

Summary of Changes for the State of Nebraska and FOP 88 2021-2023 Labor Contract

The following are changes to the 2021-2023 Labor Contract between the State of Nebraska and FOP 88 which will become effective July 1, 2021. Please contact DAS Employee Relations with any questions regarding the application and/or interpretation of these or any other provisions.

A brief overview is below with the adjusted language following. For reference, underlined language is new language, and stricken language is language that is being removed.

WAGES

Article 11.1.1 through 11.3.3

- A 7 step pay plan for DCS and DHHS classifications
 - DHHS classifications pay plans adjusted; all classifications have a Step 1 (minimum hourly rate) of at least \$17.00 per hour.
 - DCS classifications pay plans remain as in the 2019-2021 Labor Contract.
 - Each step is \$1.00 above the previous step in the pay plan.
- On July 1, 2021, DCS teammates whose performance has been scored satisfactory for the past calendar year and who have not been subject to disciplinary action of disciplinary probation or greater will advance one step (\$1.00) on their respective pay plan. DCS teammates at or above Step 7 of their classification's pay plan on June 30, 2021 shall receive a 2% increase to their annual full-time equivalent salary base subject to the same performance and disciplinary requirements.
- On July 1, 2021, DHHS teammates will be placed on the 7 step pay plan for their respective pay plan.
 - Teammates shall be placed at Step 1 (minimum hourly rate) or receive an increase equal to the dollar amount that the minimum hourly rate for their respective classification increased.
- On July 1, 2021 all remaining FOP covered teammates (classification not in DCS or DHHS) whose performance has been scored satisfactory for the past calendar year shall receive a 2% salary increase to their annual full-time equivalent salary base.
- On July 1, 2022, DCS and DHHS teammates whose performance has been scored satisfactory for the past calendar year will and who have not been subject to disciplinary action of disciplinary probation or greater will advance one step (\$1.00) on their respective pay plan. DCS teammates at or above Step 7 of their classification's pay plan on June 30, 2021 shall receive a 2% increase to their annual full-time equivalent salary base subject to the same performance and disciplinary requirements.

- On July 1, 2022 all remaining FOP covered teammates (classification not in DCS or DHHS) whose performance has been scored satisfactory for the past calendar year shall receive a 2% salary increase to their annual full-time equivalent salary base.

SUBSTANTIVE CHANGES

<u>Article 5</u> 5.6 5.9 5.12 5.14	Alters the time period for certain bumping and recall/reinstatement rights from 24 months to 12 months.
Article 5.20 and 5.21	Removes the Re-employment Program from the FOP 88 Labor Contract.
Article 7.7.1	Adds Behavior Technician to the list of direct care staff eligible for shift differentials outlined.
Article 10.2	Alteration to reasons for imposing disciplinary action to more closely align with performance management language.
Article 10.10	Agencies have 30 calendar days after the pre-disciplinary hearing to take action or no discipline shall be imposed excepting criminal conduct and bias against a protected class. An extension of 15 calendar days is available.
Article 11.7	Teammates reverting to a classification from which they were promoted have a salary review of only the past 5 years.
Article 11.8	The provision allowing credit for years of experience in a corrections setting, or like setting, for purposes of placement on the pay plan only applies to teammates who have not been employed by NDCS in FOP 88 covered classifications for the 36 months preceding hire or rehire. An exception is allowed by mutual agreement of NDCS and FOP 88.
Article 11.10	Language added to clarify how state-issued health directives will impact specific performance goals and evaluations.
Article 14.27 and 14.27.1	Discretion for Agency Heads/Designees to waive the FMLA requirement under the Maternity Leave Donation Program.
Appendix A	Outlines the 7 step pay plan for DCS and DHHS classifications, and the Minimum and Maximum Hourly Rates for all other classifications.
<u>Appendix C</u> C.11.13.1 C.11.15.1 C.11.15.2 C.11.15.3	Voluntary overtime to be awarded by entire shift. If no volunteers for the full shift then the last half of a shift shall be filled first. If unable to fill both halves mandatory overtime is assigned for the entire shift. Adjustment to mandatory overtime provisions to prevent mandatory overtime on a teammate's last day of the scheduled

	work week, last shift before approved paid leave, or for only the latter half of the next shift.
Appendix M	Supervisory counseling shall not be used when evaluating for work assignments or promotion if over six months previous.
M.1.8	
M.5.5	Teammates in restrictive housing units who have been in permanent postings for at least 12 consecutive months to be issued stab resistant edge weapon defense vests sized and provided for the individual teammate.
M.6.1	Hours worked in excess of 16 in a 24-hour period to be paid at 2x the teammate's regular rate of pay.
M.6.3.1	Teammates who volunteer to work an entire shift receive priority placement.
Q.2	Change ordinary work day from 8 hours to 8.25 hours.

CONTRACT UPDATES AND CLEAN UP

Article 1.1 and 24.1	Dates updated.
Article 4.7.11 and 4.7.13	Updates to specifically provide that decisions from both arbitrators and State Personnel Board hearing officers may be received via email.
Article 10.3	Clean up to correct incorrect contract reference.
Article 17.1	Clean up to correct incorrect contract reference.
Article 19.11	Clean up to correct incorrect contract reference.
Appendix M	Clean up to provide clarity and correct incorrect contract references.
M.1.6	
M.3.3	
M.6.1.4	

State of Nebraska and FOP 88 2021-2023 Labor Contract

Language Changes

- 1.1 This Contract made and entered into this ~~16th day of April, 2019~~ [DATE] at Lincoln, Nebraska, pursuant to the provisions of Chapters 48 and 81, Reissue Revised Statutes of Nebraska, 1943 (R.R.S.) by and between the State of Nebraska (*hereinafter referred to as the Employer*) and the Fraternal Order of Police, Nebraska Protective Services, Lodge 88 (*hereinafter referred to as the Union or FOP 88*), as representative of employees, except as modified by Article 2.2, employed by the State of Nebraska in classes assigned to the following bargaining units as certified by the Nebraska Commission of Industrial Relations (CIR):

Protective Services (P)

- 4.7.11 The decision of the arbitrator shall be made in writing within 60 calendar days of the conclusion of the hearing and shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding and the DAS Employee Relations Division, shall receive a copy of the decision by first class U.S. Mail or by electronic mail, response receipt requested. The Arbitrator's decision will become public record upon submittal to the parties. If the arbitrator does not render a decision within 60 calendar days from the date the arbitration hearing concludes (the last day of the hearing or the date the last brief was received, whichever is later), a penalty of \$50 per day will be imposed and deducted from the arbitrator's fee for each day over 60 calendar days the decision is late, until the decision is received. This penalty may only be waived upon mutual agreement of the parties and the Administrator of the DAS Employee Relations Division.
- 4.7.13 The Administrator of the DAS Employee Relations Division/designee shall have the authority to set time limitations for: the length of time within which a hearing officer must be chosen; the amount of time the parties will have to present their case (although each party will receive the same amount of time); the time within which a case must be heard after a hearing officer is appointed; the length of time that will be allowed for the parties to submit post hearing briefs; and the period of time after a hearing within which the hearing officer must enter his/her decision. Post hearing briefs shall not be allowed in any case unless the parties and the hearing officer are all in agreement as to the need for such briefs. The recommended decision of the hearing officer shall be made in writing within 60 calendar days of the conclusion of the hearing and shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. The

DAS Employee Relations Division and FOP 88, shall receive from the hearing officer a copy of the recommended decision by first class U.S. Mail or by electronic mail, response receipt requested. If the hearing officer does not render a recommended decision within 60 calendar days from the date the appeal hearing concludes (the last day of the hearing or the date the last brief was received, whichever is later), a penalty of \$50 per day will be imposed and deducted from the hearing officer's fee for each day over 60 calendar days the recommended decision is late, until the recommended decision is received. This penalty may only be waived upon mutual agreement of the parties and the Administrator of the DAS Employee Relations Division.

- 5.6 Subject to the limitations of the agency layoff plan, the rights of the laid off employee shall be in the following sequential order:
- a. If there is a vacant position in the same classification within 25 miles, the employee shall, if qualified, in order of seniority, transfer to the vacant position. If more than one vacancy exists in the same classification, the employee may choose which vacancy they want to fill. In no event shall an employee be required to accept a transfer or reassignment in excess of twenty-five miles from their current work location. Employees may, if qualified, voluntarily accept a vacant position of the same classification more than 25 miles away.
 - b. In lieu of bumping, an employee may transfer to a vacant position of the same or lower minimum rate of pay which the employee is qualified to hold. If more than one vacancy exists in the same classification, the employee may choose which vacancy they want to fill. Affected bargaining unit employees with the highest seniority shall have first choice. The salary of the employee selecting transfer shall be set in accordance with section 5.7 of this Article. If two or more laid off employees have the same service anniversary date and elect to transfer to the same vacant position, this tie shall be broken by lot.
 - c. In order to provide the most efficient continued operation of the Agency, employees occupying positions designated for layoff and who elect to exercise his/her bumping rights shall, except in situations where specific job related factors are involved, bump employees with the least seniority in the following sequence:
 1. positions of the same classification; In any agency when two or more employees of the same classification are being laid off concurrently, the employee with the most state seniority shall have the first choice of the positions eligible to be bumped into, however, no employee shall be allowed to bump a more senior employee. The positions eligible to be bumped into shall equal the number of

positions of the same classification in the agency which will remain occupied, or the total number of positions being reduced, whichever is the smaller number. The positions eligible to be bumped shall be the ones occupied by employees with the least state seniority.

2. positions within the same classification series assigned to a classification with a lower minimum rate of pay;
 3. positions within classifications the employee occupied within the previous 2412 months of an equivalent or lower minimum rate of pay;
 4. positions within the same classification series as the employee occupied within the previous 2412 months with a lower minimum rate of pay.
 5. positions assigned to a classification with a higher minimum rate of pay if the employee actually performed the duties of the higher level position and was reclassified to a position assigned to a classification with a lower minimum rate of pay within the previous 2412 months for other than disciplinary or voluntary reasons.
 6. positions of the same classification at any Agency location occupied by an employee with the least seniority in that classification.
 7. positions of a lower classification in the same series at any Agency location occupied by an employee with the least seniority in that classification series.
 8. previously held positions in other agencies within the last 2412 months if the employee's duties and responsibilities were reassigned from one agency to another agency.
- d. Agencies shall provide employees occupying positions designated for layoff seven calendar days to respond to bumping options.
 - e. Employees who are bumped from their positions shall be able to exercise their rights as outlined in Section 5.6. The seniority of an employee shall be based on service anniversary date as defined in 5.5.b.

5.9 Any employee laid off shall be offered a position in the classification from which he/she was laid off, provided he/she meets the minimum qualifications for the position before a new employee may be hired for such position by the Agency if such opening becomes available within 2412 months of the employee's layoff. If the

employee was exempt from the current minimum qualifications for the position before the employee was laid off, the employee shall be exempt from the current minimum qualifications for purposes of recall. Employees or former employees declining reinstatement to a position of a lower classification within the same series shall be given the opportunity to be reinstated to a position of their previous classification, if positions become available within the 2412 month period.

5.12 Employees or former employees reinstated within 2412 months to a position of their previous classification (held at the time of layoff) shall return at the same distance into the salary range the employee was at when he/she left State employment. Employees reinstated shall not be required to serve an original probationary period, unless this probationary period was not completed prior to layoff. In those instances where the employee was serving a probationary period upon layoff, the probationary period will be completed upon reinstatement.

5.14 Employees reinstated during the 2412-month period shall retain all previously accumulated sick leave, except that employees who have previously received payment for one-quarter of their sick leave balance shall start with a zero sick leave balance. Employees eligible for retirement who are laid off shall have the option to defer the payment of one-quarter of their sick leave account for up to 2412 months. Should the laid off employee return to state employment within 2412 months, the employee's sick leave balance and service date shall be reinstated (minus time in a non-pay status). Should the laid off employee not obtain further state employment at the end of the 2412-month period, the agency from which they left shall pay them one-quarter of their sick leave account.

7.7.1 Shift differential for all direct care staff is as follows for the following classifications:

2nd and 3rd shifts weekdays \$1.00

1st shift weekends (Saturday and Sunday) and holidays \$1.25

2nd shift weekends (Saturday and Sunday) and holidays \$1.50

3rd shift weekends (Friday and Saturday) and holidays ~~\$1.50~~ \$1.75

Developmental Technician I, II

Food Service ~~Aide~~ Worker

Staff Care Specialist

Food Service Assistant

Staff Care Technician I, II

~~Food Service Cook~~

Licensed Practical Nurse

Maintenance Technician

~~Food Service Aides~~, Food Service Assistants, and Food Service ~~Cooks~~ Workers who work between 6:00 p.m. and 6:00 a.m. shall receive shift differential at the second shift rates for all hours worked between those hours. ~~Food Service Aides~~, Food Service Assistants, and Food Service ~~Cooks~~ Workers who work at least three (3) consecutive hours and have any hours worked between the 6:00 p.m. and 6:00 a.m. time frame shall be guaranteed a minimum of three (3) hours of 2nd shift differential pay. For employees who start their shift between 6:00 p.m. and 6:00 a.m. and do not work three (3) consecutive hours, they will be paid 2nd shift differential for only the hours worked. As these employees do not work traditional shifts, the employing agency, in consultation with the union, shall designate the assigned shift of each food service position.

- 10.2 **Reasons for Imposing Disciplinary Action** – Appropriate disciplinary action, subject to just cause as defined in Article 10, may be taken for any of the following offenses for violating reasonable agency work rules including those contained in agency policy and procedures manuals, legally promulgated rules and regulations, or for violating any provision of the FOP 88 and State of Nebraska Labor Contract:
- a. Violation of, or failure to comply with, the Labor Contract, State constitution or statute; an executive order; regulations, policies or procedures of the employing agency; or legally promulgated published rules.
 - b. Failure or refusal to comply with a lawful order or to accept a proper assignment from an authorized supervisor.
 - c. Inefficiency, ~~incompetence~~ or ~~gross~~ negligence in the performance of duties, or failure to meet clearly established performance expectations.
 - d. Unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs. Use of a controlled substance by the employee as prescribed by his/her physician and/or other licensed health practitioner shall not be a violation.
 - e. Negligent or improper use of state property, equipment or funds, or conversion of state property. This includes transmitting threatening, obscene, or harassing material through the State's communication systems.
 - f. Bribery to gain, or attempt to gain, promotion, leave, or favorable assignment for individual benefit or advantage.
 - g. Falsification or intentional omission of required information on the employment application/resume.
 - h. Unauthorized use or abuse of any type of leave, meal or rest periods.

- i. Repeated tardiness or unauthorized leave, including unauthorized departure from the work area.
- j. Failure to maintain appropriate working relationships with the public, employees, supervisors, or managers while on the job or when performing job related functions.
- k. Failure to obtain and maintain a current license or certification required by law or agency standards as a condition of employment.
- l. Conviction of a felony.
- m. Acts or conduct which adversely affects the employee's performance and/or the employing agency's performance or function.
- n. Work place harassment based, in whole or in part, on race, color, sex, religion, age, disability or national origin, which manifests itself in the form of unwelcome comments, jokes, printed material and/or unwelcomed sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.
- o. Display of materials and/or the utterance of offensive comments in the workplace that are derogatory towards a group or individual based upon race, gender, color, religion, disability, age or national origin.

10.10 ~~Whenever the results of a predisciplinary hearing are forwarded to the Agency Head for resolution, the Director/Designee will respond within thirty (30) calendar days of receipt, except when the parties mutually agree to extend the time limit. If a response is not received within 30 calendar days, or the extended period if the time for response is extended, then the discipline recommended to the Agency Head/Designee shall be implemented. After the conclusion of a pre-disciplinary hearing the Agency Head/Designee shall have thirty (30) calendar days to impose disciplinary action or dismiss the allegations. The Agency Head/Designee may extend the amount of time to impose disciplinary action or dismiss the matter by not more than fifteen (15) calendar days. The extension shall be issued in writing. If disciplinary action is not imposed within the thirty (30) calendar days, or the extended period if applicable, then disciplinary action shall not be imposed for the alleged offense/s. If the allegations contain criminal conduct that could result in the employee being charged with a misdemeanor or felony, the time limits outlined above will not apply until the employee is either convicted or the charges are dismissed.~~

14.27 **Maternity Leave Donation (MLD) Program.** When an expectant or new mother needs to be away from work due to a birth of a child, she may request MLD. MLD shall be available only to employees who have exhausted their own earned sick leave, in conjunction with an approved Family Medical Leave (FML) under the Family Medical Leave Act and only with approval of the agency head and/or designee. Eligibility may

be extended to those without an approved Family Medical Leave at the discretion of the agency head and/or designee.

14.27.1 **Eligibility of Recipient.** Employees shall meet the following criteria before request(s) for donations can be made:

- a. Be the expectant or new mother of a newborn baby
- b. FML request has been approved by the agency or the agency head and/or designee has waived need for this approval
- c. Have exhausted all earned sick leave
- d. Have not offered anything of value in exchange for the donation

24.1 The terms and conditions of this Contract shall continue in full force and effect commencing on July 1, 2021, and terminating on June 30, 2023 unless the parties mutually agree in writing to extend any or all of the terms of this Contract.

C.11.13.1 Voluntary overtime will be awarded to a bargaining unit member only if the volunteer is willing to cover the entire shift. If there are no volunteers to work the entire shift, the voluntary overtime will then be awarded by filling the last half of the shift first, then the first half of the shift second. If there are not enough volunteers to provide coverage for the entire shift, then the entire overtime shift shall be assigned as mandatory overtime in accordance with the mandatory overtime provisions.

C.11.15.1 An employee shall not be subject to mandatory overtime solely for the second half of a shift following their regularly scheduled shift unless said employee has worked the first half of that same shift or is scheduled to work the shift immediately following the overtime shift. At no time will an employee be sent home and be required to return and finish the next shift.

C.11.15.2 An employee shall not be mandated to work overtime after the employee's last scheduled shift if they will be absent due to the use of approved vacation leave or compensatory time off for their full shift the following day, or where they are scheduled to use paid leave immediately following their days off.

C.11.15.3 No employee shall be mandated to work overtime on the last day of their work week prior to their regular days off.

M.1.6 PRIMARY POST ASSIGNMENT – The post assignment which is given the employee on an official form. This assignment is permanent and dictates assignment of class, classification, etc. ~~This is subject to the~~ The Agency shall provide providing ten work days written notice to the affected employees prior to making changes in their

permanent work schedules, except when requested or agreed to by the Employee or in cases of emergency as defined in M.1.4.

M.1.8 SUPERVISORY COUNSELING. A supervisory counseling is a means of correcting or clarifying performance expectations, and is not considered a form of discipline. Supervisory counseling shall not be used in agency decisions regarding work assignments or evaluations for promotion if the supervisory counseling took place over six months previously.

M.3.3 Work Schedules and Changes - Correctional Officers, Correctional Corporals, and Correctional Unit Caseworkers will be assigned to permanent shifts and permanent days off. This is subject to the Agency providing ten work days written notice to the affected employees prior to making changes in their permanent work schedules, except when requested or agreed to by the Employee or in cases of emergency as defined in M.1.4.

Subject to Institutional needs, Sergeants will be assigned to a permanent shift and days off, and will rotate from post to post on that shift every six months; except for Sergeant positions designated as an exempt post. When making assignments or conducting the bidding process for shift/days off seniority will be taken into considerations; however, Institutional needs will be the determining factor. Sergeants may be temporarily assigned to a different shift and/or days off, to fulfill Institutional needs or for training purposes. M.4.2 is not applicable to Sergeants; however the provisions of ~~M.13.1~~ M.12.1 do apply.

M.5.5 Bargaining unit members assigned to a restricted housing facility or similar housing unit, who have been assigned such a permanent posting for at least 12 consecutive months, shall be issued a stab resistant edge weapon defense vest that is sized for the employee. Such vest shall only be used by the employee for whom it is issued.

M.6.1 A standard work week shall be 40 hours plus roll call time. In no event, except per Section M.1.4, shall any employee work more than 16 consecutive hours plus roll call without a minimum of a 7 hour break. All hours in excess of this standard work week shall be considered overtime and compensated at one and one-half times the regular hourly rate for all members of the bargaining unit. All hours worked in excess of 16 consecutive hours plus roll call in a 24 hour period beginning at the start of that employee's shift, shall be compensated at two times the regular hourly rate for all members of the bargaining unit. The Agency will continue to provide roll call time at the facilities where it now exists during the fiscal years for which this Contract is in effect.

M.6.1.4 EXEMPT POST/JOB ASSIGNMENT: Is defined as a post/job assignment that is not positioned within a normal rotation with other employees ~~and/or~~ has specific duties and work hours different from employees in the normal rotation.

- a. This employee cannot be placed on a mandatory list with other employees assigned to normal rotation post/job assignments and can only be mandated to work their assigned post/job assignment.
- b. The employee may volunteer to work overtime, but shall be the last for consideration after all other employees that volunteered to work have been offered the opportunity to work first.

M.6.3.1 Assignment of employees to work voluntary overtime shall be awarded to the volunteering employee with the most State seniority within the same classification of the position to be filled. If there are no volunteers within the classification, the voluntary overtime will be awarded to those remaining volunteers based on State seniority. However, within twenty-four hours prior to the start of a shift, voluntary overtime is offered on a first come first serve basis. After the employee works two or more hours of voluntary overtime the employee moves to the bottom of the mandatory overtime list.

Employees who are assigned to work voluntary overtime shall have the opportunity to work for at least two hours. Employees who volunteer to work an entire shift shall receive priority placement.

Q.2 Meal Periods

For those military security specialist employees whose scheduled work day is ordinarily eight and one-quarter (8 $\frac{1}{4}$) hours, a meal period shall be considered time worked, as those employees are considered on duty from the beginning of their shift until they finish their shift.