

## Memorandum of Agreement (1)

**AND NOW**, this 2<sup>nd</sup> day of April, 2009, this Memorandum of Agreement is made by and between Council 13, American Federation of State, County and Municipal Employees ("Union") and the Commonwealth of Pennsylvania ("Commonwealth").

**WHEREAS**, the Commonwealth is faced with a global fiscal crisis of an unprecedented magnitude, which has caused a substantial and dramatic reduction in the Commonwealth's revenues;

**WHEREAS**, at present, the Commonwealth is projecting a deficit in Fiscal Year 2008/09 of at least \$2.3 billion, a figure which, based on the latest revenue projections, is likely to grow before this fiscal year ends and will be carried into Fiscal Year 2009/10;

**WHEREAS**, as a result of this fiscal crisis, the Commonwealth has taken and will continue to take significant steps to reduce expenses across all agencies and, as part of that cost reduction effort, must identify ways to reduce personnel costs;

**WHEREAS**, the Governor has issued a pay freeze for all managers and non-represented employees, including the elimination of two step increments and a general pay increase scheduled to take effect between January 2009 and January 2010, a measure projected to save nearly \$140 million through Fiscal Year 2010/11;

**WHEREAS**, the Union has opposed the Governor's request to relinquish negotiated wage increases, including increments and general wage increases, for bargaining unit members;

**WHEREAS**, the Commonwealth was prepared to undertake rolling furloughs of one day per pay period, or a total of 29 days, to reduce expenses over the balance of this Fiscal Year and the next Fiscal Year, but the Union expressed its strong opposition to rolling furloughs;

**WHEREAS**, the parties recognize that the projected funding of the Pennsylvania Employees Benefit Trust Fund ("PEBTF") by the Commonwealth for the duration of the current collective bargaining agreement will result in a substantial reserve level which can be reduced on a temporary basis to generate cost savings for the Commonwealth during this fiscal crisis without impacting adversely the fiscal stability of the PEBTF or the level of benefits offered;

**NOW THEREFORE**, the Commonwealth and the Union, subject to ratification by its members, in their respective capacities as signatories to the collective bargaining agreement now in effect, have met, negotiated and agreed to the terms of this Memorandum of Agreement as an amendment to their collective bargaining agreement.

1. **PEBTF Deferred Contributions.** The parties agree that the Commonwealth will be permitted to reduce, on a temporary basis, its contribution to the PEBTF. A reduction of twenty percent (20%) in the applicable employer contribution rate, as set forth in

Article 25, Section 1(c), will take effect with the April 2009 monthly payment (for March 2009 contributions) and will continue through and including the June 2010 monthly payment (for May 2010 contributions).

The Commonwealth is committed to meeting its contractual obligations to fund the PEBTF in accordance with the parties' collective bargaining agreement. As provided herein, the Commonwealth will make up the deferred contributions and will satisfy its full and complete contractual funding commitment. The fiscal stability of the PEBTF is a testament to the prudent management of the fund, and the Commonwealth would propose no action that would undermine these achievements. For these reasons, the Commonwealth has agreed to the deferral make-up provisions contained in Paragraph 2.

**2. Deferral Make-Up Provisions.** The parties agree that the deferred contributions will be made up and paid to the PEBTF in full as follows:

a. **General Make-Up Payments.** The Commonwealth intends to make up the deferred contributions in fifteen (15) equal monthly installment payments over the period commencing with the September 2010 payment to the PEBTF. The Commonwealth, in its discretion, may delay the initial make-up payment until December 2010 and thereafter make the fifteen (15) equal installment payments. The make-up payments will be due at the same time as, and in addition to, contractually mandated contributions. The Commonwealth will notify the Union of any delay in the make-up payments.

b. **Accelerated Make-Up Payments.** If, at any point in time, the actuarially projected reserves for the PEBTF fall below one (1) month, the Commonwealth will make-up a sufficient amount of the deferred contributions to restore the one (1) month reserve within thirty (30) days or earlier to ensure there is no cash flow crisis. In addition, if the economy improves to the point that Commonwealth can accelerate the general make-up payment schedule in Paragraph 2.a. above, it will do so. Any accelerated make-up payments hereunder will reduce the Commonwealth's obligation under the general make-up payment provision in Paragraph 2.a.

**3. Benefit Levels.** It is agreed that there shall be no reduction in the level of benefits provided by the PEBTF as result of this Memorandum of Agreement. The parties will request that the PEBTF actuary provide a letter confirming that the deferred contributions hereunder will not result in a reduction in the level of benefits and that, while the deferred contributions will cause a temporary drop in the level of reserves below the current three-plus month reserve level, the deferral make-up provisions above are projected to restore this level of reserves. The actuary's letter will be attached hereto.

**4. Furloughs.** In exchange for the Union's agreement to defer contributions to the PEBTF, the Commonwealth has committed that it will not impose rolling furloughs of the participating Union members during the period that the reduced contribution rate remains in effect (i.e. through June 30, 2010).

The Union has strongly urged the Commonwealth to refrain from conducting permanent furloughs as well. While the Commonwealth in its discretion retains the right to conduct

permanent furloughs in accordance with Article 29, Section 7 of the parties' collective bargaining agreement, particularly where programs are eliminated as a result of the economic crisis as is the case in the Governor's FY 2009/10 budget proposal, the Governor has expressed his preference to minimize such furloughs to the extent possible. In the event permanent furloughs occur, the Commonwealth will follow the contractual process for such furloughs.

This agreement to refrain from rolling furloughs shall be a one-time, non-precedent setting agreement, and nothing contained herein shall be construed to create a duty to negotiate over the decision to undertake such furloughs. It further is understood that each party reserves its respective position and legal arguments regarding such furloughs.

**5. Scope and Effect.** This agreement shall remain in full force and effect regardless of whether any other union whose members are covered by the PEBTF agrees to the deferral of Commonwealth contributions to the PEBTF.

**6. Ongoing Discussions.** The Commonwealth is fully committed to continuing the process of meeting with the Union to discuss any and all cost-containment ideas, suggestions, and recommendations that the Union wishes to raise.

**7. Dispute Resolution.** It is in the best interests of the parties to agree upon a dispute resolution mechanism to resolve disputes arising under this Memorandum, if any. A dispute will be initiated by either party by written notice to the other within ten (10) calendar days of the dispute arising. If the dispute remains unresolved for twenty (20) calendar days following such notice, the initiating party may move the dispute to arbitration. It is agreed that the parties will endeavor to resolve such dispute on an expedited basis. If more than one union is involved in the same or a similar dispute, the matters will be consolidated and heard together. The parties will bear equally the expense of the arbitration, including the arbitrator's fees and associated costs. The parties will agree on three arbitrators who will be available on an expedited basis, from which they will select one to hear the dispute. If they are unable to agree, the union will strike one name, and the Commonwealth will strike one name, and the remaining name will be the arbitrator to hear the dispute.

Subject to ratification, the parties have signed this Memorandum of Agreement to indicate their assent to its terms.

Council 13, American Federation of State,  
County and Municipal Employees



David Fillman, Executive Director

Date:

4/17/09

Commonwealth of Pennsylvania



Naomi Wyatt, Secretary of Administration

Date:

4.9.09

## Memorandum of Agreement (2)

**AND NOW**, this 2<sup>nd</sup> day of April, 2009, this Memorandum of Agreement is made by and between Council 13, American Federation of State, County and Municipal Employees ("Union") and the Commonwealth of Pennsylvania ("Commonwealth").

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**WHEREAS**, at present, the Commonwealth is projecting a deficit in Fiscal Year 2008/09 of at least \$2.3 billion, a figure which, based on the latest revenue projections, is likely to grow before this fiscal year ends and will be carried into Fiscal Year 2009/10;

**WHEREAS**, as a result of this fiscal crisis, the Commonwealth has taken and will continue to take significant steps to reduce expenses across all agencies and, as part of that cost reduction effort, must identify ways to reduce personnel costs;

**WHEREAS**, the Governor has issued a pay freeze for all managers and non-represented employees, including the elimination of two step increments and a general pay increase scheduled to take effect between January 2009 and January 2010, a measure projected to save nearly \$140 million through Fiscal Year 2010/11;

**WHEREAS**, the Union has opposed the Governor's request to relinquish negotiated wage increases, including increments and general wage increases, for bargaining unit members;

**WHEREAS**, the Commonwealth was prepared to undertake rolling furloughs of one day per pay period, or a total of 29 days, to reduce expenses over the balance of this Fiscal Year and the next Fiscal Year, but the Union expressed its strong opposition to rolling furloughs;

**WHEREAS**, the parties recognize that the projected funding of the Pennsylvania Employees Benefit Trust Fund ("PEBTF") by the Commonwealth for the duration of the current memorandum of understanding will result in a substantial reserve level which can be reduced on a temporary basis to generate cost savings for the Commonwealth during this fiscal crisis without impacting adversely the fiscal stability of the PEBTF or the level of benefits offered;

**NOW THEREFORE**, the Commonwealth and the Union, subject to ratification by its members, in their respective capacities as signatories to the memorandum of understanding now in effect, have met, negotiated and agreed to the terms of this Memorandum of Agreement as an amendment to their memorandum of understanding.

**1. PEBTF Deferred Contributions.** The parties agree that the Commonwealth will be permitted to reduce, on a temporary basis, its contribution to the PEBTF. A reduction of twenty percent (20%) in the applicable employer contribution rate, as set forth in

Recommendation 25, Section 1(c), will take effect with the April 2009 monthly payment (for March 2009 contributions) and will continue through and including the June 2010 monthly payment (for May 2010 contributions).

The Commonwealth is committed to meeting its contractual obligations to fund the PEBTF in accordance with the parties' memorandum of understanding. As provided herein, the Commonwealth will make up the deferred contributions and will satisfy its full and complete contractual funding commitment. The fiscal stability of the PEBTF is a testament to the prudent management of the fund, and the Commonwealth would propose no action that would undermine these achievements. For these reasons, the Commonwealth has agreed to the deferral make-up provisions contained in Paragraph 2.

**2. Deferral Make-Up Provisions.** The parties agree that the deferred contributions will be made up and paid to the PEBTF in full as follows:

a. **General Make-Up Payments.** The Commonwealth intends to make up the deferred contributions in fifteen (15) equal monthly installment payments over the period commencing with the September 2010 payment to the PEBTF. The Commonwealth, in its discretion, may delay the initial make-up payment until December 2010 and thereafter make the fifteen (15) equal installment payments. The make-up payments will be due at the same time as, and in addition to, contractually mandated contributions. The Commonwealth will notify the Union of any delay in the make-up payments.

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