through the REHP. The annuitant contribution, as a percentage of the Employee's final annual gross salary at the time of retirement from State service, shall be equal to the active Employee contribution in effect upon the date of retirement, as a percentage of the Employee's biweekly gross base salary, and shall change thereafter in accordance with the active Employee contribution rate in effect from time-to-time.

**Annuitant Credited Service.** Credited service for purposes of eligibility for annuitant health coverage, for service earned on or after July 1, 2008, will be limited to service as a Commonwealth employee which otherwise counts as credited service under the State and/or Public School Retirement, TIAA-CREF or other approved retirement systems' rules in effect from time to time. Employees hired on or after July 1, 2008 who have earned credited service under the State and/or Public School Retirement, TIAA-CREF or other approved retirement systems' rules with another employer will not have that service counted for purposes of eligibility for REHP coverage, unless they were employed by the Commonwealth prior to July 1, 2008. If it is determined by the State and/or Public School Retirement Systems that an Employee is eligible for additional credited service for military service, such credited service will be included in the determination of eligibility for REHP coverage. The phrase "Commonwealth employee" shall be limited to service earned through an employing agency eligible to participate in the Commonwealth's Life Insurance Program.

**REHP Grandfathering Provision.** An employee who has at least fifteen (15) years of credited service as of September 1, 2008, or who has thirteen (13) years of service and is within one (1) years of superannuation age as of September 1, 2008, shall be eligible to elect REHP coverage upon reaching superannuation age with fifteen (15) years of credited service rather than twenty (20) years. The three (3) year rehire rule will not apply to such employees. All other terms and conditions related to REHP coverage shall continue to apply.

**Comprehensive Health Care Legislation:**

Add as a new section at the end of Article 23:

“In the event that comprehensive healthcare legislation is passed, the parties agree to negotiate the impact, if any, of such legislation on the existing active and annuitant health care programs.”

**Modified Contract Language**

C. Modified contract language reflecting the provisions of this award is attached as Exhibit

5. **ACCELERATED GRIEVANCE PROCEDURE**

Article 35, Section 1 (Grievances) shall be amended by the addition of the following as a new paragraph:

“Effective January 1, 2009, all grievances submitted in accordance with this article must state the article(s) and section(s) of the collective bargaining agreement that was allegedly violated and provide a short description of the alleged violation. If not, the grievance will be considered withdrawn.”

Article 35, Section 2 (Step 1.) shall be amended by the addition of the following to the first paragraph:

“Grievances must be submitted fifteen (15) working days prior to the pre-scheduled Step 1 meeting. This period may be modified by mutual agreement of the parties.”

Appendix G (H-1 Alternative Dispute Resolution Process), Rule 4 (Operation of Joint Committee), Section 3 shall be amended by modifying the following sentence to read:

“It will not be necessary for any written statements to be notarized in order to be considered.”

6. **PROVISION TO ALLOW MANAGEMENT TO CHANGE SHIFTS TO SCHEDULE TRAINING**

Article 6, Section 5 (Hours of Work) shall be amended by the addition of the following as a new paragraph:

“In addition to the above, the employer may, with at least two weeks notice, modify the work schedule of bargaining unit members twice during each calendar year in order to provide *block* training during the day shift. Additional modification of schedules for *block* training on the day shift shall only be permitted for emergency reasons.

**7. TOBACCO USE – MEET AND DISCUSS**

Article 33 of the collective bargaining agreement shall be amended by the addition of the following as a new Section thereof:

“Section 32. Policies concerning tobacco use at the work site, including prohibitions against tobacco use, may be established by the Commonwealth after meet and discuss with the Association.”

**8. BID POSTS**

Replace Article 33, Section 18, and the sideletters dated January 21, 1988 and September 28, 1988, regarding bid posts with a new Article in the agreement, as follows:

1. A Bid Post is a Corrections Officer post that is desirable because it involves considerably reduced and/or limited inmate contact and control and, consequently, involves less of the demands normally associated with exercising care, custody and/or control over inmates for an eight hour shift. Additionally, the work hours and/or days of such positions may be those typically considered as premium (i.e. 8:00 am to 4:00 pm, Monday through Friday), but not necessarily operated on those hours and/or days.
2. The Employer agrees to post any vacancy in a permanent job assignment (i.e., not involving promotion) 15 days prior to the filling of such vacancy unless an emergency requires a lesser period of time. Employees at an institution/boot camp who are in the eligible job classification will be given an opportunity to bid on such a vacancy and preference shall be granted onto the qualified senior bidder. Whenever the vacancy is filled by a person other than the most qualified senior eligible employee bidding on the job, the institution superintendent or his/her representative will explain to the most qualified senior eligible employee the reason for selecting a less senior person. A grievance under this Section may be pursued only through Step 2 of the H-1 Alternative Dispute Resolution Process and the decision of the Joint Committee shall be final and binding.
3. Institutions must have good reason(s) for the permanent removal of employees from their bid posts. Whenever an Institution has concerns about an Officer's performance in his/her bid post, a meeting will be held with that Officer to fully detail these concerns. After receiving input from the Officer and considering that input appropriately, the Officer will be fully appraised of what performance correction is necessary and by when the correction must be realized. If the correction is not realized by the specified date, another meeting will be held with the Officer. Again, the Officer's input will be solicited and considered and he/she will again be advised of the necessary correction, the date by which it must be realized and the advised failure to do so will result in removal from the post. During either or both meetings, the employee may elect to have Union Representation.



4. The procedure outlined in #3 will not be employed in the event an emergency situation requires the Officer's temporary removal from post nor during those periods of inactivity (down time) which may be inherent to some posts. In either case, Officers can be assigned to a different post for the period of emergency or inactivity.
5. Where the Officer's action(s), or lack thereof, are so serious that they cannot be tolerated, he/she will be permanently removed from the post effective immediately. In the event of such removal, the Union retains the right to file a grievance and process it to Step 3 of the H1 Alternative Dispute Resolution Process.
6. Furthermore, an employee may be removed from a bid post and disciplined for the same Rules infraction, provided there is a nexus between the Rules infraction and the duties of the bid post. An employee's removal from a bid post for a Rules infraction may be grieved through Step 3 of the H1 Alternative Dispute Resolution Procedure. The issue to be decided is whether there is a rules infraction and if so, whether there is a nexus between the rules infraction and the duties of the bid post.
7. Existing positions satisfying the above criteria shall be mutually identified in writing by the parties at each institution within three months of this Award. Disputes regarding the application of this criteria shall be resolved by direct reference to the grievance and arbitration process set forth in Article 35 of this collective bargaining agreement. There shall be one state-wide grievance and arbitration proceeding to resolve all open issues regarding bid posts and existing positions.
8. In the event that a new position is created after the issuance of this award, and the parties are unable to agree whether the new position constitutes a bid post, the dispute will be resolved by submission to the grievance and arbitration process set forth in Article 35 of this collective bargaining agreement.
9. Notwithstanding any provision of this article, any Restricted Housing Unit post shall not be considered a Bid Post. The agreed upon designation of Control Center posts in effect as of the date of this Award shall be maintained in effect. Any institution without an agreement on the Control Center post shall resolve that issue in accordance with the provisions found in paragraph seven (7).

This article will supersede the January 21, 1988 and September 28, 1988 sideletters on Bid Posts.

9. **COMBINED LEAVE CERTIFICATION REQUIREMENT**

Article 10, Section 12 shall be amended as follows:

"Section 12. A doctor's certificate is required for an absence from work due to personal sickness for three or more consecutive days of work or a family illness for three or more consecutive days which requires an employee's absence from work or to document a chronic short or long-term personal illness or disability for which a regimented treatment program which is administered by a licensed health care professional will require absence from the work place. For absences of less than three days, a doctor's certificate *or other appropriate documentation for emergency reasons other than sickness*, may be required where the Employer has reason to believe that the employee has been abusing sick leave.

Family is defined as husband, wife, child, step-child, child for whom the employee is the legal guardian, parent, brother or sister of the employee."

10. **PRECLUDE USE OF COMBINED LEAVE DURING INCARCERATION**

Add a new Section 3 to Article 10:

"Notwithstanding any provision of this agreement, no form of paid leave may be used by an employee to cover an absence in connection with any form of incarceration, including without limitation absences due to house arrest, community service, etc."

11. **HOLIDAY COMPENSATORY LEAVE**

Article 9, Section 4: Delete "90" and replace with "120" in reference to the calendar day period succeeding the holiday.

12. **LEAVE DONATION**

Article 42, Section 2b – Add "foster child".

New Section – "Notwithstanding the requirement in Sections 1 and 3 of this Article that combined 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."

13. **COMBINED LEAVE – UNSCHEDULED ABSENCES**

The following shall be added as a new paragraph to Article 10, Section 12:

In addition, employees may be required to provide medical documentation of employee illness or family illness or other appropriate documentation for emergency reasons other than sickness, when the Employer has reason to believe that the employee has been abusing

the non pre-scheduled leave or when a significant number of employees take such non pre-scheduled leave on the same day at any institution. Failure to provide such documentation will provide just cause for discipline.

#### **14. COMBINED LEAVE/SICK LEAVE SYSTEM**

Article 10, Section 1 shall be amended to provide access to sick leave as follows:

Modify Article 10, Section 1, as follows:

**Section 1.** Employees will earn combined and sick leave as of their date of hire with the Employer as a percentage of regular hours paid in accordance with Schedule 1 of this Article. Employees shall be eligible to use combined and sick leave after 30 calendar days of service with the Employer. Bereavement leave will be earned as of the beginning of the year in accordance with Schedule 1 of this Article, however, it will be non-cumulative from year to year. An employee may use sick leave for absences from work due to personal illness for more than five consecutive days or a chronic short or long-term personal illness or disability which mandates a regimented set of treatment which is administered by a licensed health care professional. (Examples for which this type of leave may be used are chemotherapy and kidney dialysis). Employees will be eligible to use sick leave using the following criteria:

- a. 0 to 3 years inclusive of credited Commonwealth service - an employee must be absent due to personal illness for more than five consecutive days, sick leave will be available, beginning with the sixth day of absence, combined leave will be available for the first five days of absence.
- b. Over 3 years through 5 years inclusive of credited Commonwealth service - an employee must be absent due to personal illness for more than five consecutive days, sick leave will be available retroactive to day five. Combined leave will be available for the first four days.
- c. Over 5 years through 8 years inclusive of credited Commonwealth service - an employee must be absent due to personal illness for more than five consecutive days, sick leave will be available retroactive to day four, combined leave will be available for the first three days.
- d. Over 8 years through 11 years inclusive of credited Commonwealth service - an employee must be absent due to personal illness for more than five consecutive days, sick leave will be available retroactive to day three, combined leave will be available for the first two days.
- e. Over 11 years through 14 years inclusive of credited Commonwealth service - an employee must be absent due to personal illness for more than five consecutive days, sick leave will be available retroactive to day two, combined leave will be available for the first day.

- f. Over 15 years of credited Commonwealth service – an employee must be absent due to personal illness for more than five consecutive days, sick leave will be available retroactive to the first day.
- g. Each absence mandated by a regimented set of treatment which is administered by a licensed health care professional due to a chronic short or long-term personal illness or disability.

Regular hours paid as used in this Article include all hours paid except overtime, standby time, lay-over hours, call time, and full-time out-service training.

Employees shall be credited with a year of service for each 26 pay periods completed in an active pay status, provided they were paid a minimum of one hour in each pay period.

**15. COMBINED LEAVE – ANTICIPATED USE**

Article 10, Section 10 shall be modified as follows:

Permanent employees who have one or more years of service since their last date of hire may anticipate combined and sick leave to which they become entitled during the then current calendar year unless the Employer has reason to believe that the employees have been abusing the leave entitlement. Once an employee has used non-pre-scheduled combined leave in excess of three occurrences in a calendar year, that employee will not be able to anticipate combined and sick leave to which he/she would have become entitled during the then current calendar year unless approved by management. Permanent employees with less than one year of service since their last date of hire may not anticipate combined or sick leave.

**16. COMBINED LEAVE SICK LEAVE SELL-BACK**

Article 10, Section 17 shall be modified to provide sell-back of ten (10) days.

**17. ACCESS TO FAMILY SICKNESS LEAVE**

Article 10, Section 19.a shall be modified as follows:

A Employees who meet the eligibility criteria in b. through e. below may use accrued sick leave in accordance with the following schedule:

<b>Leave Service Credit</b>	<b>Family Sickness Leave</b>
Over 1 year to 2 years	Up to 37.5/40 hours (4 days)
Over 2 years to 3 years	Up to 75/80 additional hours (10 days)
Over 3 years to 15 years	Up to 112.5/120 additional hours (15 days)

Over 15 years to 25 years  
Over 25 years

Up to 150/160 additional hours (20 days)  
Up to 195/208 additional hours (26 days)

18. **EATING AND SANITARY FACILITIES**

Article 8, Section 1, shall be amended to include the following:

Food provided to the bargaining unit shall be fresh and edible. In the event that a grievance is filed related to this provision, the grievance may be pursued only through Step 2 of the

H-

1 Alternative Dispute Resolution Process and the decision of the Joint Committee shall be final and binding.

19. **VESTS**

Article 29, Section 4.d, shall be amended by adding the following:

Vests provided by the Employer shall be worn during the workday. The Employer shall make reasonable accommodations on an institution-by-institution basis (mist rooms, air conditioning, relief, etc.) for physical impediments to the safe use of vests. Disputes regarding the application of these criteria shall be resolved by direct reference to the grievance and arbitration process set forth in Article 35 of this collective bargaining agreement.

20. **LEAVES OF ABSENCE – UNION BUSINESS**

Article 15, Section 2, will be modified to provide:

The employer agrees to credit full seniority and service credits:

(A) for all purposes for all time that a PSCOA business Agent or Official utilizes on Leave Without Pay granted in accordance with this Article. Seniority credit will be calculated in accordance with Article 27, Seniority, Section 1(e).

(B) for all Union business leave utilized by local Union officials in accordance with this Agreement.

21. **OVERTIME**

Article 18, Section 2b(3) shall be modified as follows:

(3) Any combined leave once an employee has used non-scheduled combined leave in excess if three occurrences in a calendar year.

22. REPAYMENT OF OVERPAYMENT

Article 33 shall be amended by adding the following:


Effective January 1, 2009, in the event that the Employer asserts an overpayment of wages or benefits provided by this agreement of more than \$100 has been made to any employee the Employer shall provide written notice of such overpayment to the employee and the Union and shall supply the employee and Union with documentation of such debt. Repayment of such debt shall be made by the following procedures:

- a. The employee may elect to repay the debt in full in a single payment.
- b. The employee may voluntarily repay the debt by making payments of 15% or more of net pay per pay period. Net pay is defined as gross pay minus federal, state and local withholding, unemployment compensation tax, social security and retirement contributions and pre-taxed health care contributions.
- c. If the payment of 15% of net pay is too severe, the employee may propose a payment plan after submitting documentation of hardship including total family income, assets, liabilities, number of dependents, total expenses for food, housing, clothing, transportation, medical care and any exceptional expenses. The employee then may submit an alternative payment plan through payroll deductions for approval by the Employer.

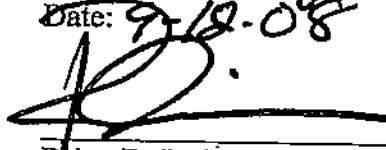
In any case the alternative payment shall not be less than 10% of net pay per pay period and for a repayment period of 26 pay periods or less. The Office of Administration shall have the sole right to approve such alternative payment plans.

\* \* \* \* \*

Except as otherwise stated, all terms are effective as of July 1, 2008. Except as otherwise explicitly provided by the terms of this Award, all terms and conditions of the parties' collective bargaining agreement for July 1, 2005 through June 30, 2008, shall remain in full force and effect for the duration of this Award. Any issue in dispute presented by either party not addressed in this Award has not been awarded by the Panel.

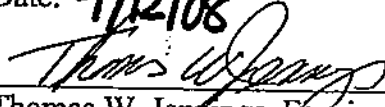
  
Michael E. Zobrak  
Neutral Arbitrator

Date: 9-18-08



Brian D. Pedrow, Esquire  
Commonwealth Appointed Arbitrator

Date: 9/12/08

  
Thomas W. Jennings, Esquire  
PA State Corrections Officers Association  
Appointed Arbitrator

Date: 9/18/08

DISSENTING AS TO PARAGRAPHS 3

4, 9, 13, 21