
MEMORANDUM OF UNDERSTANDING
BETWEEN THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
And the
COALITION OF MASSDOT UNIONS FOR UNIT B
FOR A
SUCCESSOR AGREEMENT COVERING EMPLOYEES IN
BARGAINING UNIT B
July 1, 2017 through June 30, 2020

This Memorandum of Understanding is entered between the Massachusetts Department of Transportation (“MassDOT or Employer”) and the Coalition of MassDOT Unions as the collective bargaining representative for employees in Bargaining Unit B. (the “Union”) Except as modified herein, the terms of the current agreement, including all previous memoranda of understanding, supplemental and side agreements, shall continue in effect. It is understood that the agreement reflected in this document is the result of mutual compromise. The withdrawal by either party of any proposal advanced during negotiations shall not be admitted in any proceeding to prejudice the position of the party who withdrew the proposal. The parties agree to use their best efforts to agree on a single integrated collective bargaining agreement that incorporates the modifications to the July 1, 2009 – June 30, 2012 collective bargaining between the Commonwealth and the Union as set forth in the Memorandum of Understanding for Successor Collective Bargaining Agreement for the period of July 1, 2013 to June 30, 2014 and the Memorandum of Understanding for Successor Collective Bargaining Agreement for the period of July 1, 2014 to June 30, 2017.

Any modifications to the Master Labor Integration Agreement negotiated after December 28, 2010 shall be incorporated into the collective bargaining agreement and control over earlier versions notwithstanding any provision of the Master Labor Integration Agreement to the contrary.

ARTICLE 1
RECOGNITION

Section 1.

(a)–MassDOT The Employer recognizes the Union as the exclusive collective bargaining representative for all employees in job titles assigned to Bargaining Unit B, as set forth in Appendix A. ~~† The parties acknowledge that that any job title that was in existence on the effective date of this Agreement not appearing on Addendum A has been intentionally excluded.~~ **Appendix A (1) attached hereto reflects the positions contained in Unit B at the time of ratification of this Agreement. Appendix A (2) reflects the positions to be contained in Unit B following the realignment of titles pursuant to the parties’ Classification Study Implementation Memorandum of Understanding.**

(b) The Union recognizes that the Secretary/Chief Executive Officer of MassDOT or his/her labor designee shall have sole authority to make commitments or agreements with respect to wages, hours, standards of productivity, performance and any other terms and conditions of employment.

(c) To effectuate clear labor management communications and to further the stability of labor relations, when any settlement agreement directly or indirectly affects the interests of employees represented by more than one of the component unions, the Employer may in its reasonable discretion require that the Chairperson of the CMU also be a signatory to any such settlement agreement. The execution by the Chairperson shall bind the CMU and each of the component unions individually to the terms of the agreement. Each such agreement shall contain the following representations:

i.) The persons executing the agreement are authorized to enter the agreement on behalf of the CMU and to bind the CMU and each of the component unions to the terms of the agreement;

ii) All required approvals, votes, consents, or other actions required to be taken under any agreement, by-law or other applicable governance document have been obtained in advance of execution of the agreement;

iii) The CMU and each of the component unions individually shall refrain from filing any grievance or other action in any forum against the Employer challenging the settlement agreement or the implementation of the settlement agreement, except for actions alleging that the Employer has failed to comply with terms of the settlement agreement.

(d) If any of the above representations are proven materially false or if the CMU or any component Union makes any demand to bargain, files any action challenging the agreement or the implementation of the agreement, or takes any other action to impede the agreement, the Employer may void the agreement in part or in its entirety and recoup any payments made pursuant to such agreement.

(e) Upon the Employer’s request, the CMU agrees to fully support and defend the agreement in any action, dispute or other proceeding brought by a component union arising directly or indirectly out of the agreement or the implementation of the agreement all at its own expense.

Section 2.

A. As used in this contract the term “employee” or “employees” shall:

1. include full-time and regular part-time **and temporary** persons employed by ~~MassDOT~~ **the Employer** in job titles in the bargaining unit included in Section 1 above, including seasonal employees whose employment is for a period of ninety (90) consecutive days or more.
2. exclude:
 - a. all managerial and confidential employees;
 - b. all employees employed in short term jobs established by special federal or state programs such as summer jobs for underprivileged youths;
 - c. all intermittent employees which are defined as an employee who is neither full-time nor a regular part-time employee and whose position has been designated as an intermittent position by ~~his/her Appointing Authority~~ **the Employer** in accordance with existing written procedures of the Personnel Administrator, or those procedures as hereafter amended.
 - d. all persons paid through a subsidiary account designated by the State Comptroller for use in the payment of contract personnel.

B. A full-time employee is defined as an employee who normally works a full workweek and whose employment is expected to continue for twelve (12) months or **more, or** who normally works a full workweek and has been employed for twelve (12) consecutive months or more.

C. A regular part-time employee is defined as an employee who is expected to work fifty percent (50%) or more of the hours in a work week of a regular full-time employee in the same title.

A temporary employee is a full-time or regular part-time employee hired to work for the duration of a temporary vacancy or for a defined period of up to one year but not including persons employed as “03” or “07” consultants¹ as provided in Section 1.2 B (4) above. Temporary employees shall serve a probationary period of nine (9) months. Upon expiration or earlier termination of their appointments, temporary employees shall be laid off without recourse to the layoff, bumping and recall provisions of the agreement. The employer recognizes the benefit of maintaining a career workforce and understands that temporary employees are intended to supplement the regular workforce and handle temporary or seasonal increases in bargaining unit work. No person may have their temporary employment extended beyond one year without the

¹ **If the “03” and/or the “07” designations reflecting individual contracts and entity contracts respectively are no longer in use, it is agreed that the successor designations for these accounts will be substituted for them.**

consent of the Union. Except as provided above, any temporary position that is not vacated at the expiration of one year shall be posted within 14 business days as a regular position in accordance with Article 14. If the posted position is not filled within 6 months, the Employer may not hire a temporary employee in a position within the same job series until it hires a regular fulltime employee in a position within the same job series at the same location. Incumbents in temporary positions shall be considered for such positions before external applicants, provided that such appointment is not contrary to Civil Service law. A temporary employee who is selected to fill the position on a permanent basis shall not be required to serve a new probationary period. The number of temporary FTE employees shall not at any time exceed twelve and one half (12.5%) of the total number of filled FTE positions in bargaining units B and C in the aggregate.

D. The Employer will on a monthly basis provide the CMU with the following information about all temporary employees hired within Unit B under this provision:

Name and home address
Date of Hire
Job Title
Work Location

and also provide the date of separation, or any other change of employment status of such temporary employee along with a description of the nature of any such change in employment.

DE. In addition to the use of other seasonal employees as provided in this agreement or by practice, the Employer may hire engage temporary intermittent seasonal employees from November 1 to April 15 each year and to supplement staffing levels during snow and ice operations. ~~Temporary~~ Such employees shall not be used as substitutes for bargaining unit employees, except in instances where all bargaining-unit qualified employees who are willing to work the ~~snow and ice operations event~~ have first been offered the opportunity. Intermittent ~~Temporary~~ seasonal employees will not be covered by any term or condition of the collective bargaining agreement but may be required to pay an administrative fee to the union to the extent permitted by law.

Section 2.

An employee may consent in writing to the authorization of the deduction of Union dues from his/her wages and to the designation of the Union as the recipient thereof. Such consent shall be in a form acceptable to the Employer, and shall bear the signature of the employee. **The form may be completed on-line as an electronic form or completed, printed, and sent to the designated human resources officer.** An employee may withdraw his/her Union dues check-off authorization by giving **the Employer** at least sixty (60) days' notice in writing, **or lesser notice as may otherwise be required by law.** ~~to his/her department head.~~ **The Employer will promptly notify the Union of any request to withdraw union dues authorization.**

Section 3.

An employee may consent in writing to the authorization of the deduction of an agency fee from his/her wages and to the designation of the Union as the recipient thereof. Such consent shall be in a form, acceptable to the Employer, and shall bear the signature of the employee. **The form may be completed on-line as an electronic form or completed, printed, and sent to the designated human resources officer.** An employee may withdraw his/her agency fee authorization by giving **the Employer at least sixty (60) days written** notice.

ARTICLE 4

AGENCY SERVICE FEE

Section 1.

~~To the extent permitted by law, Each employee who elects not to join or maintain membership in the Union shall be required to pay as a condition of employment, beginning thirty (30) days following the commencement of his/her employment or the effective date of the Agreement, whichever is later, a service fee to the Union in any amount that is equal to the amount required to become and remain a member in good standing of the exclusive bargaining agent and its affiliates to or from which membership dues or per capita fees are paid or received, all as provided in General Laws C.150E S.12.~~

Section 2.

~~This Article shall not become operative until this Agreement has been formally executed, pursuant to a vote of a majority of all employees in bargaining unit B present and voting.~~

Section 3.

~~The Union shall reimburse the Employer for any expenses incurred as a result of being ordered to reinstate an employee terminated at the request of the Union for not paying the agency fee. The Union will intervene in and defend any administrative or court litigation concerning the propriety of such termination for failure to pay the agency fee. In such litigation the Employer shall have no obligation to defend the termination.~~

Section 4.

~~Disputes between the parties concerning this Article shall be resolved in accordance with the grievance procedure contained in this Agreement.~~

~~In the event such a dispute is submitted to arbitration, the arbitrator shall have no power or authority to order the Employer to pay such service fee on behalf of any employee. If the arbitrator decides that an employee has failed to pay or authorize the payment of the service fee in accordance with this Article, the only remedy shall be the termination of the employment of such employee if the employee continues to refuse to pay or authorize payment of the required service fee after having sufficient time to do so.~~

ARTICLE 5 UNION BUSINESS

Section 1. Union Representation

Union staff representatives shall be permitted to have access to the premises of the Employer for the performance of official Union business, provided that there is no disruption of operations. Requests for such access will be made in advance and will not be unreasonably denied. The Union will furnish the Employer with a list of staff representatives and their areas of jurisdiction.

Section 3. Unpaid Union Leave of Absence

C. Witnesses called by the Union to testify at a Step III hearing or in arbitration proceeding (Step IIIV) may be granted time off without loss of benefits or other privileges (not including wages).

D. All leaves granted under this Section shall require prior approval of the Director of Labor Relations and Employment Law. ~~Requests for unpaid leaves of absence (as provided by Section 3B above) for the purpose of attending Union conventions must be made at least twenty one (21) days in advance of such conventions.~~ **Requests for all unpaid release time must be made at least seven (7) calendar days in advance unless agreed to by the parties.**

Section 4. Union Use of Premises

The Union shall be permitted to use those facilities of the Employer for the transaction of Union business during working hours, which have been used in the past for such purpose, and to have reasonable use of the Employer's facilities during off-duty hours for Union meetings subject to appropriate compensation if required by law. **Where practicable, Union officials shall provide the Employer with at least one (1) day advanced notice of such use.** This Section shall not be interpreted to grant an employee the right to carry on Union business during his/her own working hours, not granted elsewhere in the contract.

Section 5. Bulletin Boards

The Union may post notices on bulletin boards or on an adequate part thereof in places and locations where notices usually are posted by the Employer for employees to read. All notices shall be on Union stationery, signed by an official of the Union, and shall only be used to notify employees of matters pertaining to Union affairs. The notices may remain posted for a reasonable period of time. No material shall be posted which is inflammatory, profane or obscene, or defamatory of the Commonwealth, **MassDOT** or **their** ~~its~~ representatives, or which constitutes election campaign material for or against any person, organization or faction thereof.

ARTICLE 6A MUTUAL RESPECT

The ~~Commonwealth~~-**Employer** and the Union agree that mutual respect between and among managers, employees, co-workers and supervisors is integral to the efficient conduct of the ~~Commonwealth's~~-Employer's business. Behaviors that contribute to a hostile, humiliating and/or intimidating work environment, including abusive language or behavior, are unacceptable and will not be tolerated. Employees who believe they are subject to such behavior, ~~and who want to pursue the matter~~, shall raise their concerns with an appropriate manager or supervisor as soon as possible, but no later than ninety (90) days from the most recent **occurrence(s)** ~~incidents(s)~~. **Employees who want to formally pursue the matter must file a written complaint which identifies the behaviors including specific examples believed to cause the hostile, humiliating and/or intimidating work environment.**

The written complaint shall be investigated by the Employee Relations Unit or other Employer designated body which shall make recommendations to the Employer for correcting any unacceptable and/or unprofessional behaviors identified by the investigation. The Complainant shall be notified of the steps taken to address the Complainant's concerns.

In the event the employee(s) **written complaint** ~~concerns have been formally raised at the agency level and are~~ is not addressed within a reasonable period of time, the employee and/or the Union may file a grievance at step ~~III~~ **II** of the grievance procedure as set forth in Article 23 (~~notice shall be sent concurrently to the Agency Head or designee~~). If the employee, (or the Union) requests a hearing at Step ~~III~~ **II** such hearing shall be granted. Grievances filed under this section shall not be subject to the arbitration provisions set forth in Article 23. No employee shall be subject to ~~discrimination~~ **retaliation** for filing a complaint, giving a statement, or otherwise participating in the administration of this process.

ARTICLE 6
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 1.

The Employer and the Union agree not to discriminate in any way against employees covered by this Agreement on account of race, religion, creed, color, national origin, sex, sexual orientation, age, ethnicity, mental or physical disability, union activity, gender identity, gender expression, military or veteran status.

Section 2.

The Union and the Employer agree that when the effects of employment practices, regardless of their intent, discriminate against any group of people on the basis of race, religion, age, sex, national origin, or mental or physical disability, specific positive and aggressive measures must be taken to redress the effects of past discrimination, to eliminate present and future discrimination, and to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation and in-service or apprenticeship training programs. Therefore the parties acknowledge the need for positive and aggressive affirmative action.

Section 3.

The Statewide Labor/Management Committee established pursuant to ARTICLE 25 shall give priority to the area of affirmative action **and reasonable accommodation**. The Committee shall review affirmative action programs and shall devote its best efforts to alleviating any obstacles that are found to exist to the implementation of the policy and commitments contained in the Governor's Executive Order No. 116 dated May 1, 1975 or as subsequently amended or in Governor's Executive Order #253 (1988) or as subsequently amended. The provisions contained in Article 14 and Article 18 shall not be construed to impede the implementation of affirmative action programs developed by the Employer in accordance with goals set forth in this Article ~~6~~.

Section 4.

The Employer and the Union acknowledge that sexual harassment is a form of unlawful sex discrimination, and the parties mutually agree that no employee should be subjected to such harassment. The term sexual harassment as used herein is conduct such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which constitutes sexual harassment when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Section 5.

A grievance alleging a violation of Section 4 of this Article shall be filed initially at Step II of the grievance procedure. Such action must be brought within twenty-one (21) days from the alleged act or occurrence. However, an employee who has filed a complaint alleging sexual harassment under the Employer's Sexual Harassment Prevention Policy may not file a grievance regarding those same allegations under this Section.

Section 6.

The Employer and Union agree that individuals with disabilities should enjoy equal access to all employment opportunities. During the process to identify a reasonable accommodation the employee may elect to have union representation present.

**ARTICLE 7
WORKWEEK AND WORK SCHEDULES**

Section 1. Scheduled Hours, Workweek, Workday

A. Except as otherwise specified in this Agreement, the regular hours of work for full-time employees shall be thirty-seven and one-half (37.5) hours per week excluding meal periods or forty (40) hours per week excluding meal periods., as has been established for that job title at the particular job location. Any employee whose regular workweek has averaged more than forty (40) hours excluding meal periods in the past shall have a forty (40) hour workweek.

B. The work schedule, both starting times and quitting times, of employees shall be posted on a bulletin board at each work location or otherwise made available to employees and Union stewards.

C. When the Employer desires to change the work schedule of employee(s) the Employer shall, whenever practicable, **give the affected employee ten (10) days written notice.** ~~select volunteers from among the group of potentially affected employees and select from among the qualified volunteers.~~

~~The Employer shall, except in emergency situations, give any affected employee whose schedule is being involuntarily changed ten (10) days written notice of such contemplated change. The provisions of this subsection shall not be used for the purpose of avoiding the payment of overtime.~~

D. To the extent practicable, the normal work week shall consist of **no more than** five (5) consecutive days, ~~Monday through Friday,~~ with the regular hours of work each day to be consecutive except for meal periods. Similarly, to the extent practicable, employees in continuous operations shall receive two (2) consecutive days off in each seven (7) day period. ~~The parties shall establish a joint Union/Management Committee in each Department/Agency to study those situations where such work schedules do not now prevail in an attempt to determine the practicability of establishing a regular work schedule for employees which might~~

~~consist of five (5) consecutive workdays followed by two (2) consecutive days off. The joint Union/Management Committee shall also study those situations in each facility where the employee works more than one (1) shift in a workweek in an effort to establish more uniform work schedules. Should the parties not be able to come to agreement on this issue, then the parties may seek resolution at Step III of the grievance procedure. This subsection should not apply to employees in authorized flexible hours programs~~ **or those working alternative work schedules. A workweek other than Monday through Friday may be established where the Employer reasonably determines the need for such schedule.**

E. (1) The Employer may establish a work week of less than five consecutive days, including three (3) or (4) four day workweeks, provided that the work day shall not exceed 13.34 hours excluding meal periods (“Compressed Workweek”). The Employer shall attempt to fill Compressed Workweek schedules by first soliciting volunteers and shall select from among qualified volunteers in order of seniority. If there are an insufficient number of qualified volunteers, the Employer may upon 14-day notice reassign qualified employees in inverse order of seniority within the district or other administrative work unit, selecting first from among temporary employees and then regular employees.

(2) The Employer shall not involuntarily reassign any employee to a Compressed Workweek schedule prior to April 15, 2020, except that temporary employees and new hires may be assigned to such schedules. Prior to extending an offer of employment to any person hired after this agreement is ratified the Employer shall provide written notice that they may be required to work a Compressed Workweek.

(3) No involuntary reassignment shall extend beyond 12 consecutive weeks and no employee shall be involuntarily reassigned more than twice during any rolling 52-week period or be required to work more than 24 weeks in the aggregate during any rolling 52-week period.

(4) Annually, beginning on April 1, 2020 up to twenty percent (20%) of the total number of bargaining unit employees in Bargaining Units B and C combined may elect to be excluded from assignment to a Compressed Workweek schedule. Employees shall be given an opportunity to make this election within a District or other administrative work unit in order of their MassDOT seniority. For purposes of this section there shall be a single seniority roster for Units B and C. Employees who make this election shall not be required or permitted to work a Compressed Workweek schedule through April 15th of the following year. Such election must be made in writing to the District Highway Director or other Department head on or before April 1st of each year.

F. (1) When a holiday falls on a day that an employee assigned to a Compressed Workweek schedule is scheduled to work but is not required to work, the employee shall be paid at their regular hourly rate for all of their regularly scheduled hours that day. If the employee is required to work the holiday, in addition to the employee’s regular pay, s/he may elect to receive either 7.5 or 8 hours of pay at their regular hourly rate or 7.5 or 8 hours of compensatory time based on the number of hours in their normal workweek.

(2) When a holiday falls on a day that an employee assigned to a Compressed Workweek schedule is not scheduled to work, the employee shall be paid 7.5 or 8 hours of holiday pay at their regular hourly rate based on the number of hours in their normal workweek. If the employee works the holiday, in addition to the employee's regular pay, s/he may elect to receive either 7.5 or 8 hours of pay at their regular hourly rate or 7.5 or 8 hours of compensatory time based on the number of hours in their normal workweek.

G. In addition to all other compensation to which they are entitled under the terms of this Agreement, employees working a Compressed Workweek schedule that includes work on both Saturday and Sunday shall also be paid an additional \$ 1.25 for all hours worked during that Compressed Workweek.

H. The parties acknowledge the benefit of establishing alternative work schedules, including but not limited to flexible hours, staggered hours, part-time and job sharing where such programs contribute to the efficient delivery of state services. The Labor Management Committee established pursuant to ARTICLE 25 of this Agreement shall meet to determine the feasibility of establishing such options where they do not currently exist, to monitor existing programs, and to recommend changes where appropriate.

Upon the written request of either party, the Union shall meet with local and central office representatives relative to developing and implementing Flex-time/Alternative work schedules where feasible for an individual worksite/facility or for the Department/Agency. Following said meetings where there continues to be any unresolved issues the areas of dispute may be brought at the request of either party to the Human Resources Division to work toward a possible resolution. All agreements reached pursuant to the above paragraph shall be submitted to the Union and the Human Resources Division for approval.

Section 2. Overtime

D. 1. With the exception of paid sick leave, all time for which an employee is on full paid leave status shall be considered time worked for the purpose of calculating overtime compensation. **An employee who uses sick time during the same workweek in which he/she works either emergency or mandatory overtime shall be permitted to use up to three (3) such days each fiscal year for purposes of calculating overtime compensation provided the sick time is used prior to the notification to report for the overtime.**

2. ~~However, a~~ **An** employee who uses sick leave during the same work week in which he/she works mandatory overtime shall have the opportunity to replace up to three (3) shifts per fiscal year of sick leave with his/her available personal leave, vacation leave, accrued compensatory time or holiday compensatory time.

E. Upon the request of an employee, the Employer may grant at its discretion compensatory time in lieu of payment for overtime at a rate not less than one and one-half hours for each hour of employment for which overtime compensation would be required under this Article. Such

compensatory time shall not be accumulated in excess of one hundred and twenty hours and maybe used in one half-hour increments. The Employer shall permit the use of compensatory time at the employee's request, provided the use of compensatory time does not unduly disrupt the operation of a department or agency. Upon termination an employee shall be paid for all unused compensatory time at the final regular rate of pay.

Section 3. Regular Meal Periods

A meal period shall be scheduled as close to the middle of the shift as possible considering the needs of the Employer and the needs of the employee. **Employees shall not reduce the length of the workday by working through a meal break without the prior approval of the department head.**

Section 4. Rest Periods and Clean-up Time

A. Employees shall be allowed two (2) rest periods of up to fifteen (15) minutes per workday. **Rest periods may not be used to either extend the meal break or reduce the length of the workday without prior approval of the department head. Employees who work less than a five-day workweek shall be allowed rest periods not to exceed a total of two and a half hours per workweek. The rest periods shall be of equal length and scheduled at equal intervals throughout each workday.**

B. Employees shall continue to enjoy the same clean-up benefits that existed on June 30, 2012.

Section 4A. Time Keeping.

The Employer may require all employees to record daily arrival and departure times and the start and end time of all breaks and meal periods in a form and manner, **including by mechanical or electronic means**, as it determines, which to the extent practicable shall be uniform for similarly situated employees. **Employees shall not be required to record their arrival, departure and break times using more than a single method of timekeeping.**

Section 5. Call Back Pay

An employee who has left his/her place of employment after having completed work on his/her regular shift, and who is called back to a workplace prior to the commencement of his/her next scheduled shift shall receive a minimum of four (4) hours pay at his/her regular hourly overtime rate. This Section shall not apply to an employee who is called in to start his/her shift early and who continues to work that shift. An employee who is called back must remain available for and respond to any subsequent call during the four-hour period. If the employee is called back during the same four (4) ~~two~~ hour period, s/he shall not receive additional compensation above the four (4) hours of pay, unless the subsequent call extends beyond the initial four hours, in which case s/he shall be paid for the additional time worked on an hour for hour basis at the overtime rate. An employee who refuses or fails to respond to a second or subsequent call during the four-hour period, shall not be paid the four (4) hour minimum, unless it is unreasonable under the

circumstances to require s/he to respond. The Union may submit a grievance alleging that a second or subsequent call was unreasonable to expedited arbitration.

An employee who is called back to work as outlined above but is not called back to a work place shall receive a minimum of two (2) hours pay at his/her regular overtime rate. For the purpose of this Section, a "work place" is defined as any place other than the employee's home to which he/she is required to report to fulfill the assignment. Where an employee fulfills his/her call back assignment through the use of an electronic communication device such as a telephone or "networked" computer, or **mobile device**, the employee shall receive a minimum of one hour (1) for assignments received before 11:00 p.m. and two (2) hours for assignments received on or after 11:00 p.m., **provided that no employee shall receive additional pay for a second or subsequent assignment received within the original call back period unless fulfillment of any assignment extends beyond the original call back period in such case the employee will be paid for the actual time worked.** For the purpose of this Section, a "workplace" is defined as any place other than the employee's home to which s/he is required to report to fulfill the assignment. **The Employer may require the employee to maintain and provide a complete and accurate written account of the work performed during a call back assignment.**

For an employee who is called back pursuant to paragraphs 1 and 2 of this Section, the (4) hour minimum shall be counted for the purpose of calculating overtime compensation pursuant to Section 2 of this Article when said employee is called back to the workplace. The two (2) hour minimum shall be counted for the purpose of calculating overtime compensation when the employee is called back to work but not called back to the workplace.

Section 6. Shift Differential

A. Effective July 9, 2006, employees ~~of the Commonwealth~~ rendering service on a second or third shift as hereinafter defined shall receive a shift differential of one dollar and 25 cents (\$1.25) per hour for each hour worked.

B. No change.

C. No change.

D. No change.

E. Employees who are assigned to work a Compressed Workweek shall receive the shift differential for all hours worked beginning after 3:00 p.m. and ending before 7:00 a.m. on their regular full shift. This does not apply to employees who have requested and been granted an alternative work schedule.

F. Employees who are assigned to work a Compressed Workweek to perform tunnel maintenance or inspection work in the MHS shall be paid the MHS differential for all hours worked beginning after 3 p.m. and ending before 7:00 a.m. on their regular shift.

This does not apply to employees who have requested and been granted an alternative work schedule.

Section 8. Weekend Differential

A. Employees rendering service on a weekend shift as hereinafter defined shall receive a weekend differential of one dollar (\$1.25) per hour for each hour worked, provided, however, that no employee shall receive said weekend differential for more than one (1) shift per weekend **not to exceed 7.5 or 8 hours.**

B. No change.

C. No change.

D. No change.

E. Employees who are assigned to work a Compressed Workweek shall receive the weekend differential for all hours worked on a Saturday or Sunday up to the maximum of one (1) regular full shift per weekend. This does not apply to employees who have requested and been granted an alternative work schedule.

Section 9. MHS Tunnel Differential

~~Effective the first full pay period after this Agreement is ratified executed,~~ Employees regularly assigned to tunnel maintenance work in the MHS on an “off hours” shift shall receive in addition to their regular compensation , including any other applicable wage differentials, the additional amount of one dollar and twenty-five cents (\$1.25) for each hour worked on such assigned shift. For purposes of this section an “off hours” shift is any shift that begins on or after 3:00 p.m. and ends on or before 7:00 a.m.

ARTICLE 8 LEAVE

Section 8.7.2 Family And Medical Leave

A. Family Leave

1. The Employer shall grant to a full time or part time employee who has **been employed** ~~completed his/her probationary period, or if there is no such probationary period, has been employed~~ for at least **nine (9)** ~~three~~ consecutive months **preceding the commencement of the leave**, an unpaid leave of absence for up to twenty-six (26) weeks in conjunction with the birth, adoption or placement of a child as long as the leave concludes within twelve (12) months following the birth or placement. The ability to take leave ceases when a foster placement ceases unless the need for the additional leave is directly connected to the previous placement.
2. At least thirty (30) days in advance, the employee shall submit **to the Employer** a written notice of his/her intent to take such leave and the dates and expected duration of such leave. If thirty (30) day notice is not possible, the employee shall give notice as soon as practicable. The employee shall provide upon request by the Employer proof of the birth or placement or adoption of a child.
3. If an employee has accrued sick leave, personal leave, compensatory leave, or vacation credits at the commencement of his/her family leave, the employee ~~may~~ **shall** use such leave credits for which s/he may be eligible under the sick leave, personal leave or vacation provisions of this Agreement, **except that up to two (2) weeks of accrued leave per calendar year may be reserved and used after the FMLA has ended.** The Employer may, in his/her discretion, assign an employee to temporarily backfill for an employee who is on family leave. Such assignment may not be subject to the grievance procedure.
4. At the expiration of the family leave, the employee shall be returned to the same or equivalent position with the same status, pay and length of service credit as of the date of his/her leave. If during the period of the leave, employees in an equivalent position have been laid off through no fault of their own, the employee will be extended the same rights or benefits, if any extended to employees of equal length of service in the equivalent position in the department.
5. Employees taking an unpaid leave of absence under this provision will accrue sick and vacation leave benefits only for the first eight (8) weeks of such unpaid leave. Notwithstanding any other provisions of the Agreement to the contrary, the family leave granted under this Article shall not affect an employee's right to receive any **other** contractual benefits for which s/he was eligible at the time of his/her leave.

6. During the time an employee is on family leave, the employee shall be entitled to group health insurance coverage benefits on the same terms and conditions in effect at the time the leave began, provided the employee continues to pay the required employee share of premium while on leave. If the employee fails to return from leave, **the Employer MassDOT** may recover, as provided under FMLA, the cost it incurred in maintaining insurance coverage under its group health plan for the duration of the employee's leave.

B. Medical Leave

1. The Employer shall grant to any **full-time or part-time** employees—who ~~has completed his/her probationary period or, if there is no probationary period, who has been employed at least~~ **nine (9)** ~~three (3)~~ consecutive months **preceding the commencement of the leave** an unpaid leave of absence for up to twenty-six (26) twenty-six weeks to care for a spouse, child or parent who has a serious health condition or for a serious health condition which prevents the employee from being able to perform the functions of his/her position. For this accompanying regulations, 29 C.F.R. Part 825, the Employer will request medical certification at the time the employee gives notice of the need for the leave or within five business days thereafter, or in the case of the unforeseen leave, within five business days after the leave commences. In the event of an unanticipated illness, an employee who returns to work within eight (8) working days of the beginning of their absence will not be required to return from D1 to his/her employer.

~~2.3.~~ At least thirty days in advance, the employee shall submit a written notice of his/her intent to take such leave and the dates and expected duration of such leave. If thirty (30) day notice is not possible, the employee shall give notice as soon as practicable. The employee shall provide, upon request by the Employer, satisfactory medical evidence. ~~Satisfactory medical evidence is defined under Section 1.K.2 of this Article.~~ **An employee requesting medical leave shall complete the Department's FMLA form and submit it to the Employer.** ~~Under FMLA Law, the Employer may obtain a second opinion at its own expense.~~ **If the Employer has reason to question the validity of the medical evidence, it may obtain a second opinion at its own expense. In the event there is a conflict between the second opinion and the original medical opinion, the Employer and the employee may resolve the conflict by obtaining the opinion of a third medical provider, who is approved jointly by the Employer and employee, at the Employer's expense. When there is no agreement on the third medical provider, within fifteen (15) days after the employer sends a list of medical providers to the Union, either party may submit a request that the Department of Public Health or the Department of Mental Health, as the case may be, to provide a list of five (5) medical specialists in the field of the condition underlying the need for the leave or able to schedule an appointment within thirty (30) days of the request. Each party may strike two names provided and rank the remaining three in order of preference and return such lists to the respective Department within ten (10) days of the receipt of the list. The closest matching specialist shall be requested to serve as a third medical provider. Pending receipt of a third medical opinion, the employee will be provisionally entitled to the leave,**

provided that if the employee fails to authorize his\her medical provider to release all medical information related to the conditions for which the leave is needed to the second or third medical provider, or misses a scheduled appointment with the medical providers due to their fault, fault, the employer may deny the FMLA leave until the employee provides such authorization will attend a rescheduled appointment. If the certification of a third medical provider does not ultimately established employees entitlement to FMLA leave, the employee's provisional FMLA will terminate effective the date of the third medical opinion.

~~In the even there is a conflict between the second opinion and the original medical opinion, the Employer and Employee may resolve the conflict by obtaining the opinion of a third medical provider, who is approved jointly by the Employer and the employee, at the Employer's expense.~~

~~2.3. Upon submission of satisfactory medical evidence that demonstrates an existing catastrophic illness, the Appointing Authority shall grant the employee on a one-time basis, up to an additional twenty-six (26) weeks of non-intermittent leave.~~

~~3.4. Intermittent leave usage and modified work schedules may be granted where a spouse, child or parent has a serious health condition and is dependent upon the employee for care, or for the serious health condition which prevents the employee from being able to perform the functions of his/her position.~~

Effective October 1, 2014 for new requests of intermittent FMLA and effective January 1, 2015 for employees currently on FMLA, employees who provide satisfactory medical documentation to support an intermittent FMLA may utilize up to 60 days of their FMLA allotment provided for in Section 8 (B) (1) for intermittent absences. Where intermittent or a modified work schedule is medically necessary, the employee and Employer shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the operations of the workplace. Such modified work schedules may include full time continuous leave, a change in job responsibilities; or an alternative work option or a continuation of the intermittent leave beyond the sixty (60) days if operations allow provided the employee has not exhausted the 26 weeks of FMLA leave allowed within the previous 52 week period.

At the expiration of the intermittent medical leave, modified work schedule, or job assignment that was agreed upon, the employee shall be returned to the same or equivalent position with the same status, pay and length of service credit as of the date of his/her leave.

In the event that no alternative is agreed upon and if the employer believes that operations are being unduly disrupted, the employer will give written notice to the Union and employee of the intent to terminate the intermittent leave.

In such an event, no employee who then requests full time continuous leave and who is otherwise eligible shall be denied such leave as long as they provide medical documentation supporting an FMLA qualifying illness. Such leaves will be limited to the remainder of

the 26 weeks of available FMLA leave and based upon their intermittent determination shall not be eligible for the catastrophic leave extension.

The Employer shall maintain the ability to transfer an employee to an alternative position with no reduction of pay or benefits in order to avoid disruption of operations so as long as the transfer is reasonable and not meant to discourage the use of intermittent leave. Wherever practicable an employee who transfers pursuant to this paragraph shall be given 10 days' notice of such transfer.

In the event that the employer gives notice of its intent to terminate the intermittent leave, and the affected employee does not wish to access any remaining full-time leave benefits as described above, the Union may request expedited impartial review by an arbitrator to determine whether the Employer has made a reasonable attempt to accommodate the need of the employee's intermittent leave beyond the sixty (60) days and whether or not the leave unduly disrupts operations. Said review must be requested within 10 calendar days of the notification that the leave will be terminated. The status quo ante shall be preserved pending the decision of the arbitrator, unless the proceedings are unreasonably delayed due to the part of the Union or the Employee.

The parties shall meet upon execution of the agreement to establish the review/arbitration process noted above. Such proceedings shall be informal in accordance with the rules to be agreed upon by the parties. The parties shall develop a form to be used as notice to the Union and employee of the intent to terminate intermittent leave.

5. If the employee has accrued sick leave, personal leave, compensatory leave, or vacation leave credits at the commencement of his/her medical leave, that employee ~~may~~ **shall** use such leave credits for which s/he may be eligible under the sick leave, personal leave, or vacation leave provisions of this Agreement, **except that up to two (2) weeks of accrued leave per year may be reserved and used after the FMLA has ended. The Employer may in its discretion assign an employee to temporarily backfill for an employee who is on family or medical leave or hire a temporary replacement and such assignment or hire shall not be subject to the grievance procedure, except that the employee may file an Article 16 grievance if they are entitled to pay in a higher classification.**

6. At the expiration of the medical leave, the employee shall be returned to the same equivalent position with the same status, pay and length of service credit as of the date of her/his leave. If during the period of the leave, employees in an equivalent position have been laid off through no fault of their own, the Employer will extend the same rights or benefits, if any, extended to employees of equal length of service in the equivalent position in the department.

7. Between periods of unpaid medical leave, where an employee returns to the payroll for a period of less than two (2) weeks, when a holiday falls during that time, no holiday pay or compensatory time shall be granted for such holiday.

8. During the time an employee is on medical leave, the employee shall be entitled to group health insurance coverage benefits on the same terms and conditions in effect at the time the leave began, provided the employee continues to pay the required employee share of premium while on leave. If the employee fails to return from leave, the ~~Commonwealth~~ **Employer** may recover the cost it incurred in maintaining insurance coverage under its group health plan for the duration of the employees leave, in compliance with the requirements set forth under the FMLA and regulations thereunder.

C. The total amount of Family Leave and Medical Leave available to employees under this section shall not exceed 26 weeks in a 12-month period. The total amount of accrued paid leave that may be reserved and used after the expiration of Family or Medical leave in any calendar year shall not exceed two (2) weeks in the aggregate.

D. Notwithstanding any provision to the contrary, an employee shall be entitled to benefits as provided by the Massachusetts Parental Leave Act G.L. c. 149, § 105D, the Massachusetts Family Medical Leave Act, G.L. c. 175M and other applicable laws which shall run concurrent with the Family and Medical Leave provided in this agreement. The terms of this Agreement shall control unless otherwise provided by law.

Section 8.8 Non-FMLA Family Leave

A. Upon written application to the Employer, including a statement of any reasons, any employee ~~who has completed his/her probationary period, or if there is no probationary period~~ who has been employed at least ~~three (3)~~ **nine (9)** consecutive months who has given at least two (2) weeks prior notice of his/her anticipated date of departure and who has given notice of his/her intention to return, may be granted non-FMLA family leave for a period not exceeding ten (10) weeks. Such leave shall be without pay or benefits for such period. The Employer may, in his/her discretion, assign an employee to temporarily back fill for an employee who is on non-FMLA family leave. Such assignment may not be subject to the grievance procedure. The purpose for which an employee may submit his\her application for such unpaid leave shall be limited to the need to care for, or to make arrangements for care of grandparent, grandchild, sister or brother living in the same household, or child whether or not the child (or children) is natural, adoptive, foster, stepchild, or child under the legal guardianship of the employee.

B. Ten (10) days of non-FMLA family leave may be taken in not less than one half day increments. However, such leave requires the prior approval of the **Employer** ~~Appointing Authority~~ or his\her designee.

C. If an employee has accrued sick leave, personal leave, compensatory leave, or vacation leave credits at the commencement of her\his non-FMLA family leave, that employee ~~may~~ **shall** use such leave credits for which s/he may be eligible under the sick leave, personal leave, or vacation leave provisions of this agreement

D. Between periods of non-FMLA family leave, where an employee returns to the payroll for less than two weeks, when a holiday falls during that time, no holiday pay or compensatory time shall be granted for such holiday.

Section 8.9 Catastrophic Illness/Injury Leave

Upon submission of satisfactory medical evidence that demonstrates an existing catastrophic illness or injury, the ~~Appointing Authority~~ **Employer** shall grant the employee ~~on a one-time basis,~~ up to an additional twenty-six (26) weeks of non-intermittent non-FMLA leave. **A catastrophic illness or injury is a severe or life-threatening condition that requires prolonged recovery or hospitalization and that totally incapacitates the employee from working. An employee may be granted leave under this paragraph not more than twice during their employment provided that the total aggregate amount of leave granted to any one employee shall not exceed 26 weeks.**

Section 8.10 Educational Leave

Employees may be granted a paid leave of absence in accordance with the policies of the Employer for educational purposes to attend conferences, seminars, briefing sessions or other functions of a similar nature that are intended to improve or upgrade the individual's skill or professional ability. The employee shall not suffer any loss of seniority or benefits as a result of such leave.

Based on the operational needs of the department, Employees enrolled in a degree program may be granted an unpaid leave of absence(s) up to (12) twelve months for course work required by the program. The decision to approve or deny any request for a leave of absence shall not be subject to the grievance procedure as outlined in Article 23, and shall not be arbitrable.

ARTICLE 9 VACATIONS

Section 8.

The Employer shall grant vacation leave in the vacation year in which it becomes available, unless in ~~his/her~~ **its** opinion it is impossible or impracticable to do so because of work schedules or emergencies. In cases where the vacation requests by employees in the same title conflict, preference, subject to the operational needs of the Department/Agency, shall be given to employees on the basis of years of service with MassDOT.

Unused vacation leave earned during the previous two (2) vacation years can be carried over to the new calendar year beginning with the first full pay period in January for use during the following vacation year. Annual earned vacation leave credit not used by the last full pay period inclusive of December 31 of the second year it was earned will be forfeited.

All vacation time must be approved in advance by the employee's supervisor. Except in the case of emergency employees must submit the request at least 48 hours before the use of the vacation day (s).

~~The department head is charged with the responsibility of seeing that vacation is taken in order that the employee does not lose vacation credits. Each employee~~ **who does not have access to Self Service Time and Attendance** shall receive annually, on or before October 1, as of September 1, a preliminary statement of the available vacation credits from the local office. ~~—A central office statement shall be forthcoming to each work location by October 31 for dissemination to each employee.~~

The parties recognize the need to ensure the granting of personal leave, vacation, holiday and compensatory time when it is requested and as it becomes available. Towards this end the department heads and union representatives at each work location shall work out procedures for implementing this policy of granting time off.

Section 9.

Absences on account of sickness in excess of the authorized sick leave provided in the Agreement may be charged to vacation leave upon request of the employee and subsequent approval by the Employer, which will not be unreasonably withheld, **except that no employee who is off the payroll without authorization within six months of the absence shall be permitted to charge an absence due to illness as vacation time.**

**ARTICLE 11
EMPLOYEE EXPENSES**

Section 1.

A. No change.

B. An employee who travels from his/her home to an **assigned** temporary work ~~location assignment~~ rather than to his/her regularly assigned office shall be ~~allowed transportation expenses~~ **reimbursed for mileage only for the distance that is in excess of the** ~~for distance~~ between ~~his/her~~ **the employee's** home and his/her **regular work location** ~~temporary assignment~~ and his/her regularly assigned office and his/her temporary assignment, whichever is less, **if any, using the most direct route to each location.**

C. Employees shall not be reimbursed for commuting between their home and office or other regular work location. With the approval of ~~the Personnel Administrator~~ **Director of Human Resources** an employee's home may be designated as his/her regular office by his/her ~~appointing authority~~ **department head** for the purposes of allowed transportation expenses in cases where the employee has no regular office or other work location.

D. No change.

Section 6.

The Employer will make reasonable efforts to reimburse employees as soon as administratively possible provided that requests for reimbursement are submitted not more than 60 days after the expense is incurred. If the request is submitted after 60 days, the reimbursement may be delayed.

**ARTICLE 12
SALARY RATES**

Section 12.1

The following shall apply to full-time employees:

A. Effective ~~January 11, 2015~~ **the first full pay period in July 2017** employees who meet the eligibility criteria provided in Section 2 of this Article shall receive a ~~3~~ **1%** increase in salary rate-
~~or the annualized amount of one thousand seven hundred dollars to the base wage whichever is greater.~~

1. **If FY 2018 tax revenues equal or exceed \$27.072 billion, then, effective the first full pay period in July, 2017, employees shall receive an additional increase of “up to” one percent (1%) in salary rate.**

The terms, “state tax revenues,” “budgeted revenues,” and “budgetary funds” shall have the meanings assigned to those terms in M.G.L., Ch. 29, sec. 1.

For the purposes of this section, “tax revenues” shall mean, for any given fiscal year, state tax revenues that count as budgeted revenues in the budgetary funds, as reported by the Commissioner of Revenue on a preliminary basis in July following the end of the fiscal year, subject to any final technical adjustments made prior to August 31. Tax revenues shall include taxes that are transferred to the Commonwealth’s Pension Liability Fund, the Massachusetts Bay Transportation Authority State and Local Contribution Fund, the School Modernization and Reconstruction Trust Fund and the Workforce Training Fund.

- B. ~~Effective October 4, 2015~~ **the first full pay period of July 2018**, employees who meet the eligibility criteria provided in Section 2 of this Article shall receive a ~~3%~~ **two percent (2%)** increase in salary rate. ~~or the annualized amount of one thousand seven hundred dollars to the base wage whichever is greater.~~

- C. ~~Effective July 10, 2016~~ **the first full pay period of July 2019**, employees who meet the eligibility criteria provided in Section 2 of this Article shall receive a ~~3%~~ **two percent (2%)** increase in salary rate. ~~or the annualized amount of one thousand seven hundred dollars to the base wage whichever is greater.~~

- D. The salary charts shall be adjusted to reflect the above adjustments.

Section 12.2

~~In addition to the wage increases provided above, the Employer shall make available the following:~~

- A. ~~In FY 2015 an amount equal to .025% of the total base wage payroll for the bargaining unit as of June 30, 2014 to fund benefits, other than across the board wage increases, as agreed by the Employer and Union.~~

- B. ~~In FY 2016 an amount equal to .025% of the total base wage payroll for the bargaining unit as of June 30, 2014 to fund benefits, other than across the board wage increases, as agreed by the Employer and Union.~~

- C. ~~In FY 2017 an amount equal to .025% of the total base wage payroll for the bargaining unit as of June 30, 2014 to fund benefits, other than across the board wage increases, as agreed by the Employer and Union.~~

~~The Employer and Union shall meet as soon as practicable after ratification of the Agreement to negotiate the application and use of the funds made available under this Section.~~

Section 2

Employees who receive a “Below” rating on their annual EPRS evaluation shall not be eligible to receive the salary increases provided in Section 12.1 of this article, nor any step increases. Employees who receive a “Below” rating will have their performance reviewed ~~on a monthly basis~~ in accordance with article 24A of this Agreement ~~I~~ will become eligible for their salary and step rate increase previously denied effective upon the date of receiving a “Meets” or “Exceeds” rating.

Section 5

Whenever an employee paid in accordance with the salary schedules provided in Appendix A of this Agreement receives a promotion to a higher job group, the employee's new salary rate shall be calculated as follows:

- A. For employees who are below the maximum step within their current job:
 1. Determine the employee’s current salary rate and step within his/her current job group; then
 2. Find the salary rate of the next higher step within the employee’s current job group; and
 3. Multiply the employee’s current salary rate by one and three one-hundredths (1.03); then
 4. Compare the higher of the resultant amounts from b) or c) above to the salary rates for the higher job group into which the employee is being promoted.
 5. The employee’s salary rate shall be the first rate in the higher job group that at least equals the higher of the resultant amounts from d) above.
 6. **For promotions after October 1, 2018, if the application of the above formula results in a salary that is less than the amount the employee would receive had he/she been promoted to the next lower grade, the employee’s salary upon promotion shall be increased to the next higher step in the grade the employee is being promoted into.**
 7. **For promotions after October 1, 2018 an employee who is not at the terminal step in their grade and has been in their current step for at least nine (9) months at the time of a promotion shall be advanced one (1) step in in the new job grade after the promotional factor is applied.**

Employees shall have the option of 6 or 7 above and not both.

- B. For employees who are at the maximum step within their current job:
 - a. 1. Determine the employee’s current salary rate and step within his/her current job group; then

- b. 2. Multiply the employee's current salary rate by one and three hundredths (1.03); then
- e. 3. Compare **the higher of the** resultant amounts from b) above to the salary rates for the higher job group into which the employee is being promoted.
- d. 4. The employee's salary rate shall be the first rate in the higher job group that at least equals **the higher of** the resultant amounts from ~~d.~~ c) above.
- e 5. **For multiple grade promotions after April 15, 2019, if the application of the above formula results in a salary that is less than the amount the employee would receive had he/she been promoted to the next lower grade, the employee's salary upon promotion shall be increased to the next higher step in the grade the employee is being promoted into, provided a higher step exists.**

Section 10. Overpayments

When the Employer determines that an employee has been overpaid, it shall notify the employee and the union and shall recover such overpayment over the same period of time in which the employee was overpaid unless the employer and the employee agree to another arrangement. A repayment schedule requested by the employee shall not be unreasonably denied. As a condition of any repayment agreement an employee will be required to execute a wage withholding agreement that allows the Employer to withhold any unpaid sums from the employee's final paycheck or any amounts due the employee at the time of separation for unused vacation, compensatory or vacation time. The union shall be provided the opportunity to assist the employee with any such agreement.

ARTICLE 13B TUITION REMISSION

Full-time employees shall be eligible for tuition remission as follows: **(For the UMass system, "tuition remission" is defined as the "student tuition credit").**

- A. No changes to this section.
- B. No changes to this section.
- C. No changes to this section.
- D. No changes to this section.
- E. No changes to this section.

ARTICLE 14
SENIORITY, TRANSFERS, PROMOTIONS, REASSIGNMENTS,
FILLING OF VACANCIES, AND NEW POSITIONS

Section 1. A promotion shall mean an advancement to a **position within a** higher salary grade within the jurisdiction of the ~~employee's Appointing Authority~~ **Employer** or an appointment to another title, which is not to a higher salary grade, but where substantially dissimilar requirements prevent a transfer under Section 4.

This Article is applicable to all promotions except those reasonably anticipated to be for less than one year and its application in all cases is restricted to employees who possess the educational, training, and/or experience requirements established by the Chief Human Resources Officer for appointment to the relevant position. This Article shall apply when promoting full-time employees to positions other than positions to be filled by appointment from a civil service eligible list.

Where the Union files a grievance over the non-selection of an employee(s), the Union shall be limited to advancing the grievance of one (1) non-selected employee per vacancy or class action. The Union shall identify such grievant in writing at the time of filing its demand for arbitration. The Arbitrator shall not have the authority to select the successful candidate for the position but shall be limited to an order re-posting the position and reconsidering candidates from the original pool of applicants, except if the Employer re-selects the original successful candidate following an order to repost the position and the arbitrator finds a new violation of Article 14. If a redetermination of the selection process is ordered, it shall be limited to the original pool of applicants.

In the event that a Civil Service examination for a position has been administered but scores have not been announced, the ~~Appointing Authority~~ **Employer** shall initially restrict eligibility for application for promotion to such position to those employees who have taken the examination. In the event that Civil Service has published an eligible list of those who passed a Civil Service examination for a position but has not certified said list, the ~~Appointing Authority~~ **Employer** shall initially restrict eligibility for application for promotion to such position to those who passed said examination.

All vacancies, excluding those reasonably anticipated to be for less than one year, shall be posted but will not limit the Employer from hiring from outside the ~~Department/Agency~~ **Division**. The ~~Department/Agency~~ **Division** may receive applications from persons outside the ~~Department/Agency~~ **Division** and consider such applications in conjunction with applications from employees within the ~~Department/Agency~~ **Division** for any vacancy posted under the provisions of this Article. **Initial consideration may be limited to those applicants who meet the minimum entrance requirements and any preferred qualifications. The Employer may establish a screening procedure to determine who among those who meet the minimum entrance requirements will be interviewed for the position provided it shall be based on objective and job related factors.**

In the event a person is hired from outside the ~~Department/Agency~~ **Division**, such action shall be subject to the grievance procedure through Step III as provided by Article 23A of the Agreement if the Union alleges such employee does not meet the minimum requirements for the vacancy as determined by the Chief Human Resources Officer. Both parties agree to submit the issue of hiring from the outside to a study committee. Such committee will, during the life of this Agreement, address the problems inherent in such hiring and will recommend possible solutions.

Section 2.

- A. For positions in job grades 2 through 10, the ~~Appointing Authority~~ **Employer** will select the employee who is qualified to perform the work with the longest length of service in the work unit containing the vacancy. The ~~Appointing Authority~~ **Employer** will make the selection from the appropriate applicants as set forth in Paragraph C of this section on the basis of ability to do the job and seniority within the appropriate work unit(s).
- B. The following procedure shall apply to promotions made pursuant to this Article for positions in job grades 11 and above which have not been excluded from this procedure under the provisions of Paragraph E of this Section.

The following factors will be used by the ~~Appointing Authority~~ **Employer** in determining his/her selection for a given vacancy:

- 1. Ability to do the job.
 - a. Licenses or Registration - in positions where licenses or registration is required in the job specification or by a state-approving agency, applicant must possess adequate license or certificate of adequate registration on the date application is made.
- 2. Work history
- 3. Experience in related work
- 4. Education and training directly related to the duties of the vacant position.

In the event that two or more applicants are considered approximately equal in accordance with the foregoing factors, then length of service within the **Division** ~~appropriate work unit(s)~~ shall be the deciding factor.

- C. ~~For promotions made pursuant to this Article, the Appointing Authority shall consider applicants and post promotional opportunities in the following sequence:~~
 - 1. ~~Within the work unit~~

~~2. Within all other work units under the jurisdiction of the Appointing Authority.~~

~~The work unit and/or work units shall be designated by the Appointing Authority. No later than sixty (60) days following execution of this Agreement, each Department/Agency shall provide to the Union a current listing of Appointing Authorities in its jurisdiction, and the designation of work units within the jurisdiction of each Appointing Authority. Once designated, the work unit and/or work units shall not be arbitrarily changed.~~

- DC. Unsuccessful applicants for posted vacancies shall ~~receive a Notice of Non-Selection form (Appendix E)~~ **be provided** stating the reason(s) for non-selection in accordance with the criteria contained in Sections 2A and 2B of this Article. Such notice shall be given at the time the vacancy is filled. Employees who receive such notice shall, at their option, be provided with the opportunity to discuss their non-selection with the appropriate hiring authority, or Human Resources Director. The fact that said discussion took place, and the statements made during that discussion, shall not be used in any way in connection with any grievance regarding the employee's non-selection, but the underlying issues of the non-selection grievance may be presented during the grievance process.
- E. The titles specified in Appendix D of this Agreement are excluded from the promotion procedure set forth in this Article. The Employer shall provide to the Union as soon as compiled a list of the titles in those departments/agencies not listed in Appendix D to be excluded from the provisions of this Article.

The Union may negotiate with the Employer over the job titles added to Appendix D that it believes should be subject to the provisions of this Article. If the parties are unable to agree as to whether a title(s) should be covered by this Article, the Union may submit its request for inclusion of specified title(s) directly to arbitration in accordance with Step ~~IV~~ **III** of the grievance procedure. All titles in the Employer's list shall be excluded from the promotion procedure under this Article until such time as an arbitrator determines that such title(s) should be covered by the provisions of this Article. Any titles, which are not on a list of excluded titles, shall be covered by the provisions of this Article.

In the event that new titles are created by the Chief Human Resources Officer, which the Employer considers necessary to be excluded from the provisions of this Article, it shall so notify the Union. The Union may negotiate with the Employer over whether such new titles shall be subject to the provisions of this Article.

If the parties are unable to agree as to whether a new title(s) should be covered by this Article, the Union may submit its request for inclusion of specified title(s) to arbitration in accordance with the grievance procedure provided for in this Agreement. All new titles on the Employer's list shall be excluded from the promotion procedure under this Article until such time as an arbitrator determines

that such titles should be covered by the provisions of this Article. Any titles, which are not on a list of excluded titles, shall be covered by the provisions of this Article.

In deciding whether or not additional titles should be added to the list of titles in Appendix D, the arbitrator shall base his decision on whether or not the nature and character of the new titles is consistent with the nature and character of the titles already listed in Appendix D and on other appropriate factors.

Section 3.

A. Positions to be filled under the provisions of this Article shall be posted throughout the appropriate work unit(s) for ten (10) calendar days. **Postings may be made by electronic means in any work unit(s) where employees have access to email.**

The ~~Appointing Authority~~ **Employer** may reasonably determine the positions in which employees must be employed and/or the requisite experience the employees must possess in order to be eligible to apply for a given promotion. The job posting shall include the job title, the current specific duties and qualifications in accordance with official job specifications, license and registration, salary grade, area of position, schedule of shift hours and days off.

B. An employee promoted in accordance with this Article whose performance is unsatisfactory may be returned to his/her previous job title under the jurisdiction of the ~~Appointing Authority~~ **Employer**. If an employee's performance is determined to be unsatisfactory at any time during the **six month** ~~following~~ probationary periods, such determination shall not be subject to the grievance procedure:

Job grades 2 through 10	three months
Job grades 11 and above	six months

C. If the employee so requests within two (2) weeks prior to the mid-point of the above designated probationary periods, his/her supervisor shall meet with the employee and a union representative to discuss the employee's performance in the position.

D. At any time prior to the mid-point of the above-designated probationary periods, an employee may request to return to his/her former job title under the jurisdiction of the ~~Appointing Authority~~ **Employer** and such request will be granted.

E. In the event an employee is returned to his/her former job title, the employee displaced by such return shall be returned to his/her former job title. Where more than one position in the back filled job title was filled pursuant to this Article, the employee last selected shall be the one displaced.

F. If an employee is returned to his/her former job title pursuant to the provisions of paragraph B of this Section, said employee will not be eligible for promotion pursuant to this Article for a period of nine (9) months.

- G. Notwithstanding the above paragraphs, employees may return to their former job titles under these provisions provided there is a position available under the jurisdiction of the ~~Appointing Authority~~ **Employer**. In the event a position is not available under the jurisdiction of the ~~Appointing Authority~~ **Employer** said employee shall be covered by the layoff and recall Article of the Agreement.
- H. All promotions made pursuant to this Article shall be temporary or provisional appointments at least until the completion of the probationary period. All vacancies resulting from an employee's promotion pursuant to this Article shall be filled temporarily or provisionally at least until the promoted employee has completed his/her probationary period.
- I. Notwithstanding the above paragraphs, employees may, upon request, be granted a demotion under the provisions of this Article provided there is a position available ~~under the jurisdiction of the Appointing Authority~~ **within the Division**.
- J. No provision of the salary plan shall be used to discourage internal promotions.

Section 4. Transfers and Reassignments

- A. Transfers
 - 1. For the purpose of this Section a transfer shall be defined as:
 - a. a change from one work unit or work facility to another work unit or work facility in the same ~~Department/Agency~~ **Division** without any change in classification, or
 - b. a substantial change in duties without a change of work unit or facility as long as the requirements for appointment are not substantially different.
 - 2.
 - a. An employee seeking a transfer to a different work unit shall submit a written transfer request to ~~his/her Appointing Authority~~ **Human Resources Department** or designee prior to posting.
 - ~~b. An employee seeking a transfer to a different work facility under the jurisdiction of another Appointing Authority shall submit a written transfer request to that Appointing Authority or designee.~~
 - 3.
 - a. Selection between employees seeking a transfer other than a substantial change in duties shall be made on the basis of seniority from among those employees considered by the ~~Appointing Authority~~ **Employer** to be able to adequately perform the duties of the position.

- b. An employee seeking a transfer involving a substantial change in duties shall submit a written transfer request to **the Human Resources Department** ~~his/her Appointing Authority or designee~~ and selection shall be made on the basis of seniority from among those employees considered by the ~~Appointing Authority~~ **Employer** to be qualified to perform the duties of the position.
4. Requests for transfers shall be kept on file and shall be considered and, where appropriate, implemented by the **Employer** ~~Appointing Authority or designee~~ prior to the filling of any vacancy.
5. ~~An employee who moves from one Appointing Authority within a Department/Agency to another facility under a different Appointing Authority within the same Department/Agency without a change in classification or job title and without an interruption of continuous service shall retain all seniority for the purpose of this Agreement and shall not otherwise be subject to a probationary period.~~

B. Reassignment

1. For the purpose of this section a reassignment shall be defined as a change involving different days off, shift or work location, but without a substantial change in duties and without any change in work unit or classification.
2. An employee seeking a reassignment shall submit a written request to the **Human Resources Department**. ~~his/her Appointing Authority or designee~~.
3. Selection between employees seeking a reassignment shall be made on the basis of seniority **among those considered by the Employer to be able to adequately perform the duties of the position.**

C. Procedures

1. Written request for transfer/reassignment shall remain active and on file for a period of twelve (12) consecutive months from the date of submission by the employee seeking the transfer/reassignment. Transfer/reassignment requests not approved within this period must be resubmitted by the employee in order to remain active for consideration.
2. Nothing in this Section shall be interpreted to preclude an employee from requesting and/or **the Employer** ~~an Appointing Authority~~ from granting any transfer/reassignment not referred to in this Section.
3. Except in extraordinary situations, new employees shall have no transfer rights until the completion of their probationary period.

4. Employees who are granted a voluntary transfer shall work in the position into which they have transferred for twelve (12) months before another voluntary transfer request may be granted.
5. Notwithstanding the above sentence, the Employer may, at its sole discretion, grant an employee another voluntary transfer within the aforementioned twelve (12) month period.

D. Transfers and Reassignments by the Employer

As a general rule, MassDOT will not involuntarily relocate any of its employees to another work location that is more than thirty miles from his/her current work location. For purposes of this provision, work location shall mean the location at which the employee customarily reports to work. Should management decide that operational needs require the involuntary relocation of an employee more than thirty miles from his/her current work location MassDOT will do so from among the pool of qualified employees within the classification needed to relocate in the reverse order of seniority., provided that any employee so relocated shall not be relocated beyond an adjacent district, and further provided that any such employee so relocated will be returned to his former work location as soon as operational needs permit. **For purposes of this section, District 4 and District 5 shall be considered adjacent districts, except that no employee shall be involuntarily transferred more than 45 miles from their current work location.** ~~This Article shall not apply to employees assigned as resident engineers or inspectors; the assignment and reassignment of such employees shall be subject to the applicable collective bargaining agreement and to established practice thereunder.~~

In the event it becomes necessary for the Employer to involuntarily transfer or reassign an employee, the Employer will provide the employee at least ten (10) working days prior written notice, except in cases of emergencies involving the protection of the property of the Commonwealth or **MassDOT. involving the health and safety of those persons whose care and/or custody have been entrusted to the Commonwealth.** In emergency situations management shall, at the Union's request, provide the reason(s) for the transfer/reassignment. However, a declaration of said emergency shall not be used for the purpose of avoiding the payment of overtime. The Employer shall use the joint criteria of ability to do the job and inverse seniority in determining which of the potentially affected employees shall be transferred/reassigned.

E. Implementation

1. For the purpose of this Section, seniority shall be defined as length of service in the ~~Department/Agency~~ **Division**. If seniority in the ~~Department/Agency~~ **Division** is equal, then length of state service will be used to determine the more senior employee.

~~2. The Employer and the Union at the Agency level shall develop simplified forms and procedures to implement the transfer and reassignment language contained in this Section and shall review its functioning periodically.~~

Section 5. All employees covered by this Agreement whose employment in a particular area ~~or facility or Department/Agency~~ is being phased out and who are being transferred or reassigned to another facility, ~~or area or Department/Agency~~ covered by the provisions of this Agreement or any amendments thereto, shall bring to that area ~~or facility, or Department/Agency~~ all seniority rights they hold at the time of said transfer or reassignment.

Section 6. ~~The Employer shall appoint to a permanent non-Civil Service vacancy the temporary employee with the most seniority in the job title within the work unit.~~

**ARTICLE 16
OUT OF TITLE WORK**

Section 2. Work in a Higher Classification

Any employee who is assigned by his/her ~~Appointing Authority~~ **Department Head or designee** to a vacant position in a higher grade for a period of more than thirty (30) **consecutive** days shall receive the salary rate for the higher position from the first day of the appointment, **provided such assignment has the prior approval in writing of the Department Head. Written approval must be provided on the Form that is attached as Appendix B.**

**ARTICLE 18
LAYOFF - RECALL PROCEDURE**

Section 1. Applicability

The provisions of this Article shall apply only to non-civil service employees and shall not apply to the separation from a position by reason of the certification of a civil service list by the Personnel Administrator.

Section 2. Definitions

As used in this Article seniority shall mean service rendered in the Division.

There shall be a single integrated seniority roster for each bargaining unit.

Division seniority shall be the length of an employee's total service within the Division. Division seniority for employees transferred to MassDOT pursuant to Chapter 25 of the Acts of 2009 shall include total service with the Department/Agency/Authority where they were employed as of October 31, 2009.

For purposes of layoff and recall seniority shall mean service rendered within a Division. The Highway Division, Registry Division, Aeronautics Division, and the Office of Planning and Other Shared Services ("Shared Services"), shall be the "Divisions" for purposes of this Article.

MassDOT seniority shall be determined by the length of an employee's total service with MassDOT as determined by date of hire. Seniority for employees transferred to MassDOT pursuant to Chapter 25 of the Acts of 2009 shall include total service with the Department /Agency/Authority where the employee was employed on October 31, 2009.

Bargaining Unit seniority shall be the length of an employee's total service in a position within the bargaining unit. Bargaining Unit seniority for employees transferred to MassDOT pursuant to Chapter 25 of the Acts of 2009 shall include total service in a position within the

bargaining unit with the Department/Agency/Authority where they were employed as of October 31, 2009.

An employee whose position was transferred from the former Massachusetts Turnpike Authority, the Massachusetts Port Authority or the former MassHighway to MassDOT's Shared Services Division shall have seniority within the Shared Services Division and the Highway Division for purposes of layoff.

An employee whose position was transferred from the former Registry of Motor Vehicles to MassDOT's Shared Services Division shall have seniority within the Shared Services Division and Registry Division for purposes of layoff.

Employees transferred from the former Registry of Motor Vehicles, Merit Rating Board or former MassHighway to the Administrative Services Division of the former Executive Office of Transportation shall have seniority within the Division to which their original agency transferred and/or the Shared Services Division.

Where employees have equal seniority within a Division, MassDOT seniority and then Bargaining Unit seniority shall be used in order of priority.

In computing seniority as defined in this Article any break in service or any time off the payroll in excess of thirty (30) days shall be excluded from the total seniority except approved FMLA leave, military leave and any paid leave.

Section 3. Layoff Notice to Union/Notice to Employee

In the event that Management becomes aware of an impending reduction in workforce, it will make every effort to notify the Union at least ten (10) calendar days prior to the layoff. Management will notify the affected employees in writing not less than five (5) working days in advance of the layoff date. The notice to employees shall contain a restatement of Section 4 below. Whenever practicable, affected employees will have four (4) working days to exercise their bumping rights, but in no event less than two (2) working days to exercise said rights. Management will provide the Union with updated seniority lists, which may impact specific titles due to the layoff, as soon as possible but not later than ten (10) days prior to the layoff.

Section 4. Displacement-Bumping Procedure

- A. In the event there is a reduction in work force within the ~~Appointing Authority, Division~~ which will result in bumping, and layoff, the ~~Human Resources Division (HRD)~~ **Employer** will ~~consider~~ **encourage** the ~~department/agency~~ to develop a Voluntary Layoff Incentive program for affected employees.
- B. Employees whose position(s) are being eliminated shall have the right to exercise their bumping rights by accepting a transfer to a position in the same title for which the employee is determined qualified by the ~~Appointing Authority~~ **Employer**. Employees choosing to transfer in accordance with this provision may transfer:

1. into the position of the least senior employee in their facility; or
2. into the position of the least senior employee in their region/area if such least senior employee is less senior than the least senior employee in the facility; or
3. into the position of the least senior employee in any region/area if such employee is less senior than the least senior employee in the region/area in which the reduction occurred.

- C. 1. Employees whose positions are being eliminated may elect to bump to a lower title ~~in his/her bumping corridor~~ in the bargaining unit for which the employee is qualified in the “facility” in which the employee presently works to the position of the least senior employee in the title, provided that there are person(s) with less seniority who are in the lower title.

If there is no one with less seniority in the lower title ~~in his/her bumping corridor~~ in the “facility”, then the employee whose position is being eliminated may elect to bump to a lower title ~~in his/her bumping corridor~~ in the bargaining unit for which the employee is qualified in the “region/area” in which the employee presently works to the position of the least senior employee in title, provided there are person(s) with less seniority who are in the lower title(s).

~~An employee may elect to bump to a position in a different bumping corridor only if he/she has no viable bump option to any position title within two job grades next below the employee(s) current job grade. An employee so choosing to bump to another bumping corridor may elect to bump:~~

- a. ~~to a title in another bumping corridor that is at least two (2) job grades lower than the position from which the employee is to be laid off, provided that the employee is qualified for the job as determined by the Appointing Authority, and that there are person(s) with less seniority in the lower title, or~~
- b. ~~to a vacant position in any title for which the employee is qualified, as determined by the Appointing Authority, provided that he/she is the most senior of the bumping employees vying for said title.~~

Notwithstanding the above, an employee may bump to a lower position title ~~in another bumping corridor~~ regardless of job grade if he/she has previously occupied said position, provided that there is a person(s) with less seniority in the title and provided that the employee satisfactorily performed the duties of the position during his/her tenure in the position. It is incumbent upon the employee to notify the ~~Appointing Authority~~ **Employer** that he/she believes that they are entitled to consideration under this paragraph,

and such notice must be made during the bump selection time period specified above. In such a circumstance, the bump shall be to the position of the least senior employee in the affected job title.

~~In addition, an employee may bump to a lower position title in another bumping corridor if the employee can demonstrate that he/she is clearly more qualified and more senior than the employee currently performing the duties of the position. The responsibility for determining if such an opportunity exists, and for making such an assertion, is solely that of the employee, and such assertion must be made during the bump selection time period specified above. The criteria the Appointing Authority shall apply in making the determination of superior qualifications shall be the criteria applied for promotions in Article 14, Section 2 B of this Agreement.~~

- D. For the purpose of this Article, the area/region/facility shall be defined by the ~~department/agency~~ **Division Head**. For the purpose of this Article all vacant, fillable positions shall be considered the least senior positions for displacement of employees.
- E. In the event that the position of the least senior employee is a part-time position, the full-time employee whose position has to be eliminated, as referenced in Section B, may elect to:
 - 1. Accept the part-time hours; or
 - 2. Accept transfer to the position of the least senior full-time employee; or
 - 3. Be laid off.
- F. The least senior full-time employee who is displaced as a result of the operation of Section E.2 above may: 1) Accept transfer to the position of the least senior part-time employee in the same title provided the part-time employee is less senior; **or be** 2) be laid off.; or 3) exercise bumping rights.
- G. A part-time employee whose position is eliminated may accept transfer to the position of the least senior employee in the same area/region, or to any area/region statewide. The part-time employee unwilling or unable to accept the hours of the position of the least senior employee shall be laid-off.
- H. In all instances of displacements as specified in sub-section E, F and G above, the employee must be determined qualified by the ~~Appointing Authority~~ **Employer** to perform the duties of the displaced employee.
- I. An employee deemed not qualified by the ~~Appointing Authority~~ **Employer** to transfer in accordance with the provisions of this sub-section, shall have the right

to appeal said determination to the Alternative Dispute Resolution (ADR) process established in Article 23A of this Agreement.

- J. It is agreed that the provisions of this Article do not preclude an employee from requesting and the ~~Appointing Authority~~ **Employer** from granting a voluntary layoff regardless of the employee's seniority in the Department. It is understood that this option of voluntary layoff shall include, but is not limited to, recall rights and payment for all accrued vacation time.

~~K. Bumping corridors for titles covered under this Agreement are set forth in Appendix H.~~

Section 5. Transfers to Vacant Positions

- A. Within the Department/Agency: the employee who is to be laid off shall at the option of the ~~Appointing Authority~~ **Employer**, have the opportunity to transfer laterally to a vacant fillable position, in a title other than their own in the same job grade, within the jurisdiction of his/her present ~~Appointing Authority~~ **Employer**, for which he/she is determined to be qualified by the ~~Appointing Authority~~ **Employer**.
- B. Between Agencies Divisions – the employee who is to be laid off may file a request for transfer to any **Division within MassDOT** ~~agency in state service~~. Upon approval of that ~~agency~~ **Division Administrator**, such employee may be appointed to any vacancy in the bargaining unit in the same grade and title or any similar title for which he/she might meet the necessary qualifications in the same or lower salary range as the position from which he/she was laid-off. ~~MassDOT S~~seniority shall be the determining factor in the event one or more such employees are seeking the same position in another **Division** ~~state agency~~. **It is understood that the term Division does not include the Massachusetts Bay Transit Authority. This provision shall not be subject to the grievance arbitration provisions of this Agreement.**

Section 6. Recall

- A. The Department/Agency shall maintain an area/regional recall roster from which laid off employees will be recalled, to the title from which they were laid off or bumped, in accordance with their seniority and in accordance with their qualifications to perform the work.
- B. ~~If the employee's position is abolished as a result of the transfer of the functions to another Department/Agency, such employee may elect to have his/her name placed on the recall roster or to be transferred, subject to the approval of the Appointing Authority to a similar position in such Department/Agency without loss of seniority, or other rights and in accordance with paragraph "A" above.~~

C. ~~An employee laid off during the July 2009 — June 2012 term of this Agreement shall remain on the recall roster for three (3) years, except an employee who is offered recall to a position of the same title, in the same job grade, as the position title from which he/she was laid off, and who refuses such offer shall be removed from the recall list and his/her recall rights shall be forfeited at that time.~~

B. Effective July 1, 2012, an employee laid-off shall remain on the recall list for two (2) years, except an employee who is offered recall to a position in the same job grade as the position from which he/she was laid off and who refuses such offer shall be removed from the recall list and his/her recall rights shall terminate at that time.

The Department shall deliver written forms to persons on the recall roster asking each to indicate to which facility, area or region they would be willing to accept re-employment. As vacancies occur in particular facilities, areas or regions the department/agency shall, in accordance with sub-section A of this Section, offer the position(s) to the employee on the recall roster who is determined qualified by the ~~Appointing Authority~~ **Employer** to perform the work and has indicated in writing that he/she would accept employment at that location, or who is on a statewide recall roster.

Failure to provide a geographical preference, as referenced above, within seven (7) calendar days of receipt of the geographical preference form, will result in the employee's name being placed on a statewide recall roster.

D. The Union acknowledges that the Department/Agency will not be liable for failure in the administration of the recall roster due to employee error or omission.

E. Notwithstanding the above, a laid off employee who fails to respond in writing to a notice of recall within seven (7) calendar days of the receipt of such offer or who upon acceptance of the recall offer fails to report to work on the appointed date, shall forfeit any further recall rights. Employees who are laid off shall be informed that it is their responsibility to notify the Employer of any change of address.

F. Notices of recall sent by the ~~Appointing Authority~~ **Employer** to a laid off employee and the employee's notice of acceptance, or rejection of said recall shall be sent by certified mail, return receipt requested.

Section 7.

A. The parties may, by agreement in writing, alter the implementation of this Article to meet the varying needs of the particular Departments/Agencies.

B. Employees who are separated from employment as the result of the implementation of this Article and who are subsequently recalled to employment, shall for purposes

of determining their salary upon recall under Article 12, be credited with their prior service and shall not upon recall be considered to be “hired, reinstated or re-employed” notwithstanding the provisions of Article 12 to the contrary.

ARTICLE 22 ARBITRATION OF DISCIPLINARY ACTION

Section 1.

No employee who has been employed in the bargaining unit described in Article 1 of this Agreement for six (6) consecutive months or more shall be discharged, suspended, or demoted for disciplinary reasons without just cause. **The Employer may extend the probationary period for an additional three (3) months on a one-time basis by providing a ten (10) day notice to the employee in advance of the expiration of the probationary period.** An employee who severs his/her employment with an Agency must serve an additional probationary period upon re-employment whether in the same or a different job title or the same or different agency. ~~The Employer will not discharge or suspend an employee without just cause.~~ Within twenty-four (24) hours of such suspension or discharge, exclusive of Saturdays, Sundays, or holidays, written notice of the discharge or suspension and the reason therefor shall be given or mailed to the employee and the local Union office, and a copy placed in the employee's personnel file. The Employer retains the right to demote an employee for just cause.

Section 2. Progressive Discipline/Warning, Suspension, Discharge

For violations of terms and/or conditions of the applicable collective bargaining agreement, violation of the Employer's rules or regulations and as a condition of this Agreement, the following procedure and penalties shall be in effect:

(a) **First Violation - Supervisors Memorandum of Verbal Counseling (SMVC)** - Unless otherwise provided in this Agreement, for the first violation the employee shall be given an SMVC, a written copy of which shall be furnished to the employee, Union office, and the Director of Labor Relations. The Employer will exercise its best efforts to implement progressive discipline no later than forty-five (45) days following the violation. Except as otherwise provided in this Agreement, the SMVC shall be a condition precedent to further disciplinary action for subsequent violations. In accordance with this Agreement, if no further violations occur within a period of eight (8) months from the first violation, the SMVC shall no longer remain in effect at that point.

(b) **Second Violation - Formal Letter of Warning (FLW)** - Unless otherwise provided in this Agreement, for the second violation of a similar offense within the eight (8) month period referred to in (a) above, the employee shall be given a FLW, a written copy of which shall be furnished to the employee, Union office, the Director of Labor Relations, and a copy placed in the employee's personnel file. The Employer will exercise its best efforts to implement progressive discipline no later than forty-five (45) days following the violation. Except as otherwise provided in this Agreement, the FLW shall be a condition precedent to further disciplinary action for subsequent similar violations. In accordance with this Agreement, if no further violations occur within a period of one (1) year from the second violation, the FLW shall

no longer remain in the employee's personnel file.

(c) **Third Violation - Suspension** - Unless otherwise provided in this Agreement, for a subsequent violation of a similar offense, which violation occurs within the one (1) year period referred to in (b) above, the employee shall be suspended without pay. The Employer will exercise its best efforts to implement progressive discipline no later than forty-five (45) days following the violation. Except as otherwise provided in this Agreement, the suspension shall be a condition precedent to further disciplinary action for subsequent similar violations. In accordance with this Agreement, if no further violations occur within a period of one (1) year from the third violation, the suspension shall no longer remain in the employee's personnel file. If no similar violations occur within one (1) year from the date of the incident which led to the suspension, the suspension may not be used to mandate discharge for a subsequent similar Section 2 violation. A Section 2 suspension will preclude consideration for promotion for a period of one (1) year from the date of the incident that led to the suspension.

(d) **Fourth Violation - Discharge** - Unless otherwise provided in this Agreement, for a subsequent violation of a similar offense, which violation occurs within the one (1) year period referenced in (c) above, the employee shall be discharged and shall have no further recourse to the beneficial rights created by this Agreement, except those provided by Article , Grievance and Arbitration. The Employer will exercise its best efforts to implement progressive discipline no later than forty-five (45) days following the violation.

Section 3. Immediate Suspension Pending Discharge

The following violations shall be subject to immediate suspension, pending discharge, with loss of pay for a period of not less than five (5) working days. The penalty, if any, including discharge, shall be established by the Employer after a hearing held within five (5) working days of notice of suspension, unless otherwise mutually agreed by the parties. Any grievance of the Employer's final decision will be considered timely if filed in accordance with the provisions of Article 23 within five (5) working days of said final decision. In order to discipline for the following violations, the employee must have been on the Employer's premises at the time of the violation(s), with the exception of the violations enumerated in (b), (c), (d), (h), (j) and (m) below.

- (a) Punching the timecard of another employee, allowing someone else to punch or falsify a timecard/record, or falsifying a timecard/record in any way;
- (b) Defacing, damaging, or destroying property of the Employer or of another employee;
- (c) Assisting any person to gain unauthorized entrance to, or exit from, any portion of the Employer's premises;
- (d) Engaging in any criminal, dishonest, immoral, or indecent act, including but not limited to theft, pilferage, or unauthorized removal or use of the property or assets of the Employer, it's employees or patrons, and engaging in any way in bookmaking or in organized gambling;
- (e) Fighting or causing bodily injury to another person, or intimidating, threatening, or

using discriminatory or profane language (including gestures) against or directed toward another person; or jeopardizing the life or safety of Authority employees or patrons;

(f) Insubordination;

(g) Drunkenness or under the influence of intoxicating substances on the job, having in the workplace, consuming during work hours, including breaks or meal periods, or selling or distributing any intoxicating liquors or other drugs/controlled substances in violation of the law;

(h) Operating or using any piece of equipment and/or property without being authorized to do so;

(i) Soliciting and/or accepting gifts from suppliers/customers of the Employer or providing services or referrals to suppliers/customers for financial or material gain;

(j) Indictment, arrest, conviction, or plea of nolo contendere for an offense deemed by the Employer to adversely affect the financial interests, safety, and/or reputation of MassDOT or its employees;

(k) Instituting or participating in a work stoppage or cessation of work; and

(l) Loss of a money bag; and

(m) Material misrepresentation or omission of facts in obtaining employment or falsification of employment or medical records.

Section 4.

A Section 3 suspension will preclude consideration for promotion for a period of one (1) year from the date of the incident that led to the suspension.

Section 5.

In the event an employee is summoned to meet with a supervisor for the purpose of discussing disciplinary action, said employee shall be entitled to be accompanied by the steward or alternate steward if said employee requests such representation and the steward or alternate steward is available during the shift; if the steward or alternate steward is unavailable, then, upon request by the employee, the employee may request that a Union member be present.

Section 6.

A grievance alleging a violation of Section 1 of this Article shall be submitted in writing by the aggrieved employee/Union to the ~~Director of the Office of Labor Relations and Employment Law~~ **Employer's Designee** within ten (10) working days of the date such action was taken. The grievance shall be treated as a Step II grievance and Article 23-Grievance Procedure, shall apply.

Section 7. In the event that an employee is given a departmental hearing prior to the imposition of discipline or discharge, and the employee/Union wishes to appeal said disciplinary action, the employee/Union shall present a grievance in writing to the ~~director of the Office of Labor Relations and Employment Law~~ **Employer's Designee** within ten (10) working days from the

date such action was taken. In such instances the provisions of "Article 23A - Grievance Procedure" shall apply.

Section 8.

Any employee wishing to appeal a disciplinary action taken pursuant to Article 23 of this Agreement, must sign and submit to the Employer, on a form prepared by the Employer, a confirmation that the employee has not appealed said disciplinary action to the Civil Service Commission.

In the event that the employee has already filed such appeal, the employee shall have the option of withdrawing the appeal to the outside forum in favor of preserving the grievance within ten (10) calendar days of being notified of the conflict by the Employer.

In the event that the employee does pursue a grievance under these provisions, and subsequently files an appeal of the disciplinary action to the Civil Service Commission the grievance shall be considered withdrawn. However, the employee may preserve the grievance by withdrawing the appeal to the outside forum within ten (10) calendar days of notification of conflict from the Employer.

If an employee files charge of discrimination covered by Article 6 with a state or federal agency or state or federal court arising from termination of employment, the Employer and the Union agree that the union waives its right to arbitrate any grievance based on a claim of a violation of Article 6 relating to the same claim of discrimination. If the employee withdraws his or her charge with prejudice, other than in the case of a mutually agreeable settlement, the grievance shall be arbitrable if otherwise timely and appropriate. **This waiver provision shall not apply to claims filed by employees pursuant to G.L. c. 150E or claims arising under the Fair Labor Standards Act.**

~~The provisions of this Section shall not affect complaints filed by employees at the Massachusetts Labor Relations Commission.~~ Nothing in this Section shall relieve the employee or the Union of the grievance filing timeframes stipulated in either Article 23 or Article 23A of this Agreement.

Section 9.

- A. Should the Union submit a grievance alleging a violation of Section 1 to arbitration pursuant to Article 23A the arbitration shall be conducted on an expedited basis.
- B. An employee and/or Union shall not have the right to grieve, pursuant to Articles 23 or 23A, disciplinary action taken as a result of the employee engaging in a strike, work stoppage, slowdown or withholding of services unless the Union alleges that the employee did not engage in such conduct.

**ARTICLE 23A
GRIEVANCE PROCEDURE**

Section 1.

The term “grievance” shall mean any dispute concerning the application or interpretation of the terms of this Collective Bargaining Agreement.

Section 2.

The grievance procedure shall be as follows:

Step I An employee and/or the Union shall submit a grievance in writing, on the grievance form prepared by the Employer (Appendix C) to the person designated by the Employer for such purpose not later than twenty-one (21) calendar days after the date on which the alleged act or omission giving rise to the grievance occurred or after the date on which there was a reasonable basis for knowledge of the occurrence. Such grievance shall identify the Article(s) believed to have been violated, state how and when the Article(s) was violated and state the remedy sought. The person so designated by the **Employer** ~~agency head~~ shall reply in writing by the end of seven (7) calendar days following the date of submission, or if a meeting is held to review the grievance by the end of twenty-one (21) calendar days following the date of the submission. **A meeting will be held upon request by either party or the matter will be waived to step II.**

Step II In the event the employee or the Union wishes to appeal an unsatisfactory decision at Step I, the appeal shall be presented in writing, on the grievance form prepared by the Employer to the Director of the Office of Employee Relations and Employment Law within ten (10) calendar days following the receipt of the Step I decision. Such grievance shall identify the Article(s) believed to have been violated, state how and when the Article(s) was violated and state the remedy sought. The **Employer** ~~agency head or his/her designee~~ shall meet with the ~~employee and/or~~ the Union for review of the grievance **upon request** and shall issue a written decision to the employee and/or the Union within fourteen (14) calendar days following the day the grievance is filed **or Step II conference is held whichever is later.**

Disciplinary grievances filed at Step II of the grievance procedure, must also contain the "Waiver of Right to Appeal Disciplinary Action" form (as outlined in Article 22). Grievances not containing the signed waiver by the date of the scheduled conference or the rendering of a decision shall be considered denied.

Step III Grievances unresolved at Step II may be brought to arbitration solely by the Union by filing a completed Request for Arbitration form with the **Employer's Designee, Director of Labor Relations and Employment Law**. Such form must be filed within thirty (30) calendar days of the receipt of an unsatisfactory Step

II response. Grievances that are not filed for arbitration within the thirty (30) as provided above shall be considered waived.

Section 3. – No change.

Section 4. – No change.

Section 5.

The parties will attempt to agree on an Arbitrator on a case-by-case basis. Failing such agreement within thirty (30) days of the **Employer Designee's** ~~Office of Labor Relations and Employment Law's~~ receipt of the Request for Arbitration, if the Office of Labor Relations and Employment Law has not proposed to the Union a list of arbitrators acceptable to the Union ~~Office of Labor Relations and Employment Law~~ or if there has been no agreement on an arbitrator, the Employer or the Union may file said Request for Arbitration with the American Arbitration Association under its Voluntary Labor Arbitration Rules.

Section 6. – No change.

Section 7.- No change.

Section 8. - No change

Section 9.- No change.

Section 10- No change.

Section 23.11- No change

ARTICLE 24A PERFORMANCE EVALUATION

Section 1. — ~~In accordance with the provisions of Chapter 767 of the Acts of 1981, there shall be established an Employee Performance Review System (EPRS) for all employees covered by this Agreement.~~

Section 2. — ~~Said system shall permit variations in format between various departments and agencies. There shall be no variation in format within the same Department/Agency for the same job titles. Any format must meet the following criteria (subject to formal promulgation under M.G.L. c. 31, s. 4 and 6A):~~

- A. — ~~All employee evaluations shall be in writing and shall be included in the employee's official personnel file. The Union shall be notified should the employee lack English proficiency to understand the evaluation and its process. All EPRS evaluations shall be based upon a Meets expectation, Exceeds expectations, or Below expectations standard.~~
- B. — ~~Evaluations shall be completed by the employee's immediate state supervisor and be approved by a state supervisor of a higher grade designated by the Appointing Authority (except in cases of potential conflict of interest or other legitimate reasons).~~
- C. — ~~A Final Formal EPRS evaluation shall be completed once per year for each member of the Bargaining Unit. Probationary employees shall be evaluated by the mid-point of their probationary period. However, the standard EPRS program shall commence no later than the first July 1st of their employment.~~
- D. — ~~Prior to each evaluation period the supervisor shall meet with the employee and shall inform the employee of the general performance dimensions and procedures to be utilized in evaluating the employee's performance.~~
- E. — ~~The performance dimensions shall be objective and job-related.~~
- F. — ~~At least once during the evaluation period, at or near its mid point, the supervisor shall meet with the employee to review the employee's progress. The employee shall have two (2) workdays to review the evaluation prior to signing it. A remedial development plan shall be formulated jointly if the mid-term review results in a rating of "Below".~~
- G. — ~~At or near the end of the evaluation period, the supervisor shall meet with the employee and inform the employee of the results of the evaluation. The employee shall sign the evaluation and indicate whether he/she agrees or disagrees with the content thereof. The employee shall have two (2) workdays to review the evaluation prior to signing.~~

~~H. — Following the employee's review and signature, the form shall be submitted to the higher level supervisor for final determination of ratings. The employee shall be given a copy of the completed form and shall have the right to file a written rebuttal, which shall be affixed, to the form. The employee shall have two (2) workdays to review the evaluation prior to signing it.~~

~~I. — Any employee who has received a rating of "Below" will have his/her evaluation reviewed monthly by the appointing authority or his/her designee, who shall review all the circumstances of the rating. The Appointing Authority or his/her designee may redetermine the rating after reviewing the circumstances of the initial evaluation. If the appointing authority or his/her designee redetermines the rating the employee will receive the increase retroactive to the date of original step increase due, or Article 12 increase, whichever is appropriate. If the appointing authority or his/her designee does not redetermine the rating the employee may file, through the Alliance a request within fourteen (14) days with the Human Resources Division, a request for a review of the appointing authority's or his/ her designee's determination by a Tripartite panel consisting of one person designated by the NAGE, one person designated by the Chief Human Resources Officer and one person designated by the Chairperson of the Board of Conciliation and Arbitration who shall be assigned on a rotating basis. The standard of review to be applied by the panel shall be solely limited to whether or not the final performance rating of "Below" was justified. The decision of the tripartite shall be final and binding and any employee having~~

~~J. — "Below" rating overturned shall be made whole in as prompt a manner as possible. Any costs associated with this process will be borne equally by the parties.~~

~~**Section 3.** — There shall be established within each agency a Labor/Management Committee, consisting of not more than four (4) representatives of each party, which shall meet at reasonable times to discuss any problems or issues surrounding the employee performance review system.~~

~~**Section 4.** — Any employee who, as a result of an evaluation pursuant to this Agreement, receives an overall rating of "Below" shall have the right to appeal such rating pursuant to Supplemental Agreement D of this Agreement.~~

~~**Section 5.** — Nothing in this Agreement shall be construed as limiting in any way any other appeal rights provided by law, except that the appeal procedures provided in this Agreement shall not be available to any employee who elects to appeal his/her evaluation rating under the provisions of G.L. c. 31, section 6C.~~

~~**Section 6.** — The parties agree to establish a Labor/Management Committee consisting of four (4) representatives selected by the Alliance and four (4) representatives selected by HRD. The Committee shall meet bimonthly and shall review and make recommendations concerning the Commonwealth's policies and practices regarding the review and maintenance of Personnel Records. The Committee shall also discuss problems involving the employee performance review system, which are unrelated to the Department/Agency Labor Management Committees established above.~~

Section 7.—~~The parties agree to establish a Labor/Management Committee to review and make recommendations to revise the performance evaluation guidelines/form. Said Committee shall consist of three (3) representatives selected by the Union and three (3) representatives selected by HRD.~~

Section 24A.1 – EPRS Standards

The Employee Performance Review System (EPRS) shall permit variations in format between various departments. There shall be no variation in format within the same department for the same job titles. Any format must meet the following criteria:

- A.** All employee evaluations shall be in writing and shall be included in the employee's official personnel file. The Union shall be notified should the employee lack English proficiency to understand the evaluation and its process. All EPRS evaluations shall be based on “Meets” expectations “Exceeds” expectations, or “Below” expectations standard.
- B.** Evaluations shall be completed by the employee's ~~state~~ immediate supervisor and be approved by a ~~state~~ supervisor of a higher grade designated by the Employer (except in cases of potential conflict of interest or other legitimate reasons).
- C.** A Final Formal EPRS evaluation shall be completed once per year for each employee. Probationary employees shall be evaluated by the mid-point of their probationary period. However, the standard EPRS program shall commence no later than the first July 1st of their employment.
- D.** The performance dimensions shall be job-related, objective and measurable to the extent practicable.

Section 24.A.2 – EPRS Procedures

- A.** Prior to each annual evaluation period, the employee's supervisor shall meet with the employee and shall inform the employee of the general performance dimensions and procedures to be utilized in evaluating the employee's performance.
- B.** At least once during the evaluation period, at or near its mid-point, the supervisor shall meet with the employee to review the employee's progress. The employee shall have two (2) workdays to review the evaluation prior to signing it. If the mid-term review results in a rating of “Below”, the employee shall be placed on a remedial development plan. At least once not later than 90 days before the end of the evaluation period, the supervisor and employee shall meet to review the employee's progress. The supervisor will identify the employee's specific performance deficiencies and what the employee must do to attain a “Meets” rating.
- C.** At or near the end of the evaluation period, the supervisor shall meet with the employee to inform the employee of the results of the evaluation. Following the

employee's review, the form shall be submitted to a management employee designated by the Employer for final determination of ratings. The employee shall have two (2) work days to review the evaluation prior to signing and shall be given a copy of the completed form. The employee shall sign the evaluation and indicate whether he/she agrees or disagrees with the content thereof.

Section 24A.3 – Redetermination and Appeal Rights

A. Any employee who has received a final rating of "Below" will have his/her evaluation reviewed by the Employer or his/her designee, who shall review all the circumstances of the rating. The Employer or his/her designee may re-determine the rating after reviewing the circumstances of the initial evaluation. If the Employer or his/her designee re-determines the rating the employee will receive the increases provided under Article 12 retroactively.

B. If the Employer does not re-determine the rating, the Union may file within fourteen (14) days of the decision a request for a review of the final rating by an arbitrator appointed by the Division of Labor Relations. The standard of review shall be solely limited to whether or not the final performance rating of "Below" was justified. The decision of the arbitrator shall be final and binding and any employee having a "Below" rating overturned shall be made whole in as prompt a manner as possible. Any costs associated with this process will be borne equally by the parties. The arbitration shall be conducted on an expedited basis as agreed by the parties.

C. Only employees receiving an annual rating of "Below" shall have the right to appeal the rating. Any employee who elects to appeal their EPRS rating pursuant to G.L. c. 31, §6C shall not be entitled to file an appeal under this agreement.

D. All performance merit ratings shall be based upon the EPRS system as found in this Article and all payment of salary and/or step increases shall be based upon current language found in Article 12 related to pay for performance based on the employee's most recent final annual evaluation.

Section 24A.4 - Attainment of Meets or Exceeds

A. Any employee who receives a "Below" evaluation who then receives a "Meets" or "Exceeds" rating at the mid-point of the following annual evaluation period will be eligible for the denied step and/or denied salary increases effective the date of the mid-point evaluation. An employee's anniversary date for step purposes shall not be retarded upon receiving "Meets" or "Exceeds".

B. Any employee who is adversely impacted by an untimely evaluation shall be made whole upon completion of the performance evaluation and upon the final a final rating of "Meets" or "Exceeds".

C. When work related circumstances occur over which the employee or department has no control, the employee shall not be prevented from attaining an overall rating of “Meets”.

Section 24A.5 – Labor Management Committees on EPRS

A. There shall be established a Labor/Management Committee, consisting of not more than four (4) representatives of each party, which shall meet at reasonable times to discuss any problems or issues surrounding the Performance Evaluation System.

B. There shall be established a Labor/Management Committee to review and make recommendations to the Director of Human Resources to revise the Performance Evaluation Guidelines/Form. Said Committee shall consist of three (3) representatives selected by the Union and three (3) representatives selected by the Employer. The Committee shall convene and shall continue to meet upon request by either party.

Section 24.A.6 –

Consistent with the Employee Performance Review Guidelines promulgated by the Commonwealth Human Resources Division, nothing in this Article is intended to restrict the Employer’s ability to discipline or discharge any employee for performance related issues during the EPRS cycle.

**ARTICLE 30
WAGE REOPENER (NEW)**

In the event that during the term of this Agreement a Collective Bargaining Agreement is submitted by either the Governor, or the Secretary for Administration & Finance and said Agreement is funded by the Legislature and in the event such Agreement contains provisions for across-the-board salary increases or other economic terms that in the aggregate are in excess of those contained in this Agreement, the parties agree to re-open those provisions of this Agreement to further bargaining.

**ARTICLE 31
DURATION**

This Agreement shall be for the three-year period from July 1, 2014 ~~2017~~ to June 30, 2012 ~~2020~~ and terms contained herein shall become effective upon execution unless otherwise specified. It is expressly understood and agreed that subject to ratification by the ~~NAGE~~ **Union** Membership, the predecessor collective bargaining agreement shall be voided and superseded by all aspects of this collective bargaining agreement. Should a successor Agreement not be executed by June 30, 2017, this Agreement shall remain in full force and effect until a successor Agreement is executed or an impasse in negotiations is reached. At the written request of either party, negotiations for a subsequent Agreement will be commenced on or after January 1, ~~2017~~ **2020**.

SUPPLEMENTAL AGREEMENT D is deleted in its entirety

~~This Memorandum of Understanding is entered into between the Commonwealth of acting through the Human Resources Division, and the ALLIANCE, AFSCME/SEIU, AFL-CIO. This Memorandum of Understanding reflects a clarification of Articles 12 and 24A of the current collective bargaining agreement concerning merit based pay for performance. It is agreed that:~~

~~A. All EPRS evaluations shall be based on a three tiered rating system of "Exceeds", "Meets" and "Below".~~

~~B. Disciplinary actions impacting on an employee's "ability to perform his/her normal duties" shall be considered for the purpose of a final overall rating on the performance review.~~

~~C. Disciplinary actions not impacting on an employee's "ability to perform his/her normal duties" shall not have a greater impact than other areas of the employee evaluation for the purpose of an "Exceeds", "Meets" or "Below" rating.~~

~~D. Any employee who has received a rating of "Below" will have his/her evaluation reviewed monthly by the Appointing Authority or his/her designee, who shall review all the circumstances of the rating. The Appointing Authority or his/her designee may re-determine the rating after reviewing the circumstances of the initial evaluation. If the Appointing Authority or his/her designee re-determines the rating the employee will receive the increase retroactive to the date of~~

~~original step increase due, or Article 12 increase, whichever is appropriate. If the Appointing Authority or his/her designee does not re-determine the rating the employee may file, through the Alliance within fourteen (14) days with the Human Resources Division, a request for a review of the Appointing Authority's or his/her designee's determination by a tripartite panel consisting of one person designated by the Alliance, one person designated by the Personnel Administrator and one person designated by the Chairperson of the Board of Conciliation and Arbitration who shall be assigned on a rotating basis.~~

~~E.~~

~~1. Any appeal of a final "Below" rating shall be initiated at a Merit Arbitration Panel as designated below.~~

~~2. Said appeal shall be filed within twenty one (21) days with the Human Resources Division.~~

~~3. Only employees receiving a rating of "Below" shall be able to appeal the rating.~~

~~4. The appeal shall be considered by Merit Arbitration Panel consisting of one person designated by the Chairman of the Alliance, one person designated by the Personnel Administrator, and one person designated by the Chairperson of the Board of Conciliation and Arbitration who shall be assigned on a rotating basis.~~

~~5. The standard of review to be applied by the panel shall be solely limited to whether or not the final performance rating of "Below" was justified.~~

~~6. The decision of the Merit Arbitration Panel shall be final and binding and any employee having a "Below" rating overturned shall be made whole in as prompt a manner as possible. Any costs associated with this process will be borne equally by the parties.~~

~~F. Supervisors and managers shall not use performance evaluations to threaten or coerce employees in any manner.~~

~~G. There shall be no pre-determined formula or ratio used to establish the number of "Below" or "Exceeds" ratings given.~~

~~H. Job duties and performance criteria shall be observable and measurable to the extent practicable.~~

~~I. On and after the date of this Agreement, the Commonwealth shall evaluate bargaining unit employees no more strictly than it has historically evaluated such employees for the ratings of below and meets.~~

~~J.~~

~~1. — Any employee who receives a "Below" evaluation shall be re-evaluated thirty (30) days after the completion of his/her final evaluation. The Department/Agency shall file a remedial plan for an employee receiving a "Below" rating. Each re-review period shall be thirty (30) days in length to a maximum of six (6) months. The employee shall have his/her re-evaluations done each thirty (30) day period until a "Meets" rating is achieved or six (6) months pass, whichever is first.~~

~~2. — Employees that may be nearing a "Below" rating shall be counseled by his/her supervisor at least three (3) months in advance of their final stage of the evaluation as to the specific areas that must be improved and what the employee must do to attain a "Meets" rating.~~

~~3. — During the process of the re-review, the employee who continues to receive "Below" ratings shall be able to make a one time appeal of that re-review rating to the Merit Arbitration Board. This appeal must be filed within ten (10) days of the last re-review rating. Any decision in favor of the employee will be from the month of the appeal forward. Such appeal may not be filed if the employee has already filed an appeal at the time of the final "Below" review.~~

~~K. — Once an employee receives a "Meets" or "Exceeds" evaluation during the re-review process, he/she shall be eligible for the denied step and/or denied salary increases effective from the date of receiving the "Meets" or "Exceeds" rating. An employee's anniversary date for step purposes shall not be retarded upon receiving the "Meets" or "Exceeds" rating.~~

~~L. — Any employee who may be adversely impacted by an untimely evaluation shall be made whole upon the completion of the performance review and upon achieving a final rating of "Meets".~~

~~M. — All performance merit ratings shall be based on the current EPRS system as found in Article 24A of the current Agreement and all payment of salary and/or step increases shall be based on current language found in Article 12 relating to pay for performance.~~

~~N. — All financial considerations (i.e., merit increases, step rate increase) shall be based on the employee's most recent, final annual evaluation.~~

~~O. — When work related circumstances occur over which the employee/Agency has no control, the employee shall not be prevented from attaining an overall rating of "Meets".~~

**NEW ARTICLE
INSTALLATION AND USE OF GPS DEVICES ON MASSDOT VEHICLES**

Beginning January 1, 2019, the Employer may install and/or use Global Positioning System devices or other similar technology in department vehicles and use the data obtained by such devices for any business purpose, including but not limited to the deployment of personnel, the safety of the public and employees, and to gather statistical data regarding the efficiency of department vehicles. The Employer shall not use any such system to conduct live surveillance of employees on either a random or scheduled basis. However, where the Employer has received a credible complaint, or possesses other independent reliable information, the Employer may use stored data to investigate allegations of misconduct or policy violations. In any disciplinary proceeding where the Employer relies on the GPS data to establish employee misconduct or a policy violation, it shall provide a copy of the data to the Union as may be required by G.L. c. 150E. All vehicles with installed and active GPS or similar technology will be identified by a conspicuously placed sticker or other indicator. The Union acknowledges that such devices have already been installed in some department vehicles.

MODIFICATIONS TO MASTER LABOR INTEGRATION AGREEMENT

The following provisions of the Master Labor Integration Agreement are modified as appears below and are incorporated into the collective bargaining agreement. The parties agree to use their mutual good faith efforts to agree on the appropriate placement and numbering of the provisions.

SHIFT BIDDING (MLIA)

For employees who occupy a position in the HV Electrician or Telecommunication Analyst job series, shift schedules shall be posted annually during the last two (2) weeks in September, to be effective the first week of October. Employees shall have a choice of schedules, when posted, on the basis of classification seniority.

In areas or districts where more than one work shift existed **as of November 1, 2009**, MassDOT will determine the effective date as well as the number and hours of the shifts to be bid at each shift bid in accordance with any applicable provision governing work-week scheduling. Any changes in the number of shifts or hours of the shifts from the prior shift bid will be for operational needs. Before making any changes in the number or hours of shifts to be bid, MassDOT will meet with the affected unions and provide the unions with the reasons for each change and consider suggestions from the unions for the number and hours of each of the shifts to be bid.

Shift bids shall be posted for bidding at least once per year, but no more than two (2) times per year. Shift schedules shall be posted for seven (7) calendar days. Employees within the area or district in the applicable titles will timely bid for their preferred shift no later than the end of the seven (7) calendar day period following the posting based on classification seniority. Time spent by a former Massachusetts Turnpike Authority or Port employee in a job classification that has been assigned to a state title shall be deemed to be seniority within the state title for purposes of determining classification seniority in that title.

As a general rule, MassDOT shall not change an employee's shift/bid assignment. Should it become necessary in response to operational needs to adjust an employee's shift/bid, then absent an emergency situation, revisions to work schedules will be made with no less than ten (10) calendar days advance notice. Prior to making involuntary shift schedule change(s), Management shall request volunteers from qualified employees within the same title in the area or district where the open shift(s) exists. If there are insufficient volunteers, the shift schedule of the least senior qualified employee within the same title in the area or district where the open shift(s) exist on a shift where operations would be least impacted by an open shift will be adjusted.

This Article does not establish a minimum staffing obligation on the employer nor an obligation to fill any vacant shift on either a regular or an overtime basis.

This provision shall be incorporated into the collective bargaining agreements governing bargaining units B, C, D, and E, shall prevail over any conflicting provision, and is subject to the

grievance arbitration procedure contained in the collective bargaining agreement applicable to the bargaining unit.

RELOCATION (MLIA)

As a general rule, MassDOT will not involuntarily relocate any of its employees to another work location that is more than thirty miles from his/her current work location. For purposes of this provision, work location shall mean the location at which the employee customarily reports to work. Should management decide that operational needs require the involuntary relocation of an employee more than thirty miles from his/her current work location MassDOT will do so from among the pool of qualified employees within the classification needed to relocate in the reverse order of seniority, provided that any employee so relocated shall not be relocated beyond an adjacent district, and further provided that any such employee so relocated will be returned to his former work location as soon as operational needs permit. **For purposes of this provision District 4 and District 5 shall be considered adjacent, except that no employee transferred between these districts shall be relocated more than 45 miles from their current work location.** ~~This Article shall not apply to employees assigned as resident engineers or inspectors; the assignment and reassignment of such employees shall be subject to the applicable collective bargaining agreement and to established practice thereunder. This Article shall apply to Units B, C, D and E and to Highway Division employees in Unit A, shall prevail over any conflicting provision, and shall be subject to the grievance arbitration procedure contained in the collective bargaining agreements applicable to the bargaining unit.~~

CONTRACTING OUT

Absent an emergency situation demanding otherwise, MassDOT shall not outsource bargaining unit work beyond the scope of any such work that it was out sourcing as of November 1, 2009, except in cases where employees of MassDOT are unable or unwilling to perform such services owing to lack of expertise or proper licensure/certification, or other inability to perform such services on the schedule or in the manner required by MassDOT, or under other circumstances where MassDOT reasonably determines that the public safety requires or that the public convenience would be unduly disrupted. Nothing in this provision shall limit the application of G.L. c. 29, sec. 29A to the extent that such provisions are applicable to MassDOT

~~This provision shall be incorporated into the collective bargaining agreements governing bargaining units B, C, D, E and F, shall prevail over any conflicting provision, and be subject to the grievance arbitration procedure contained in the collective bargaining agreement applicable to the bargaining unit.~~

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Executed this _____ day of February 2020

<p>Massachusetts Department of Transportation</p> <p>By: _____ Stephanie Pollack, Secretary and Chief Executive Officer</p> <p>By: _____ Boris Lasic, Assistant Secretary and Chief Human Resources Officer</p> <p>By: _____ Maria C. Rota, Senior Lead Counsel Employment and Labor Law</p>	<p>Coalition of MassDOT Union for Unit B</p> <p>By: _____ George McGilloway, Secretary-Treasurer/Principal Executive Officer, Teamsters Local 127 and Chairperson of the CMU for Unit B</p> <p>By: _____ Bradley Gallant, President AFSCME Council 93, Local 2948</p> <p>By: _____ Brenda Rodrigues, President SEIU Local 888</p> <p>By: _____ Karen Bartholomew, President USW Local 5696</p>
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APPENDIX A -1
Unit B Job Titles Prior to Bargaining Unit Realignment

Aeronautical Inspector I
Bridge Operator I
Bridge Operator II
Building Maintenance Supv II
Business Management Specialist
Communication Dispatcher I
Communication Dispatcher II
Highway Maint Foreman I
Highway Maint Foreman II
Highway Maint Foreman III
Highway Maint Foreman IV
Janitor I
Janitor II
Janitor III
Janitor IV
Laborer I
Laborer II
Maint Equipment Operator I
Maint Equipment Operator II
MassDOT ESP Person I
MassDOT ESP Person II
MassDOT Incd. Resp. Oper.
MassDOT Motor Pool Courier
Microphotographer I
Motor Equipment Mechanic I
Motor Equipment Mechanic II
Motor Equipment Mechanic III
Motor Equipment Mechanic IV
Motor Truck Driver
Photo-Copying Operator I
Photo-Copying Operator II
Radio Maintenance Technician I
Radio Maintenance Technician II
State Police Dispatcher I
State Police Dispatcher II
State Police Dispatcher III
Storekeeper I
Storekeeper II
Storekeeper III
Storekeeper IV

Supervisor of Motor Pool, Pwd
Traffic Control Equip Supv II
Traffic Section Foreman I
Traffic Section Foreman II
Tree Climber

APPENDIX A-2
Unit B Job Titles After Bargaining Unit Re-Alignment

Aeronautical Inspector I
Bridge Operator I
Bridge Operator II
Building Maintenance Supv I
Building Maintenance Supv II
Communication Dispatcher I
Communication Dispatcher II
Janitor I
Janitor II
Janitor III
Janitor IV
Laborer I
Laborer II
MassDOT ESP Person I
MassDOT ESP Person II
MassDOT Highway Maintenance Worker I
MassDOT Highway Maintenance Worker II
MassDOT Highway Maintenance Worker III
MassDOT Motor Pool Courier
Microphotographer I
Motor Truck Driver
Photo-Copying Operator I
Photo-Copying Operator II
Radio Maintenance Technician I
Radio Maintenance Technician II
State Police Dispatcher I
State Police Dispatcher II
State Police Dispatcher III
Storekeeper I
Storekeeper II
Storekeeper III
Storekeeper IV
Supervisor Of Motor Pool, Pwd
Traffic Control Equip Supv II
Tree Climber

APPENDIX A-3

Current Titles moving to Unit C or D

Business Management Specialist
Highway Maint Foreman I
Highway Maint Foreman II
Highway Maint Foreman III
Highway Maint Foreman IV
Motor Equipment Mechanic I
Motor Equipment Mechanic II
Motor Equipment Mechanic III
Motor Equipment Mechanic IV
Traffic Section Foreman I
Traffic Section Foreman II

APPENDIX A-4
Current Titles To Be Retired

Maint Equipment Operator I
Maint Equipment Operator II
MassDOT Incd. Resp. Oper.

Appendix B

Assignment of Work in a Higher Classification Unit B

To: _____
(Employee Name)

From: _____
(Department Head)

Effective _____ you are being assigned to perform the duties described below which are outside of your current classification in a higher job classification. You will be paid at the higher grade from the first day of assignment after you perform the duties for a period of thirty (30) consecutive days or more.

Current classification: _____

Higher classification: _____

Below is a description of the duties being assigned:

Approved By:

District Highway Director or Designee

Date: _____

MEMORANDUM OF UNDERSTANDING
BETWEEN THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
AND
COALITION OF MASSDOT UNIONS
FOR BARGAINING UNIT B

The parties agree that the Memorandum of Understanding Regarding SEIU Local 888 and AFSCME Local 1009 Employees in the Massachusetts Department of Transportation and the Department of Conservation and Recreation appended to the Collective Bargaining Agreement between the Commonwealth of Massachusetts and the Alliance, AFSCME-SEIU Local 888 Unit 2 for the term July 1, 2009 to June 30, 2012 concerning the calculation of emergency overtime is null and void as of July 1, 2018.

SIGNATURES ON FOLLOWING PAGE

Executed this _____ day of January 2020

<p>Massachusetts Department of Transportation</p> <p>By: _____ Boris Lasic, Assistant Secretary and Chief Human Resources Officer</p> <p>By: _____ Maria C. Rota, Senior Lead Counsel Employment and Labor Law</p>	<p>Coalition of MassDOT Union for Unit B</p> <p>By: _____ George McGilloway, Secretary- Treasurer/Principal Executive Officer, Teamsters Local 127 and Chairperson of the CMU for Unit B</p> <p>By: _____ Bradley Gallant, President AFSCME Council 93, Local 2948</p> <p>By: _____ Brenda Rodrigues, President SEIU Local 888</p> <p>By: _____ Karen Bartholomew, President USW Local 5696</p>
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MEMORANDUM OF UNDERSTANDING
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
AND
COALITION OF MASSDOT UNIONS
FOR BARGAINING UNIT B

Transfer of Accruals and Credible Service for Vacation and Sick Time

The parties agree that the Commonwealth of Massachusetts Guidelines for the Transfer of Benefits issued by the Human Resources Division, a copy of which is attached hereto shall be applied to bargaining unit employees and remain in effect until the Commonwealth amends, modifies or revokes them.

GUIDELINES FOR TRANSFER OF BENEFITS

The following Guidelines cover basic questions that agencies typically have about what credit for prior service an employee can receive toward vacation and sick leave upon transfer from a public agency into a classified position subject either to collective bargaining or the Red Book. If an employee is leaving classified service to go to another public agency not subject to our rules, the rules of that public agency determine what benefits may be transferred. In such instances, refer the employee to the agency to which he or she is transferring.

General Issues

- To answer questions about transfer of benefits, you need to know what type of public agency the employee is coming from (state authority, local authority, Higher Education, legislature, municipality), and what type of classified position he/she is going into (management, collective bargaining, confidential). You also need to know if there has been a break in service of less than three years between the two jobs; if the break is three years or more, employees cannot get any credit at all.
- “Vacation status” is the credit for time previously worked that determines the rate at which an employee earns vacation in a classified position. For example, if the employee had five years of service in a city or town upon entering the classified position, he or she can begin earning vacation at the rate of 15 days per year.
- “Vacation and sick leave credits” are those unused leave balances earned in the previous job that may, under some circumstances, be brought into the classified job. Our rules limit the amount of such credits employees can actually bring over. Employees seeking these credits must complete a Transfer Form and send it in to HRD. The Red Book was revised in November 1999 to and allows for the transfer of these credits.

- Questions about "creditable service" for retirement purposes should be referred to the State Retirement Board. Such credit is allowed and calculated according to the rules set forth in Chapter 32 of the General Laws; "creditable service" and breaks in service for retirement purposes are thus figured differently than they would be for sick/vacation purposes.
- State and local authorities include Massport, MBTA, MWRA, Mass. Turnpike Authority, Mass. Housing Finance Agency, and local Housing Authorities. These are public agencies whose funding does not come from the Appropriation Act.
- Constitutional and Independent Offices include the Secretary of State, State Auditor, Inspector General, Treasurer, State Ethics Commission, Office of Campaign and Political Finance.
- Higher Education includes Board of Higher Education, University of Mass. and all state and community colleges.

Transfer from:	Managers/Confidentials (see Red Book)	Collective Bargaining
Federal Government	No credit	No credit
Other States	No credit	No credit
Mass. Cities, Towns and Counties	Vacation status only	Vacation status only
Mass. State and Local Authorities	Vacation status only	Vacation status only
Legislative Branch, Governor's and Lt. Governor's Offices	Vacation status, vacation credits and sick leave credits	Vacation status and sick leave credits only
Judicial Branch	Vacation status, vacation credits and sick leave credits	Vacation status only
Constitutional and Independent Offices (including Counties that have officially become state agencies)	Vacation status, vacation credits and sick leave credits	Vacation status only
District Attorneys' Offices	Vacation status, vacation credits and sick leave credits	Vacation status only
Higher Education	Vacation status, vacation credits and sick leave credits	Vacation status only
Other classified positions, and certain managerial unclassified positions (e.g. Cabinet Secretaries, Undersecretaries, etc.)	Vacation status, vacation credits and sick leave credits*	Vacation status, vacation credits and sick leave credits*

* If break in service is 3 years or more, see Red Book or contract for special conditions under which Personnel Administrator can approve re-crediting of prior time for reemployment/reinstatement.

Entered this _____ day of January 2020.

Massachusetts Department of Transportation

Coalition of MassDOT Union for Unit B

By:

Boris Lasic, Assistant Secretary and
Chief Human Resources Officer

By:

George McGilloway, Secretary-
Treasurer/Principal Executive Officer,
Teamsters Local 127 and Chairperson of
the CMU for Unit B

By:

Maria C. Rota, Senior Lead Counsel
Employment and Labor Law

By:

Bradley Gallant, President
AFSCME Council 93, Local 2948

By:

Brenda Rodrigues, President
SEIU Local 888

By:

Karen Bartholomew, President
USW Local 5696

MEMORANDUM OF UNDERSTANDING
BETWEEN
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
AND
COALITION OF MASSDOT UNIONS
FOR BARGAINING UNIT B

Whereas the Employer and the Union recognize the benefit of establishing an employee performance bonus program to recognize exceptional performance and promote employee engagement, they agree to the following:

1. The Employer may implement a bonus program covering employees who receive a final rating of “Exceeds” on their annual Employee Performance Review System review.
2. The Employer shall have the sole authority to determine the total cost of the program, the amount of any individual bonus, the design and duration of the program, and any other matter related to the program not specifically limited by the terms of this agreement.
3. The Employer shall have the sole right to suspend, modify or terminate the program at any time.
4. The Employer agrees to meet with the Union prior to the implementation of the program to discuss the impacts of the program on any mandatory term and conditions of employment.
- 5.. The Union acknowledges that it had the full opportunity to bargain over the bonus program during the course of negotiations for the Collective Bargaining Agreement for the term July 1, 2017 to June 30, 2020 and that the Employer has no further obligation to bargain.
6. This agreement shall not be subject to the grievance and arbitration provisions of any applicable collective bargaining agreement.

SIGNATURES ON FOLLOWING PAGE

Entered this _____ day of January 2020.

<p>Massachusetts Department of Transportation</p>	<p>Coalition of MassDOT Union for Unit B</p>
<p>By:</p> <hr/> <p>Boris Lasic, Chief Human Resources Officer</p>	<p>By:</p> <hr/> <p>George McGilloway, Secretary-Treasurer/Principal Executive Officer, Teamsters Local 127 and Chairperson of the CMU for Unit B</p>
<p>By:</p> <hr/> <p>Maria C. Rota, Senior Lead Counsel Employment and Labor Law</p>	<p>By:</p> <hr/> <p>Bradley Gallant, President AFSCME Council 93, Local 2948</p>
	<p>By:</p> <hr/> <p>Brenda Rodrigues, President SEIU Local 888</p>
	<p>By:</p> <hr/> <p>Karen Bartholomew, President USW Local 5696</p>