

BEFORE THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JOHN Q. PUBLIC
GRIEVANT,

v.

DOCKET NO. 2024-0000-XXXX

DIVISION OF **[NAME]**
RESPONDENT.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between **John Q. Public** (Grievant) and Division of **[NAME]** (Respondent).

WHEREAS, Grievant is employed by Respondent in a position classified as a **[CLASSIFICATION]**, Pay Grade **xx**, earning \$**xx.xxxx** an hour.

WHEREAS, prior to **[date prior to the effective date of the reallocation transaction]**, Grievant was in a position classified as a **[CLASSIFICATION]**, Pay Grade **xx**, with an hourly salary of \$**xx.xxxx**.

WHEREAS, Grievant filed a grievance alleging that the position **[he or she]** occupies would be more accurately classified as a **[CLASSIFICATION]**, Pay Grade **xx**.

WHEREAS, on **[DATE]**, the Division of Personnel (DOP) received a Position Description (PD) form from Respondent for a classification review of the position Grievant occupies. The Grievant's supervisor signed the PD form on **[DATE]**.

WHEREAS, the DOP determined the proper classification of the position Grievant occupies is a **[CLASSIFICATION]**, Pay Grade **xx**, and notified the agency on **[DATE]**.

WHEREAS, Respondent processed a personnel transaction reallocating the position Grievant occupies from a **[CLASSIFICATION]** to a **[CLASSIFICATION]** with an effective date of **[DATE]**.

WHEREAS, Respondent must comply with the DOP's *Settlement Agreements/Back Wages* policy (DOP-P24) when entering into an agreement to pay back wages.

[Depending on which reallocation phase(s) was delayed, choose the appropriate language below:]

WHEREAS, pursuant to DOP's *Settlement Agreements/Back Wages* policy, when an appointing authority provides the DOP a PD form more than forty-five (45) calendar days from the Grievant's supervisor signature, back wages are owed from the 46th day from the supervisor's signature to the date DOP receives the signed PD.

Initials: Grievant: _____ Respondent: _____ Respondent Counsel: _____
Grievant Rep: _____

WHEREAS, pursuant to DOP's *Settlement Agreements/Back Wages* policy, when the DOP communicates a classification determination to the appointing authority more than sixty (60) calendar days from the receipt of a signed PD form, back wages are owed from the 61st day from the date DOP receives the signed PD to the date the agency is notified of DOP's classification determination.

WHEREAS, pursuant to DOP's *Settlement Agreements/Back Wages* policy, when the appointing authority processes the corresponding personnel transaction to effectuate the reallocation more than thirty (30) calendar days from the receipt of the classification determination, back wages are owed from the 31st day of receipt of the classification determination to the effective date of the reallocation personnel transaction.

WHEREAS, Grievant is owed for the period of time from [DATE], [example: *the 31st day from DOP's communication of the classification determination to the appointing authority*], to [DATE], [example: *the effective date of the reallocation personnel transaction*].

WHEREAS, Grievant and Respondent are desirous of entering into this Settlement Agreement and Release to resolve all matters relating to this grievance; and

NOW THEREFORE, for good and valuable consideration and the mutual covenants contained herein, Grievant and Respondent agree as follows:

1. Respondent agrees to pay Grievant back wages for the period of time from [DATE] through [DATE] for the delay(s) in the reallocation process.

2. Considering any applicable personnel transactions that may have occurred from [DATE], through [DATE], Grievant will receive \$xx.xx back pay, plus \$xx.xx interest, for a total gross amount of \$xxx.xx. Grievant agrees that any liability for federal or state tax payments upon the amount paid to [him or her] pursuant to this Settlement Agreement and Release shall be [his or her] responsibility. Provided, that Respondent will be responsible for the applicable standard employer payroll tax liability. It is the intent of all parties that the whole amount of these back wages be pensionable.

3. Grievant shall dismiss with prejudice this grievance and does hereby waive, release, acquit and discharge Respondent from any and all liabilities, attorney fees, claims, demands, controversies, damages, actions and causes of action of every kind and character, arising from the facts and circumstances of this grievance, which [he or she] may now have or may have in the future concerning the subject matter of this release.

4. This Settlement Agreement and Release shall be binding on Grievant and Respondent hereto and their assigns.

5. Grievant acknowledges that [he or she] has read this Settlement Agreement and Release and has had a reasonable period of time to consider this Settlement Agreement and Release and to consult an attorney, if desired. Grievant further acknowledges that [he or she] understands all the terms of the Settlement Agreement and Release and has knowingly and voluntarily agreed to those terms, which may not be changed.

Initials: Grievant: _____ Respondent: _____ Respondent Counsel: _____
Grievant Rep: _____

6. Grievant and Respondent expressly acknowledge that the entire agreement is contained in this Settlement Agreement and Release and no representations, promises, or inducements have been made by or to Grievant other than as appear in this Settlement Agreement and Release. The parties understand and agree that this Settlement Agreement and Release may not be changed orally. This Settlement Agreement and Release supersedes all prior agreements and understandings concerning the subject matter hereof, including, but not limited to, Grievant’s employment with Respondent.

7. Grievant and [his or her] representative, if applicable, agree that he or she will keep the settlement negotiations and the terms of this Settlement Agreement and Release completely confidential. Although Respondent will not unilaterally distribute, disseminate or otherwise release this Settlement Agreement and Release, Grievant acknowledges and understands that Respondent is a public agency of State government and may be obligated to release this Settlement Agreement and Release pursuant to West Virginia Supreme Court case precedent, the West Virginia Freedom of Information Act, West Virginia Code §§ 29B-1-1 *et seq.*, or other applicable law. Further, Grievant and Respondent may share with their respective accountants or other paid tax preparers the amount of monies received pursuant to this Settlement Agreement and Release for the sole purpose of complying with duties and obligations owed to the United States Internal Revenue Service and/or any and all state or local tax authorities.

THE PARTIES UNDERSTAND AND AGREE that this Settlement Agreement and Release and the settlement it represents are entered into solely for the purpose of avoiding further expenses of litigation. This Settlement Agreement and Release and the settlement it represents in no way constitutes an admission by Respondent of any violation of any federal, state or local law, whether statutory or common, and Respondent denies that a violation of any such law has occurred with respect to Grievant’s employment with Respondent or the cessation of that employment with Respondent.

IT IS FURTHER UNDERSTOOD that this Settlement Agreement and Release is a preliminary document and pursuant to W. Va. Code R. § 143-1-21, requires the review and approval of the Division of Personnel. If the Division of Personnel determines that any of the terms are not compliant with the Division of Personnel’s law, rules and policies, then this Settlement Agreement and Release is null and void.

IN WITNESS WHEREOF, Grievant and Respondent execute this Settlement Agreement and Release, effective the latest of dates set forth below.

Date

John Q. Public
Grievant

Initials: Grievant: _____
Grievant Rep: _____

Respondent: _____

Respondent Counsel: _____

Settlement Agreement and Release

John Q. Public

Division of **[NAME]**

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Date

Jane Q. Taxpayer

Grievant's Representative

Date

Joan Q. Citizen, Director

Division of **[NAME]**

Respondent

Date

Joe Q. Attorney, Counsel for Respondent

Division of **[NAME]**

**Approved as to compliance with the
Division of Personnel's law, rules and policies:**

Date

Sheryl R. Webb, Director

Division of Personnel

I certify this is the original document
with original signatures.

Nancy Q. Worker, [TITLE]

Division of **[NAME]**

Date