

6-3-09 MOA Final

June 3, 2009

Memorandum of Agreement between the State of New Jersey and the Communications Workers of America, AFL-CIO

Whereas the current economic crisis has caused an unforeseen and unprecedented reduction in actual State revenues for FY 2009 and in projected revenues for FY 2010; and

Whereas the State has already reduced spending, including personnel related costs and benefits in FY 2009 to help address the dramatic revenue shortfall and has proposed substantial reductions in expenditures in FY 2010, including reductions in personnel and benefit costs; and

Whereas the Communications Workers of America, AFL-CIO (CWA or the Union) and the State of New Jersey (the State) seek to avert the layoffs of thousands of State workers while preserving the integrity of the parties' collective negotiations agreements and providing the necessary personnel-related savings for the FY 2009 and FY 2010 State budgets; and

Whereas the parties recognize that during this period of economic crisis, with the rate of unemployment in New Jersey and the Country approaching double digits and with the federal government and the State seeking to stimulate the economy through job creation and other programs, layoffs not only devastate the lives of individual workers and their families, they counteract these economic stimulus policies and programs and are bad for New Jersey's economy; and

Whereas the parties recognize that an agreement to reduce State salary costs during this economic crisis, while preserving the integrity of the collective negotiations agreements, is preferable to widespread layoffs and the disruption to public services caused by such layoffs; and

Whereas the State and CWA recognize that a negotiated agreement encompassing the issues that are the subject of this Memorandum of Agreement (MOA) will not interfere with the State's determinations with respect to governmental policy and have met in an effort to reach an agreement that will provide reductions in personnel costs and thereby avert widespread layoffs; and

Whereas a negotiated agreement between the parties will facilitate the accomplishment of vital government policies and objectives, including the avoidance of layoffs, the delivery of needed public services, and the achievement of substantial budgetary savings;

Therefore the parties enter into the following agreement:

A. The Deferral of the July 2009 Across-the-Board Wage Increase

1. The 3.5% across-the-board increase to annual base salaries in Article 6A and the compensation adjustments in Article 6B that 12-month employees are due to receive the first full pay period of July 2009 and 10-month employees are due to receive the first full pay period of September 2009 will not be paid during FY10. Such increases and adjustments will be deferred and said increases and adjustments to base salary shall be paid the first full pay period after January 1, 2011.
2. Notwithstanding the parties' agreement to defer the payment of across-the-board increases, CWA unit members will not suffer any diminution in their pension benefits as a result of the deferral of such payments.

B. Furloughs

1. A total of ten unpaid furlough days shall be utilized by each CWA unit member prior to July 1, 2010.
2. The parties agree that through June 30, 2011, CWA unit employees will not suffer any involuntary unpaid leaves of absence or furloughs, except as expressly permitted in paragraphs B(1) above and B(3) through B(6) below. For purposes of this MOA, unpaid furloughs/leave days include staggered and non-staggered furloughs or "temporary layoffs," as well as furloughs or "temporary layoffs" resulting from complete or partial closures of departments or agencies.
3. It is agreed that all CWA unit members will be furloughed for one day in FY 2009. CWA unit members who were not scheduled to be furloughed in May 2009 shall utilize one "self-directed" unpaid leave day in FY 2009, or if not feasible to utilize such day in FY 2009, shall utilize the day in FY 2010.
4. It is agreed that the November 27, 2009 day after Thanksgiving shall be an unpaid leave day for all CWA negotiations unit employees, except for those employees who are required to work on that day by the State. All employees who are required to work on November 27, 2009 by the State shall utilize a self-directed unpaid leave day in FY 2010.
5. It is agreed that Lincoln's Birthday on February 12, 2010 shall be an unpaid holiday, but that any CWA negotiations unit employees who are required to work on that day by the State will be paid at the current rate of time and one half in accordance with current practice, but will not receive a holiday credit. All employees who are required to work on Lincoln's Birthday in 2010 shall utilize a self-directed unpaid leave day in FY 2010.
6. In FY 2010, all CWA unit members shall utilize seven self-directed unpaid leave days, in addition to the three furlough days unit members are required to use in accordance with paragraphs 3 through 5 above.

7. If an employee utilizes a self-directed unpaid leave day on the day before or after a holiday, the employee will be paid for the holiday. Employees who are not paid for the day after Thanksgiving 2009 will be paid for the Thanksgiving holiday.
8. Furlough days that were not already served in May 2009, or are not designated for November 27, 2009 or February 12, 2010, shall initially be selected by the employee in accordance with the procedures in Article 22G. By August 1, 2009, employees must schedule a total of five (5) of the ten (10) furlough days to be utilized prior to January 1, 2010, unless management determines that it is not operationally feasible to utilize five furlough days prior to that date. By January 15, 2010, employees must schedule any remaining furlough days to be utilized prior to July 1, 2010. If an employee does not timely schedule a self-directed furlough day(s), management will meet with the employee to schedule furlough days to be utilized in accordance with this paragraph. If following such meeting the employee and management do not agree upon the scheduling of the furlough days or if a meeting cannot be conducted due to the unavailability of an employee, management shall select the unpaid leave day to be served by the employee with at least seven days notice to the employee.
9. If the employee is unable to utilize vacation leave day(s) due to his or her need to utilize self-directed furlough days in fiscal year 2010, the employee may request such vacation day(s) to be carried over and such request shall not be unreasonably denied. If CWA is unable to address such situations with department management, such issues will be addressed by OER.
10. The parties recognize that there may be unusual circumstances with respect to the utilization of furlough days by employees who are on extended unpaid or paid leaves of absence. If CWA is unable to address such situations with department management, such issues will be addressed by OER.
11. CWA unit members who are not paid for November 27, 2009, February 12, 2010, or a self-directed unpaid leave or furlough day in either FY 2009 or FY 2010 will not suffer any diminution in their pension benefits.
12. The State agrees that the day after Thanksgiving in November 2010 will be a paid day off and Lincoln's Birthday in February 2011 will be treated as regular work day.
13. If any CWA unit member is furloughed or required to use an unpaid leave day in violation of B2 above, such member shall suffer no loss of compensation as a result of not being permitted to work on such day. If CWA submits to arbitration a grievance alleging a violation of B2 and the arbitrator sustains the grievance, the arbitrator shall be limited to awarding an employee his or her lost compensation as a result of being furloughed in violation of B2.

14. Nothing in this MOA shall be construed as a waiver of the parties' respective positions with respect to the negotiability of unpaid leave days or furlough days or with respect to whether unilaterally imposed furloughs or unpaid leave days violate the parties' collective negotiations agreements.

C. No Layoff Pledge

1. In consideration for the substantial personnel savings achieved through the wage freeze and self-directed furlough days agreed to in sections A and B of this MOA, the State pledges that there shall be no layoffs of bargaining unit employees during the period of the wage freeze which ends on January 1, 2011.
2. Consistent with the commitment in paragraph 1 above, the State shall rescind the current plans with regard to the closure of the Regional Day Schools operated by the Department of Children and Families (DCF) and shall not layoff any workers employed at such schools. DCF shall commission a study on future operations of such schools with representation of all stakeholders, including CWA.
3. The parties recognize the State's legal authority to implement layoffs, but also recognize the personal and social costs of layoffs, including the disruption of services to the most vulnerable citizens of the State.
4. The parties agree that the savings achieved through this MOA coupled with savings to be achieved through agreements with other represented bargaining units and with savings from non-aligned employees and managers, should be sufficient to avoid the economic need for layoffs through December 31, 2010.
5. If any member of a CWA negotiations unit is laid off prior to January 1, 2011 in violation of the no layoff pledge contained in C(1) above the State agrees to the following:
 - (i) The deferral of the 3.5% July 2009 across-the-board increase shall immediately end and on a prospective basis the salaries of all CWA unit members will immediately return to the levels provided for in the 2007-11 collective negotiations agreements prior to the ratification of this MOA; and
 - (ii) If prior to July 1, 2010 any CWA unit member is laid off, the provisions in Section B of this MOA that require the use of furlough days will no longer be operative and employees who are not laid off will not be required to use any additional furlough days except as provided for in this paragraph. If at the time of such layoff any such employee utilized furlough days in excess of the days the employee was required to use on a prorated basis, that employee will be reimbursed for the value of such days. If at the time of such layoff any employee utilized fewer furlough days than the employee was required to use on a prorated basis, the employee will use

such prorated furlough days following the layoff. Employees shall retain all days in their Paid Leave Banks.

- (iii) Any CWA unit member laid off prior to January 1, 2011, who does not otherwise have a right under Side Letters 35 or 13 to go into the displaced workers pool, may elect to go into the displaced worker pool for a maximum period of two months and receive all remuneration and benefits as set forth in Side Letter 35 of the parties' collective negotiations agreements for that two month period.
6. The no layoff pledge in this section of the MOA does not apply to separations from State service that are not "layoffs" under the parties' collective negotiations agreements. Examples of such separations include, the termination of an employee at the end of a working test period, a disciplinary termination, the non-renewal of a non-tenured employee, the termination of a provisional employee, or the termination of an unclassified employee with less than four years of consecutive state service. Employees separated from State service on such grounds retain any rights they have to challenge such separations under the parties' collective negotiations agreements and/or under law and regulation. This provision shall not be used to circumvent the no layoff pledge contained in paragraph 1 of this section of the MOA.

D. Paid Leave Bank

1. In recognition of the agreement that CWA unit members will utilize (10) unpaid furlough/leave days (one in FY 2009 and 9 in FY 2010) and will defer the July 2009 3.5% across-the-board raises until the first full pay period in January 2011, the State agrees to establish a Paid Leave Bank (PLB) for each unit member. Each employee's PLB will be credited with seven (7) days of paid leave as follows: On July 1, 2009 all employees will be credited with one (1) paid leave bank day. For every two furlough days utilized by an employee the employee will earn an additional paid leave bank day for a total of five (5) days earned for ten (10) furlough days utilized. On June 30, 2010, all employees will be credited with one (1) additional paid leave bank day. By the end of the FY 2010, all employees who utilize a total of ten furlough days will have their PLB credited with a total of seven paid leave bank days.
2. The PLB days will be maintained separate and apart from banks of other paid leave and there will be no limitations on the carry over of days in the PLBs. Specifically, the carry over restrictions that are applicable to paid vacation and administrative leave days will not be applicable to the PLBs.
3. Beginning July 1, 2010, and for the duration of their employment with the State, employees may use days in the PLB subject to operational needs. Approval for the use and scheduling of PLB days shall not be unreasonably denied.

- 4 At the time an employee retires, resigns or is otherwise separated from State service, either voluntarily or involuntarily, any unused days in an employee's PLB will be treated in accordance with the provisions of Article 22(G) of the parties' agreements. If an employee dies prior to leaving State service with unused paid leave days in his/her PLB, those days will be treated in accordance with Article 22(G)(4) of the parties' agreements.

E. Furlough Rule

1. In recognition of the parties' negotiated agreement on self-directed unpaid leave days (furlough days) contained in section B of this MOA and the substantial personnel savings realized as a result of such agreement in FY 2010; and in further recognition that the furlough regulation, N.J.A.C. 4A:8-1.1A, adopted by the Civil Service Commission (CSC) on May 22, 2009, expires on June 30, 2010 and is currently the subject of legal challenge and appeal, the State believes that the furlough regulation is no longer necessary and should be rescinded. Therefore, the State and CWA shall jointly request that the Civil Service Commission rescind N.J.A.C. 4A:8-1.1A as soon as possible following the ratification of this MOA.
2. The State further believes that the issues raised by the adoption of the regulation and by the legal challenges to the regulation require further study and review by the CSC and the New Jersey Public Employment Relations Commission (PERC), as well as by interested parties, including but not limited to public employee collective negotiations representatives and by State and local government management representatives. Therefore, the parties agree that a Study Commission on Alternatives to Permanent Layoffs (Study Commission) shall be established and which shall issue a report on or after December 31, 2010.
3. Pending the issuance of a report by the Study Commission, there shall be a moratorium on the approval by the CSC of any rule with respect to temporary layoffs or furloughs. During the period of the moratorium, government entities and unions representing public employees shall retain the legal rights and remedies they had prior to the issuance of the emergency temporary layoff regulation, N.J.A.C. 4A:8-1.1A. Likewise, during the period of the moratorium, the parties shall retain the legal rights and remedies they had prior to the issuance of the emergency temporary layoff regulation, N.J.A.C. 4A:8-1.1A., except as modified by the provisions of this MOA.
4. The Study Commission shall be comprised of a maximum of 16 members, including the Chair of PERC and a PERC representative appointed by the Chair of PERC, the Chair of the CSC and a CSC representative appointed by the Chair of the CSC, one representative from each of the three unions representing the majority of the civilian negotiations units in the Executive Branch of State Government affected by the temporary layoff rule, three additional public employee union representatives and six representatives of public employers,

including at least two representatives of local government entities. Each of the three unions representing the majority of the civilian negotiations units in the Executive Branch of State Government affected by the temporary layoff rule may propose a representative to serve on the Study Commission, subject to the approval of the Governor. The Governor will select the representatives to serve on the Study Commission.

5. The Study Commission's Report will:
 - a. Survey negotiated agreements on furloughs and other alternatives to layoffs by employers and unions within and outside of New Jersey and report on the terms of such agreements and the impact of such agreements on (1) the delivery of public services, (2) the budgets of governmental entities, and (3) the economy;
 - b. Provide guidance to public employers and unions representing public employees on furloughs and other measures to avoid permanent layoffs while addressing budgetary problems through collectively negotiated agreements; and
 - c. Provide guidance to public employers and unions representing public employees on furloughs and other alternative measures to permanent layoffs that are consistent with the Civil Service Act (CSA) and the Employer-Employee Relations Act (EERA), including issues relating to the negotiability of such measures.
6. All claims, grievances, appeals, unfair labor practices or other legal challenges to the State's actions with regard to furloughs of its employees shall be withdrawn and dismissed with prejudice by consent of CWA in the appropriate forum, and no further actions or challenges will be initiated by CWA with respect to actions or conduct by the State of New Jersey or the Civil Service Commission preceding the execution of this MOA.

F. Restrictions on the Use of Temporary Employment Services (TES) Positions and the Conversion of TES Positions to Regular Full-time Positions

1. To achieve continuing reductions in personnel costs during the term of the parties' collective negotiations agreements, the State agrees that it shall not increase the number of TES positions in use as of the date this MOA is executed, and based upon the audit described in paragraph 2 below, the State shall reduce the use of TES positions. This shall not limit the State's ability to hire temporary employees for seasonal work, such as lifeguards, or for special projects of defined lengths of time. This section of the MOA is intended to augment Article 1, Section E of the parties' agreements.

2. Within 180 days from the ratification of this MOA, the State, in consultation with affected negotiations unit representatives, will conduct an audit of TES positions in the Departments of Human Services, Law and Public Safety, Military and Veterans Affairs, Education and Treasury to determine whether such positions are being used in lieu of positions which should be filled by permanent employees. The results of the audit will be provided to affected negotiations unit representatives within fifteen (15) days of its completion.
3. Within 180 days from the completion of the audit, the State will convert 100 TES positions performing CWA negotiations unit work to part-time or full-time positions in CWA units or eliminate such positions.

G. Contracted Temporary Employees

1. The parties agree that contracts with vendors to provide temporary employment services should not be used to erode CWA unit work, avoid hiring caps and freezes or circumvent the appointment process for regular career service positions and the parties further agree that no new contracts shall be used for such purposes.
2. Within 180 days from the ratification of this MOA, the State agrees to reduce by 25% the total number of current hours that vendors provide clerical or administrative services and agrees that after such reduction it will not increase the total number of hours that vendors provide such services.
3. The Hobart Services contract for paralegals in the Department of Children and Families and the contracts providing for temporary clerical services in the Department of Law and Public Safety will be cancelled within 90 days of ratification of this MOA and those positions will be converted to permanent full-time positions under CWA's agreements or eliminated.
4. In addition, within 120 days from ratification of this MOA, the State shall review the contracts of vendors providing nursing and other professional services in Department of Human Services' facilities, including psychiatric hospitals and development centers. If such review determines that vendors are providing services in a manner inconsistent with paragraph 1 above, the parties shall meet to discuss appropriate actions.

H. Inspection and Design work at DOT (Implementation of Side Letter 42).

1. To facilitate the implementation of Side Letter 42, the parties agree that the Department of Transportation will review all contracts with consultants performing inspection work, including bridge and construction inspections, and will use its best efforts to replace at least 50 contracted inspectors with State employees performing CWA negotiations unit work within 60 days from the ratification of this MOA, and not more than 90 days.

2. The parties will meet and agree upon a schedule for full implementation of Side Letter 42 within 90 days from the ratification of this MOA.
3. If within 90 days of the ratification of this MOA the parties have not agreed upon a schedule for the full implementation of Side Letter 42, CWA may submit the dispute to expedited arbitration. An arbitration hearing will be held within 90 days of submission of the grievance to arbitration. The State will not challenge the legal arbitrability of a grievance alleging that the State violated its commitment in paragraph 2 above to agree upon a full implementation schedule within 90 days of ratification of this agreement.

I. Consultant Contracts

The State agrees that during fiscal years 2010 and 2011, it will exercise whatever rights exist under law to discount, reduce or obtain cost savings from vendors or contractors performing CWA negotiations unit work, including not increasing the rates of compensation received by consultants or employees of vendors or contractors.

J. Lifting the Hiring Cap on Federally Funded and Stimulus Funded Positions

The State and CWA agree that any restriction or cap on the amount of CWA unit positions that are 100% federally funded will be lifted.

K. State College and University Committee

The State will establish a Committee to review spending, tuition and costs at the nine state colleges and universities. The composition of the panel will include, but not be limited to, representatives from each of the colleges and universities and from the unions representing state college and university employees.

L. Enforcement of the MOA

1. This MOA is incorporated into and modifies the parties' 2007-2011 collective negotiations agreements, but such terms shall expire on June 30, 2011. The terms of this MOA and any dispute arising under this MOA, involving the application or interpretation of the terms of this MOA, are subject to the grievance/arbitration provisions of those agreements, as modified by paragraph 5 below.
2. The State agrees that in the event CWA seeks to arbitrate a dispute arising under Sections A through D and L(3) of this MOA, the State waives any right it may have to claim that the dispute is not legally arbitrable or negotiable under scope of negotiations law. In the event CWA seeks to arbitrate a dispute arising under Sections E, F, G, I, J and K, the State retains its right to challenge the legal arbitrability of such grievances. With respect to Section H, the terms set forth in Section H governing arbitration shall control.

3. Further, the remedy set forth in Section C, paragraph 5 of the MOA, shall only be applied to a violation of Section C, except that the remedy set forth in Section C, paragraph 5, subpart (i) shall be applied to the a violation of the rescission or moratorium provisions of Section E(1) and (3) of the MOA.
5. Further, the State agrees that any grievance filed under the terms of this MOA shall be filed directly with the Governor’s Office of Employee Relations (OER) and that the lower steps of the grievance procedure will be bypassed.
6. The parties’ agree that if any provisions of this MOA require legislation or regulation to be effective, the parties will jointly seek the enactment of such legislation or the promulgation of such regulations.

M. Existing Collective Negotiations Agreements

All provisions of the parties’ 2007-2011 collective negotiations agreements not expressly modified by this MOA remain in full force and effect.

N. MOA Subject to Ratification of Membership

This MOA is subject to ratification by the membership of CWA.

On behalf of the Communications Workers of
America, AFL-CIO

On behalf of the State of New
Jersey

