

MEMORANDUM OF AGREEMENT

MAR 10 2004

This **Memorandum of Agreement** will memorialize the terms of the settlement between the Mayor and City Council of Baltimore (the "City") and Maryland Public Employees, Council 67 a/w American Federation of State, County and Municipal Employees ("Council 67") and Baltimore Municipal Employees, Local 44 a/w American Federation of State, County and Municipal Employees ("Local 44") (collectively referred to as the "AFSCME Union") in the matters concerning (A) the CDL drivers who have failed to obtain a medical examiner's certificate in accordance with 49 C.F.R. § 391.41 in order to renew their CDL licenses; and (B) the settlement of all issues regarding the City's use of individuals in temporary positions within the Department of Public Works, the Department of Transportation and the Department of Recreation and Parks that were the subject of a grievance submitted to arbitration before Arbitrator Michael Wolf and the pending judicial action in the Circuit Court for Baltimore City (Case No. 24-C-03-006833).

A. CDL Drivers

In consideration of the mutual promises contained herein, the City and the AFSCME Union agree as follows:

1. The City shall compile and maintain a list of all job titles and classifications for which possession of a Commercial Driver's License is a condition of employment. Such positions for which possession of a CDL license is a condition of employment shall be positions held by "CDL Drivers." Such list of positions held by CDL Drivers shall be referred to as the "CDL List." The first such list shall be furnished to the AFSCME Union contemporaneously with the signing of this Agreement. The City shall keep current the CDL List, and it shall notify the AFSCME Union in writing whenever the CDL List is amended.
2. The City Employees named in the list that is attached to this Memorandum of Agreement as Appendix I are CDL drivers who, after examination by the City's designated Medical Review Officer ("MRO"), have failed to obtain a medical examiner's certificate of qualification in accordance with 49 C.F.R. § 391.41 ("Certificate") required to renew their Maryland CDL licenses as of December 1, 2003.

3. On or before December 31, 2003, the City shall mail a letter (the "Notice Letter") to each CDL driver who is listed on Appendix I in which Notice Letter the City shall advise from what impairment or disqualifying condition the CDL driver suffers. The Notice Letter shall additionally advise that no later than April 15, 2004 the CDL driver to whom the Notice Letter is addressed shall either:
 - (i) provide to the City an attestation from a Board Certified physician that the employee satisfies the qualifications set forth in 49 C.F.R. § 391 to hold a CDL; or
 - (ii) take corrective action to remedy or cure any reason for disqualification. The CDL driver shall have until April 15, 2004 within which to renew their CDL licenses.
4. CDL drivers who obtain a Certificate of qualification, and who thereby are able to renew their CDL licenses shall continue working as drivers in their respective departments.
5. Should the City receive a written request from a CDL driver prior to April 15, 2004, after a Notice Letter is delivered to that driver, the City's MRO shall review an attestation from a Board Certified physician that either (i) a CDL driver who has received a Notice Letter nonetheless satisfies the qualifications set forth in 49 C.F.R. § 391 to hold a CDL; or (ii) that the CDL driver has taken sufficient corrective action to remedy or cure a reason for disqualification. Following that review, should either the City or the CDL driver disagree about whether the CDL driver satisfies the requisite medical or physical qualifications to hold a CDL, then either the City or the CDL driver may demand an independent review by a different Board Certified physician by furnishing a written demand therefore to the Office of the Labor Commissioner and to the AFSCME Union. If an independent review is requested, the independent review shall be conducted by a physician who is chosen upon agreement between the Office of the Labor Commissioner and the AFSCME Union. Should the City and the AFSCME Union not agree, then the Board Certified physician shall be selected by the appropriate chief of faculty or department head of

the University of Maryland Hospital or Johns Hopkins Hospital. The function of the physician so selected shall be to determine, definitively, whether or not the CDL driver suffers from a medical or physical disability that would disqualify the driver from holding a CDL.

6. CDL drivers listed on Appendix I who are unable to qualify to renew, maintain or obtain their CDL licenses by April 15 2004, or who are deemed not qualified under ¶ A.5 of this Memorandum of Agreement, shall not be separated from City employment, but, instead, they shall be reassigned or demoted by the City and/or the appropriate appointing authority to an alternative position in their respective departments but only to the extent that they meet the regular and customary qualifications for such position. These CDL drivers shall not be required either to qualify for or to be placed on a List of Eligibles before being so reassigned. The alternative position to which these CDL drivers shall be reassigned shall be the highest other City Civil Service positions available, including, but not limited to, Laborer Crew Leader I (486), Laborer Crew Leader I (426), Laborer (482), and Laborer (423).
7. Those CDL drivers on Appendix I who fail to physically qualify for alternative employment or who decline employment in alternative positions shall be discharged; provided, however, that the Trustees of the Employee Retirement System of the City of Baltimore shall apply the early retirement provision set forth in section 9(f)(3) of the ERS law to an employee with twenty (20) or more years of membership service who is permanently separated from employment with the City because he or she no longer is physically qualified to hold a Commercial Driver's License or qualified for alternative employment as if the employee was removed from service without fault on his or her part, provided the payroll and other personnel documentation furnished to ERS indicates that he or she was so removed. Any employee who is so separated from City employment with twenty (20) or more years of service may, in addition, cash out

all vacation, personal and sick leave accumulated by the employee. Further, an employee with five (5) or more years of membership service who is permanently separated from employment with the City because he or she no longer is physically qualified to hold a Commercial Driver's License or qualified for alternative employment could qualify for a deferred vested benefit, pursuant to 9(1)(2) of the ERS law, provided that the payroll and other personnel documentation furnished to the ERS indicates that the employee was removed from his or her position without fault. Notwithstanding the eligibility of the employee to apply for an ERS service retirement, he or she may be granted non-line-of-duty disability retirement benefits under the ERS law if eligible. ERS will determine the employee's disability on a case-by-case basis pursuant to applicable law.

8. The City shall not contest a claim for unemployment compensation benefits filed by a CDL driver whose employment is terminated because the employee has failed to qualify to renew his/her CDL license or who has declined alternative employment.
9. The rights and remedies described in ¶¶ A.2 through A.8 of this Memorandum of Agreement shall be applied, as well, to CDL drivers who fail on or after December 2, 2003 to obtain a Certificate required to renew their Maryland CDL. Those CDL drivers who fail on or after December 2, 2003 to qualify under 49 C.F.R. § 391 shall on the 121st day after receiving written notice of such failure to qualify be demoted or downgraded to laborer or other appropriate alternative position within their respective department provided there is an immediate vacancy and they are physically qualified for such vacant position. The City shall issue and deliver a Notice Letter to each such CDL driver in the same form and substance as is provided in ¶ A.3 of this Memorandum of Agreement. Following that, the City, the CDL driver and the AFSCME Union shall follow the terms of ¶¶ A.4, A.5, A.7, & A.8 of this Memorandum of Agreement. Once those steps are

exhausted, in the event that no such vacancy exists or the employee fails to qualify for vacant position, the CDL driver shall be discharged on the one hundred twenty-first (121st) day following delivery of the Notice Letter.

10. If an employee covered by this Agreement is demoted, downgraded or separated from employment because the employee fails to obtain a U. S. Department of Transportation physical certificate required to renew a CDL license, no waiver of a right to a hearing before the Civil Service Commission shall result or be presumed from this Agreement. At the employee's option, the employee may challenge the demotion, downgrading or separation through the remedies that exist under Baltimore City Charter (1996) Article VII, §§ 95 (f) and 100(a), provided that such appeal is filed by the employee with the Civil Service Commission within the first one hundred twenty (120) days after receiving written notice of the demotion, downgrading or separation.

B. Temporary Employees

With respect to the issues concerning individuals in temporary employee status, the AFSCME Union and the City have agreed to resolve all issues as follows:

1. All workers whose names are listed in Appendix II to this Memorandum of Agreement as having remained in temporary employee status for twenty-seven (27) months or more as of November 1, 2003 shall be appointed to permanent Civil Service positions within sixty (60) days from December 1, 2003 or by February 1, 2004, whichever is sooner.
2. All workers whose names are listed in Appendix III to this Memorandum of Agreement as having remained in temporary employee status for twenty-five (25) but less than twenty-seven (27) months as of November 1, 2003 shall be appointed to permanent Civil Service positions by July 1, 2004.
3. The appointments referred to in Paragraphs B.1 and B.2 of this Memorandum of Agreement shall be made immediately without regard to the listed

workers' placement on the List of Eligibles maintained by the Personnel Director. Upon appointment, the workers shall qualify for all benefits and rights as persons who are members of the AFSCME Union bargaining unit and who are regularly employed within the City Civil Service.


4. Beginning July 1, 2004, the City shall not require more than two hundred and forty (240) temporary employee status for a period exceeding twenty-five (25) months. Notwithstanding the foregoing, there shall be no numerical limitation on the number of employees in temporary positions for six (6) months or less in the event of an emergency as determined in the sole and exclusive discretion of the Mayor or his designee.
5. The provisions in Paragraphs B.1, B.2, B.3 and B.4 of this Memorandum of Agreement are accepted and agreed upon by the City and the AFSCME Union notwithstanding the provisions of Article 26 of the MOU and the Administrative Manual AM 234-1 as they pertain the City's employment of temporary or seasonal employees, both of which shall be interpreted and applied in a manner consistent with the terms of Paragraph 4 in this Agreement.
6. Five (5) days after this Agreement is approved by the City's Board of Estimates, and it is ratified by the AFSCME Union's Executive Board and membership, the City and the AFSCME Union shall (1) file simultaneous withdrawals with prejudice of their claims in Case No. 24-C-03-006833 currently pending in the Circuit Court for Baltimore City; (2) discharge Arbitrator Wolf from his engagement in the Arbitration and thus also terminate that proceeding; and (3) prepare and issue a joint statement to be the exclusive statement issued to the public concerning the settlement of the litigation and the arbitration.

Once approved and ratified by the City and the AFSCME Union, as aforesaid, the above terms are binding upon the City, the Civil Service Commission of the City, the City's Director or Human Resources, and the Trustees of the Employee Retirement Program. The effective date of this Agreement is conditioned upon approval by the

City's Board of Estimates, and ratification by the AFSCME Union, but once approved by the Board of Estimates they shall be incorporated into and become a part of the current and all subsequent Memorandums of Understanding between the City and the AFSCME Union until it is amended or terminated by subsequent agreement of the City and the AFSCME Union.

Mayor and City Council of Baltimore

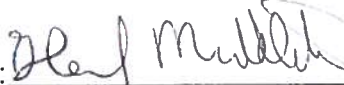
Maryland Public Employees Council
67 a/w AFSCME


By: 
Int. Labor Commissioner

By: 
Executive Director


Baltimore Municipal Employees,
Local 44 a/w AFSCME

Approved as to form and sufficiency:

By: 
President


Assistant City Solicitor
Chief

Board of Estimates:

Noted: 
CLENIC MAR 10 2004