



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Communications  
Workers of America, AFL-CIO

Administrative Appeal

CSC Docket No. 2019-2982

ISSUED: MAY 9, 2019

(ABR)

The Division of Agency Services (Agency Services), on behalf of the Governor's Office of Employee Relations, requests that the provisions of *N.J.A.C. 4A:3-4.20* be relaxed in order to implement a Settlement Agreement and Release (2019 Settlement) between the State and the Communications Workers of America, AFL-CIO (CWA).

By way of background, the CWA represents State employees in the Administrative/Clerical, Professional, Primary Supervisors and Higher Level Supervisors Units. Between July 1, 2011 and June 30, 2015, employees in these bargaining units were covered under a collective bargaining negotiations agreement (2011 Agreement) which stated, in relevant part, that employees eligible for normal increments under the State Compensation Plan would receive them during the term of the contract. The State and the CWA were unable to reach a new agreement prior to the 2011 Agreement's June 30, 2015 expiration date. After June 30, 2015, the State ceased providing annual incremental pay increases to employees in covered titles. On April 16, 2018, the State and the CWA executed a Memorandum of Agreement (MOA) in order to settle certain issues concerning the CWA's collective bargaining negotiations agreement, including increments. The parties agreed that the MOA would have an effective date of April 4, 2018. Section B(2)(b) of the MOA provided that "[a]ll employees on payroll as of the effective date of [the] MOA, who were eligible to receive increments between July 1, 2015 and the effective date of the [MOA]" would receive the increments they would have been given if increments had been paid on their anniversary dates. Section B(2)(c) of the MOA stated that:

Persons who retired between July 1, 2015 and the effective date of th[e] MOA and who, during that period, were entitled to receive one or more increments, shall receive a lump sum payment of \$650 in lieu of the increment(s). This lump sum payment shall not be treated as pensionable income and shall not affect their retirement benefit.

Further, Section B(3) of the MOA provided that:

All employees, who are on the payroll as of the date effective date of this MOA, who were hired prior to July 1, 2015, and who are not eligible to receive an increment between July 1, 2015 and the effective date of his MOA, shall receive a bonus of \$650. The prior sentence shall not apply to employees hired after July 1, 2015.

Moreover, Section B(7)(f) of the MOA stated that the State would commit to making all retroactive payments for increments and across-the-board increases between the April 16, 2018 date of ratification of the MOA and October 2018.

After ratification of the MOA, multiple issues arose which led the CWA to file a series of grievances challenging its implementation. On February 27, 2019, the parties entered into the 2019 Settlement. Specifically, it was agreed that:

The State will provide retroactive pay and the bonus payments, if applicable, to individuals (1) whose separations were resignations in good standing or general resignations unrelated to discipline, even if not for the reason of death or retirement, (2) whose separations were the result of layoffs, (3) whose separations were the result of the discontinuation or abolishment of programs or offices, [or] (4) whose separations were the result of a transfer between departments. Retroactive pay and/or the bonus will not be paid to those removed during probation, removed at the end of the test period, those removed as an at-will employee for disciplinary reasons, those terminated, those resigning in lieu of removal/discipline, those resigning by settlement, those unauthorized to work, forfeiture of employment, and/or any other resignation not in good standing.

Further, with regard to bonuses, it was agreed that:

Employees who were not eligible to receive an increment under Article 6(a)(4)-(6) of the 2015-2019 Agreements [sic] and employees who were demoted between July 1, 2015 and April 4, 2018, for reasons other than discipline, shall receive a \$650 bonus. Personnel actions resulting in increases or decreases in compensation, including

promotions and non-disciplinary demotions, shall not disqualify employees, otherwise eligible under section B(3) of the MOA, from receiving a \$650 bonus.

Agency Services states that the 2019 Settlement is intended to provide retroactive pay and bonus payments to individuals covered by the MOA who separated from State service between the MOA's April 4, 2018 effective date and the October 26, 2018 date of the retroactive payments made thereunder, due to a resignation unrelated to discipline, a layoff, or the discontinuation or abolition of programs or offices. Accordingly, it maintains that it is necessary for the Civil Service Commission (Commission) to relax the provisions of *N.J.A.C. 4A:3-4.20* in order to implement these terms.

### CONCLUSION

*N.J.A.C. 4A:3-4.20* provides:

Personnel actions having retroactive effective dates shall apply only to employees who remain on a State payroll on the date of the retroactive payment and employees who retire or die during the period of retroactive application.

*N.J.A.C. 4A:1-1.2(c)* provides that a rule may be relaxed for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes. Although the terms of the 2019 Settlement were agreed upon by the State and the CWA, absent a relaxation of *N.J.A.C. 4A:3-4.20*, the State will not be able to make retroactive payments to covered employees not on a State payroll as of the date of the payment, except to those who retired or died during the retroactive application period. Therefore, in order to effectuate the terms of the 2019 Settlement, good cause has been established in this case to relax the provisions of *N.J.A.C. 4A:3-4.20* to permit the retroactive pay and bonus payments to be implemented in accordance with the terms of the attached 2019 Settlement between the State and the CWA.

### ORDER

Therefore, it is ordered that this request be granted and retroactive payments for covered employees be processed in accordance with the terms of the attached Settlement Agreement and Release between the State and the CWA.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 9<sup>TH</sup> DAY OF MAY, 2019

*Deirdre L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachments

c: Kristina Chubenko  
Hetty Rosenstein  
Kelly Glenn

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

Whereas, the collective negotiations agreements between the State of New Jersey and the Communications Workers of America, AFL-CIO ("CWA") covering the Administrative/Clerical, Professional, Primary Level Supervisors and Higher Level Supervisors Units expired on June 30, 2015; and

Whereas, the parties desire to settle litigation involving the payment of increments and clothing maintenance allowance, including pending arbitrations and an unfair practice charge at the Public Employment Relations Commission; and

Whereas, the parties' desire to enter into successor collective negotiations agreements and to amicably resolve the pending arbitrations and unfair practice charge involving the payment of increments and clothing maintenance allowance;

Therefore, CWA and the State enter into the following Memorandum of Agreement ("MOA"):

- A. The term of this Agreement shall be July 1, 2015 through June 30, 2019, and shall cover employees in the Administrative/Clerical, Professional, Primary Level Supervisors and Higher Level Supervisors Units ("employees").
- B. Economics
  1. Across-the-board increases
    - a. All employees on payroll as of the effective date of this MOA shall receive a 2% across-the-board increase to base salary effective the first full pay period after August 15, 2017. All employees on payroll as of June 30, 2018, shall receive a 2% across-the-board increase to base salary effective the first full pay period after July 1, 2018.
    - b. All steps and ranges in the State Compensation Plan shall be increased by the across-the-board increases set forth in paragraph a above on the effective dates of those increases.
  2. Increments
    - a. Normal increments shall be paid to all employees eligible for such increments within the policies of the State Compensation Plan during the term of this Agreement.
    - b. All employees on payroll as of the effective date of this MOA, who were eligible to receive increments between July 1, 2015 and the effective date

of this MOA, shall receive the increments they would have received had increments been paid on their anniversary dates.

- c. Persons who retired between July 1, 2015 and the effective date of this MOA and who, during that period, were entitled to receive one or more increments, shall receive a lump sum payment of \$650 in lieu of the increment(s). This lump sum payment shall not be treated as pensionable income and shall not affect their retirement benefit.

3. Bonus for employees at maximum

All employees, who are on the payroll as of the date effective date of this MOA, who were hired prior to July 1, 2015, and who are not eligible to receive an increment between July 1, 2015 and the effective date of his MOA, shall receive a bonus of \$650. The prior sentence shall not apply to employees hired after July 1, 2015.

4. Clothing Maintenance Allowance ("CMA");

- a. All employees who received CMA payments during the term of the parties' 2011-2015 Agreement shall receive CMA payments retroactive to July 1, 2015 and shall continue to receive CMA payments under this Agreement provided there is no substantial change in their duties or job title that would no longer qualify them to receive CMA payments under the criteria set forth in Article 6(B) of the parties' 2011-2015 Agreement and provided they meet the service requirements in Article 6(B). Within sixty (60) calendar days from the date of execution of this MOA, the State shall provide to CWA a list of employees, if any, who received CMA payments under the 2011-2015 Agreement, and who the State maintains are not eligible to receive CMA payments under this 2015-2019 Agreement.
- b. Employees hired, promoted or transferred after July 1, 2015, or whose duties changed after July 1, 2015, and who satisfy the service requirements and the criteria set forth in Article 6(B) of the parties' 2011-2015 Agreement shall be eligible to receive CMA payments during the term of this Agreement. Within sixty (60) calendar days from the date of execution of this MOA, the State shall provide to CWA a list of employees, covered by this paragraph (b) who are eligible to receive CMA payments, and will identify employees holding titles that previously received CMA payments who the State maintains are not eligible to receive CMA payments.
- c. To resolve the multiple, protracted and pending arbitrations regarding the eligibility of approximately 1,300 employees, who CWA maintains were

entitled to receive CMA payments under the parties' 2011-2015 Agreement, the parties agree as follows:

- (1) Of the approximately 1,300 employees in dispute in the pending arbitrations, CWA shall identify up to 1,000 of those employees, who are on payroll as of the effective date this MOA, and who shall be eligible to receive CMA payments.
- (2) Of the up to 1,000 employees identified by CWA who were the subject of the pending arbitrations, those employees shall receive CMA payments retroactive to July 1, 2015.
- (3) To receive CMA payments under section (B)(4)(c) of this MOA, employees must satisfy the service requirements set forth in Article 6(B).
- (4) CWA shall submit to the State a list designating all employees who shall receive CMA payments pursuant to section (B)(4)(c) of this MOA, retroactive to July 1, 2015, and the employees identified on that list shall receive the CMA payments.

d. Cap on number of employees receiving CMA payments

The number of employees eligible to receive CMA payments pursuant to this MOA and during the term of the parties' 2015-2019 Agreement, including employees receiving CMA payments pursuant to paragraphs a, b and c above, does not and shall not exceed the cap on the number of employees eligible to receive CMA payments under Article 6(B) of the parties' 2011-2015 Agreement.

5. Eye care program

- a. Coverage under the Eye Care Program shall provide for a \$40.00 payment for regular prescription lens or \$45.00 for bifocal lens or more complex prescriptions. Included are all eligible full-time employees and their eligible dependents (spouse and unmarried children under 26 years of age). The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

- b. Each eligible employee and dependent may receive only one payment for examinations and one payment for glasses during the period from July 1, 2015 to June 30, 2017, and one payment for examinations and one payment for glasses during the period from July 1, 2017 to June 30, 2019. Proper certification and submission of receipts are required of the employee in order to receive payment.
  - c. Upon submission of a certification and receipts employees may obtain reimbursements under the Eye Care Program for the period of July 1, 2015 through June 30, 2017 and for the period of July 1, 2017 through June 30, 2019.
6. Emergency and special project rates
- All hourly rates covered by Article 35, including emergency rates and special project rates, shall be increased by 2% effective the first full pay period after July 1, 2018.
7. Timing of payments due pursuant to this MOA
- a. The State shall make best efforts to provide each retroactive payment to which employees are entitled pursuant to paragraphs 1 through 5 above, including the bonus payments pursuant to sections B(2)(c) and (3) of this MOA, as a separate payroll check or as a separate direct deposit. For example, if an employee is entitled to retroactive payments for the 2% across-the-board increase, a retroactive payment for increments that were due between July 1, 2015 and the date the MOA is executed, and a retroactive payment for clothing maintenance allowance, three separate checks may be issued or three direct deposits may be made into the employee's bank account.
  - b. Upon signature of this MOA on or before April 16, 2018, the State will immediately take all necessary actions so that employees can be paid at the proper rate and receive all appropriate retroactive payments as quickly as possible.
  - c. The State commits that by July 27, 2018 – the second pay date in July 2018 – employees shall receive a prospective salary adjustment based on their placement on the correct step of their salary range, which range shall have been adjusted to reflect the two 2% across-the-board increases pursuant to section B(1)(a) of this MOA.
  - d. Retroactive undisputed CMA payments pursuant to sections B(4)(a) and (b) of this MOA shall be made as soon as possible. These payments will be made in separate checks and shall begin in June 2018. Pursuant to section B(4)(c) of this MOA, CWA will provide the State with a list of persons who were in



dispute who will receive retroactive CMA payments and those retroactive CMA payments will be made in separate checks with a target date to begin in the regular paycheck for the pay period that occurs 30 days after the State receives the list. To be eligible to receive a retroactive CMA payment, an employee must be on payroll as of the effective date of this MOA.

- e. The \$650 bonus payments pursuant to sections B(2)(c) and B(3) of this MOA shall be paid as quickly as possible to all eligible persons, with a target date of August 3, 2018. These payments will be made in a separate supplemental check.
  - f. Between the date of ratification of this MOA and the end of October 2018, the State commits to make retroactive payments for increments and across-the-board increases. These payments will be made in separate checks.
  - g. If between the ratification date and the end of October 2018, something causes it to be administratively infeasible to make all of the prospective and retroactive payments, the State will notify CWA as soon as it becomes aware of any delay and will provide an explanation as to why the payment could not be made. Such a delay for one employee or one group of employees will not delay payments for everyone else. If there is a delay, the State will make the correct payment as soon as possible.
  - h. Paragraphs a through g above, apply only to payments made through centralized payroll.
  - i. The employee's share for healthcare contributions shall not be deducted from any retroactive payments.
- C. Unless expressly modified by the terms of this MOA, all other provisions of the parties' 2011-2015 Agreement shall remain unchanged and shall be incorporated into the parties' July 1, 2015 through June 30, 2019 Agreement, except that the parties agree to make minor changes, such as dates, that may be necessary to conform the parties' 2011-2015 Agreement to the terms of this MOA.
- D. CWA agrees to withdraw, with prejudice, all litigation involving the payment of increments and clothing maintenance allowance, including all pending arbitrations and unfair practice charges filed with PERC and any appeals related thereto. Pursuant to Article 41 of the parties' Agreement, if legislative action or rule modification is required to enact any provision of this Agreement, the parties shall jointly seek the enactment of such legislative action or rule modification.
- E. All other proposals submitted by either party during the course of these negotiations are deemed to be withdrawn.

4-16-18 Final MOA

F. The effective date of this MOA shall be April 4, 2018.

On behalf of CWA

On behalf of the State of NJ

s/Dennis Trainor, District I Vice President

s/Yvonne Cately, Governor's  
Office Employee Relations (GOER)

s/Hetty Rosenstein, NJ Director

s/ Lawrence Fox, GOER

s/John Rose, President CWA Local 1031

s/ Brian Scott, GOER

s/Patrick Kavanagh, President CWA Local 1032

s/Gaye Palmer, President CWA Local 1033

s/Adam Liebttag, President CWA Local 1036

s/Ken McNamara, President CWA Local 1037

s/Shawn Ludwig, President CWA Local 1038

s/Gladys Finnigan, Temporary Administrator CWA Local 1039

s/Carolyn C. Wade, President CWA Local 1040

Dated: 4/16/2018

Dated: 4/16/2018

### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and between the Governor's Office of Employee Relations on behalf of the State of New Jersey (the "State") and the Communication Workers of America (the "Parties").

**WHEREAS**, the State and CWA entered into a Memorandum of Agreement ("MOA"), effective April 4, 2018, memorializing the terms of a successor 2015-2019 collective bargaining agreement;

**WHEREAS**, the implementation of the MOA involved several years' retroactive payments dependent upon complex calculation, and at time, manual adjustments to employees' payroll statuses;

**WHEREAS**, due to the complexity of the calculations and the number of years involved, multiple issues arose as to the application of the MOA;

**WHEREAS**, the CWA filed multiple grievances challenging the implementation of the terms contained in the MOA;

**WHEREAS**, the parties are engaged in negotiations for a successor collective bargaining agreement and wish to resolve any outstanding issues relating to the MOA,

**WHEREAS**, the Parties now deem it in their respective best interests to resolve their disputes without additional litigation and enter into this Agreement for the purpose of avoiding the burden, expense, delay and uncertainties of additional litigation.

**NOW THEREFORE**, in consideration of the promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**1. Retroactive pay for those separated from employment for reasons other than retirement or death.**

The State will provide retroactive pay and the bonus payments, if applicable, to individuals (1) whose separations were resignations in good standing or general resignations unrelated to discipline, even if not for the reason of death or retirement, (2) whose separations were the result of layoffs, (3) whose separations were the result of the discontinuation or abolishment of programs or offices, ~~(4) who were provisional, at will or temporary, and whose separations were for reasons unrelated to discipline, or (5) (4) whose separations were the result of a transfer between departments.~~ Retroactive pay and/or the bonus will not be paid to those removed during probation, removed at the end of the test period, those removed as an at-will employee for disciplinary reasons, those terminated, those resigning in lieu of removal/discipline, those resigning by settlement, those unauthorized to work, forfeiture of employment, and/or any other resignation not in good standing.

2. Bonus at max for employees who were promoted/demoted.

Employees who were not eligible to receive an increment under Article 6(a)(4)-(6) of the 2015-2019 Agreements and employees who were demoted between July 1, 2015 and April 4, 2018, for reasons other than discipline, shall receive a \$650 bonus. Personnel actions resulting in increases or decreases in compensation, excluding promotions including promotions and non-disciplinary demotions, shall not disqualify employees, otherwise eligible under section B(3) of the MOA, from receiving a \$650 bonus.

3. Pending grievances.

The CWA agrees to withdraw, with prejudice, all grievances relating to bonus payments for those separating from employment for reasons other than retirement or death; grievances relating to bonus for employees promoted or demoted, and grievances relating to salary reductions following the implementation following the MOA and relating recoupment issues.

**IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND**  
**HEREBY**, the Parties do execute this Settlement Agreement and Release.

  
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FOR CWA

Dated: 2/27/2019

  
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FOR THE STATE

Dated: 2/27/2019