

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN
STATE OF MONTANA
INTENSIVE BEHAVIOR CENTER
AND
PROFESSIONAL INTERDISCIPLINARY
FEDERATION & REGISTERED NURSES
LOCAL No. 3399
2019-2023**

COLLECTIVE BARGAINING AGREEMENT
between the
STATE OF MONTANA
(Intensive Behavior Center)
and the
Professional Interdisciplinary Federation & Registered Nurses
Local No. 3399, MFPE

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**Collective Bargaining Agreement
between
State of Montana
and
Professional Interdisciplinary Federation & Registered Nurses
Local No. 3399**

Preamble

THIS AGREEMENT is made and entered into this 2/12/2020 day of 2/12/2020 2020, between the Intensive Behavior Center, Montana Department of Public Health and Human Services, hereinafter referred to as the "Employer," and the Professional Interdisciplinary Federation and Registered Nurses, Local #3399, MFPE, hereinafter referred to as the "Federation." It is the intent and purpose of this Agreement to assure sound and mutually beneficial working relationships between the Employer and its employees, to provide an orderly and peaceful means of resolving grievances, to prevent interruption of work and interference with the efficient operation of the State of Montana, and to set forth herein a complete Agreement between the parties concerning terms and conditions of employment which are not otherwise mandated by statute. It is understood that the Employer is engaged in furnishing an essential public service, which vitally affects health, safety, comfort, and general wellbeing of the public and both parties hereto recognize the need for continuous and reliable service to the public.

**ARTICLE 1
RECOGNITION**

Section 1. The Employer recognizes the Federation as the sole and exclusive bargaining agent for all non-supervisory employees within the following positions at the Intensive Behavior Center: occupational therapist, treatment and programming specialist, social worker, recreation therapist, occupational safety and health specialist, special education teacher, dietetic technician, and registered nurses.

Section 2. When new positions are created, the Federation and the Employer shall meet to discuss the appropriate placement of those positions. If no agreement can be reached, the Board of Personnel Appeals shall decide the appropriate unit.

**ARTICLE 2
FEDERATION RIGHTS**

Section 1. The Federation shall designate a member employee to act in the capacity as official spokesperson for the Federation on any matter. Such a designation shall be made in writing and shall specify the period covered by the designation.

Section 2. A written list of the accredited officers and representatives of the bargaining unit shall be furnished to the Superintendent immediately after their election and the Superintendent shall be notified of any changes of said representatives within seven calendar days.

Section 3. The internal business of the Federation shall be conducted by the employees during their non-duty hours; however, a selected and designated Federation official and an alternate shall be allowed a reasonable amount of pay time to investigate and pursue formal grievances. The Superintendent shall be notified of the employees so designated.

Section 4. The Federation staff will be allowed to visit work areas of the employees during work hours and confer on employment relation matters, provided that such visitations shall be coordinated in advance with management and shall not unduly disrupt work in progress.

Section 5. The Federation may utilize a reasonable amount of space on bulletin boards as determined by local management on bulletin boards currently used for employee notices. No derogatory information concerning the Employer shall be posted by the Federation.

Section 6. Accredited Federation representatives shall have the right to inspect an employee's personnel file with the exception of medical records after receiving written permission from the employee to do so and only in cases involving an official dispute between an employee and the Employer. All releases must be submitted to DPHHS HR by the employee allowing the access to their personnel file.

Section 7. Any employee subject to punitive disciplinary actions such as written reprimands, suspension without pay, or termination may request to have present a Federation representative for any meetings held for such reasons. It is understood that the subject employee may request up to four hours advance notice to facilitate such representation except in cases where immediate action is deemed necessary by management.

Section 8. The Employer must furnish the union with a list of all newly hired or terminated personnel covered by this Agreement no later than 10 days after the end of the last payroll period in each month in which such changes have occurred. The list shall include:

- a. the name and address of each newly hired employee,
- b. the classification assigned, and
- c. the name of terminated employees.

Section 9. By January 31st of each year, the Employer shall prepare and furnish to the Union a seniority roster including all employees in the bargaining unit.

Section 10. Whenever possible, the Employer will notify the Union of any contemplated increases or decreases in existing services or of any new services being added if these will result in any increases or decreases in bargaining unit positions.

Section 11. For changes contemplated during the term of this Agreement, the employer will negotiate the effects of permanently contracting out bargaining unit work prior to implementation.

Section 12. Except for changes of an emergency nature, the Federation shall be provided a copy of policy changes affecting bargaining unit working conditions ten days prior to implementation.

Section 13. The Union and the Employer agree to furnish each other, upon request, and at reasonable cost, such public information that is appropriate and necessary to allow the Employer and the Union to fulfill their respective obligations and duty to bargain as required by the Montana Collective Bargaining for Public Employees Act, Section 39- 31-101 et seq. MCA (2001).

Section 14. The Employer's communication/computer system(s), including all related equipment, networks and network devices, are provided for authorized state government use including facilitating employees carrying out their duties and responsibilities as assigned by the Employer. Employees and other users do not have any expectation of privacy for any message created, sent, received, stored, or retrieved on the Employer's computer/communication system(s). E-mail communication should resemble typical professional and respectful business correspondence. Union officers or representatives may use the Employer's e-mail system for the purpose of providing members of the bargaining unit with notification of union meetings and other pertinent non-political union business. All messages created, sent, stored, or retrieved, over the Employer's computer/communication system(s) are the property of the State of Montana.

ARTICLE 3 **FEDERATION SECURITY**

Section 1. Employees covered by the terms of this Agreement shall not be required to become members of the Federation. It is recognized that the Federation is required to represent all employees in the bargaining unit fairly and equally without regard to whether or not an employee is a member of the Federation.

Section 2. Upon receipt of a written authorization from an employee covered by this Agreement, the Employer shall deduct from the employee's pay the amount owed to the Federation by such employee for dues. The Employer will remit to the Federation such sums within 30 calendar days. Changes in the Federation membership dues rate and representation fee will be certified to the Employer in writing over the signature of the authorized officer or officers of the Federation and shall be done at least 30 calendar days in advance of such change.

Section 3. The Federation agrees to indemnify, defend, and hold the Employer harmless against any and all claims, suits, orders, or judgments brought or issued against the Employer as a result of its compliance with the provisions of this Article.

ARTICLE 4 **FEDERATION/MANAGEMENT RELATIONS**

Section 1. The Federation and management shall meet as necessary for the purpose of discussing items, which are of a group rather than individual concern and cannot be easily resolved or answered through established supervisory channels.

Section 2. Such committee shall be composed of three Federation members, who shall submit in writing an agenda of the items to be discussed five working days prior to the meeting. The agenda shall be submitted to the Superintendent or their designee. Meetings may be called by either party and shall be at a time and place mutually agreed upon.

ARTICLE 5 MANAGEMENT RIGHTS

Section 1. The employer retains all rights to manage, direct, and control its business in all particulars except as such rights are expressly and specifically modified or waived by the terms of this agreement. The Federation and its members recognize the prerogatives of the employer to operate and manage its affairs in such areas as, but not limited to:

- a. Directing employees;
- b. Hiring, promoting, transferring, assigning, retaining, laying off, suspending, and terminating employees, or other employment action;
- c. Relieving employees from duties because of lack of work or funds or under conditions where continuation of such work would be inefficient, or nonproductive;
- d. Maintaining the efficiency of government operations;
- e. Determining the methods, means, processes, and personnel by which the employer's operations are to be conducted;
- f. Taking whatever actions may be necessary to carry out the missions of the employer in situations of emergency; and
- g. Establishing and enforcing rules and regulations.

ARTICLE 6 MANAGEMENT SECURITY

Section 1. During the term of this Agreement, neither the Federation nor its agents or representatives will cause, sanction, or take part in any strike or any other interference with the operation of the Employer's business except that the Federation shall have the right to engage in concerted activities after December 31, 2020 for matters pertaining to wages and economic benefits for the 2021-2022 biennium.

Section 2. During the term of this Agreement, there shall be no lockouts by the employer.

ARTICLE 7 NON-DISCRIMINATION

Section 1. No member of the Federation shall be discharged or discriminated against for upholding Federation principles. The Employer and the Federation affirm their joint

opposition to any discriminatory practices in connection with employment, promotion, or training, remembering that the public interest requires the full utilization of the employee's skill and ability without regard to race, color, creed, national origin, age, or sex.

Section 2. In accordance with the provisions of the "Montana Code of Fair Practices," the Employer shall recruit, appoint, assign, train, evaluate, and promote its employees on the basis of merit and qualification, without regard to race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, and ancestry. The Employer may not enter into any benefit plans such as retirement, pension, or insurance plans, which may be construed as subterfuges to evade the purposes of the Code.

Section 3. An alleged violation of this Article shall not be arbitrable unless the parties enter into a voluntary written agreement to waive the right to file a similar complaint under any other procedure, including those provided by state and federal law.

ARTICLE 8 **EMPLOYEE RIGHTS**

Section 1. For the purposes of this Article, disciplinary action is defined as an oral admonishment, letter of reprimand, letter of warning, letter of suspension, or discharge. Supervisory notes (electronic or paper) and/or observations are not considered discipline.

Section 2. No bargaining unit employee who has successfully completed their probationary period shall be disciplined or discharged without due process and just cause. Due process requires that an employee is informed in writing of the reason(s) for any disciplinary action and is provided with an opportunity to respond to the action or explain the questioned behavior or actions. No employee serving a probationary period may file a grievance pertaining to discipline or discharge.

Section 3. Employees may respond both orally and in writing to any disciplinary action by the employer.

Section 4. Letters of caution, consultation, warning, admonishment, and reprimand shall be considered temporary contents of an employee's personnel file and shall be destroyed upon receipt of written request from the affected employee, no later than 23 months after they have been placed in the file, unless such items can be used in support of possible disciplinary action arising from more recent employee action or behavior patterns or are applicable to pending legal or quasi-legal proceedings.

The letters of discipline referenced in this Section may be retained by the Employer in files other than the employee personnel file only for the purpose of evidence in subsequent legal proceedings that the Employer may be a party to when such are filed within the applicable statute of limitations.

Section 5. In all cases of suspension or discharge of any bargaining unit employee, the union shall be notified of the action taken at the same time that the employee is notified.

Section 6. An employee may request the presence of union representation during an investigatory interview that the employee reasonably believes will result in their being disciplined.

Section 7. Employees may inspect and receive a copy of any material placed in their personnel file. Employees may be charged for the cost of processing and copying such materials.

Section 8. A discharged employee upon request may receive copies of investigatory information compiled by management in support of such action. A copy fee may be charged to the employee.

Section 9. No information reflecting critically upon an employee shall be placed in the official personnel file of the employee that does not bear either the signature or initials of the employee indicating that he/she has been shown the material or a statement by a supervisor that employee has been shown the material and refused to sign it. A copy of any such material shall be furnished to the employee.

Section 10. An employee desiring that material which he/she feels is inaccurate and should be removed from their personnel file shall have the right to appeal it through the grievance procedure.

Section 11. Material placed in the official personnel file of an employee without conformity with the provisions of Section 10 will not be used by the Employer in any subsequent evaluation or disciplinary proceeding involving the employee.

Section 12. The Union and the Employer agree that employees have the right of self-organization or non-organization, to form or not form, to join or not join, assist or resist any labor organization to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment or to refrain there from, and to engage or refuse to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion from any employee, the Union or the Employer.

ARTICLE 9 **HOURS OF WORK**

Section 1. It is understood that employees in the unit desire to work Monday through Friday, followed by two consecutive days off. The current practice of scheduling shall continue unless program changes make alternative scheduling necessary.

For changes not of an emergency nature, the employer agrees to provide written notice of scheduled changes at least 10 working days in advance.

Section 2. Prior to any such change, management shall provide opportunity for Federation opinion via the process established in Article 4, Federation/ Management Relations.

Section 3. A regular workday shall consist of eight hours a day and a regular work week shall be a seven-day period within which five consecutive workdays shall be scheduled. Alternate work schedules (flex time or staggered shifts) may be arranged by mutual agreement between the employee and the Employer. Alternate work schedules may include four 10-hour days. The Employer reserves the right to discontinue alternate work schedules with 10 working days written notice.

Section 4. Nothing in this Agreement shall be considered to be a guarantee or limitation of the number of hours to be worked per day, days per week, or for any other period of time.

Section 5. All employees, including RN's, will be granted a meal period within their shifts. It is agreed that the 30-minute meal period is properly calculated as part of the total compensation of an employee where such is provided under the terms of this Agreement. It is further understood that the meal period may be interrupted for service but when possible will resume at a later time. It is recognized that workers in non-direct care services are compensated for 40 hours of work per week within which they are provided a 30-minute meal period each day. Actual working hours are thereby reduced to 37 1/2 hours per week.

RN's hours of work will be up to twelve (12) hours per day and 80 hours in a two week pay period, with a minimum of two (2) consecutive days off each week, except by mutual agreement between the employee and the Employer.

Section 6. On-call status RN's Only. When on- call shifts are assigned to bargaining unit personnel they shall be compensated at \$12.00 for each hour in on- call status. With the addition of the second RN to the bargaining unit the on-call compensation will be reinstated to \$8.00 per hour while in on-call status. Bargaining unit members shall inform the Director of Nursing in writing if they wished to be placed on the list for on-call shifts. Should no bargaining unit members on the list be available to take an on-call shift, the shift will be assigned to the least senior member in the bargaining unit. Should bargaining unit personnel be called out to the facility while in on-call status they will be compensated at time and one-half times their regular rate for a minimum of one hour. If required to work longer than one hour they will continue to be compensated at the time and one-half rate for all consecutive hours worked. If the call out continues through the start of their regular shift, they will return to their regular rate. Compensation will begin for the call out when it is acknowledged.

Section 7. Call-out status RN's Only. Bargaining unit members will be compensated at time and one-half times their regular rate for a minimum of two hours when called to work while not on call. If required to work longer than two hours they will continue to be compensated at the time and one-half rate for all consecutive hours worked. If the call out continues through the start of their regular shift, they will return to their regular rate. Compensation will begin for the call out when it is acknowledged.

Section 8. Overtime. It is agreed and understood that the members of this bargaining unit are professional employees. Call-out and overtime shifts above 80 hours in a two-week pay period may be paid at time and one-half of the employee's regular rate of pay or accrued at time and one-half compensatory time at the choice of the affected employee. Election for pay or compensatory time may be made upon hire and thereafter

at the beginning of each fiscal year by each employee.

The care of clients and the welfare of employees, time already worked, and hours scheduled shall direct overtime decisions. When overtime or overtime shifts are assigned to bargaining unit members, seniority will be considered when experience, qualifications and abilities are similar. Qualified bargaining unit members expressing a clear desire to work overtime, or overtime shifts shall be considered prior to assigning overtime hours to those who have not expressed such interest.

ARTICLE 10 COMPENSATION

Section 1.

1. a. Each employee who has completed five years of uninterrupted service will receive longevity compensation in accordance with 2-18-304, MCA.
 - b. Service with the State shall not be considered interrupted by authorized leaves of absence.
2. For the purpose of determining years of service under this Section, an employee must be credited for one year of service for each payperiod of:
 - a. 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or
 - b. 12 uninterrupted calendar months following his date of employment in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month.

Section 2. Conditions relative to Addendum A governing wages and salaries are provided in accordance with Section 2-18-301, MCA, and contained in Addendum A of this Agreement.

The Health Care and Benefits Division is managing the State Employee Group Health Plan to contain costs and minimize member cost impacts. Member contributions, copay amounts, deductibles, coinsurance levels, and maximum out of pocket levels will not increase through December 31, 2020. The State's share contribution (currently, \$1054 a month) will not change during the same period.

Section 3. If an employee is selected to fill a vacancy in a higher graded job, he/she shall be paid the higher grade, as per the Pay Plan Rules regarding promotions, after management determines the employee is, in fact, performing all duties and accepting all responsibilities of the higher position. In order to be eligible for differential pay, the employee must be selected and authorized in writing by a management designee to fill the higher graded job, and formal written records of such temporary reassignment must be kept.

Section 4. Employees will be compensated according to agency policy and state and federal wage and hour laws for hours worked above 40 in a work week.

Section 5. Should an employee be called by a duly authorized management official to return to work on their regularly scheduled day off or after he/she has left Montana Developmental Center, the employee shall receive a minimum of two hours compensatory time.

ARTICLE 11
HOLIDAYS

Section 1. Employees shall be granted the following holidays without loss of pay:

New Year's Day	January 1
Martin Luther King Jr. Day	Third Monday in January
Washington's & Lincoln's Birthday	Third Monday in February
Memorial Day.....	Last Monday in May
Independence Day.....	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25
General Election Day	On Even-Numbered Years

Section 2. For pay purposes the above enumerated holidays shall be recognized holidays. All holidays will be granted to all full-time and permanent part-time employees at the normal rate of pay and for the amount of hours normally worked.

Section 3. Full-time employees required to work on a holiday will be paid one and one-half times their regular rate of pay and an alternate day off when mutually acceptable to the employee and the Employer. The holiday thus accrued must be used within the fiscal year in which earned or paid at the regular rate of pay. Regardless of the number of hours worked on a holiday, the number of hours of accrual for the holiday benefit shall not exceed eight hours. Part-time employees required to work on a holiday shall receive one and one-half times their regular rate of pay for all hours worked. It is understood and agreed that the Employer may assign an off-duty status employee to work on a holiday in emergency situations.

Section 4. Any employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sunday, shall be entitled to receive a day off to be taken at a time mutually acceptable to the Employer and the employee within that fiscal year or payment at the employee's regular rate of pay.

Section 5. Employees may opt to accumulate up to six banked holidays per year; however, accumulated holidays must be taken before June 30th of each fiscal year in which earned. Banked holidays not taken shall be compensated for at the employee's regular rate of pay in the last pay period of each fiscal year. Accrued banked Holidays must be used before accrued vacation days.

ARTICLE 12
SICK LEAVE

Section 1. Employees shall be granted sick leave as prescribed by Section 2-18-618, M.C.A. and the Montana Operations Manual.

Section 2. Employees may utilize sick leave in accordance with the present policy expressed in the Montana Operations Manual.

Section 3. Notification of absence because of illness shall be given as soon as possible to the immediate supervisor. If such notification is not made the absence may be charged to unauthorized leave-without-pay.

Section 4. In the event that an employee on annual leave becomes ill, the employee shall be afforded the right to change their annual leave status to sick leave to utilize available sick leave credits upon furnishing management acceptable medical verification.

Section 5. The Employer may request verification of illness when there is reason to suspect abuse of sick leave or for reasons as outlined in Montana Operations Manual policy.

Section 6. Sick leave will be measured and charged to the nearest one-tenth of an hour. However, this provision shall have no effect on the crediting of sick leave time or upon the procedures governing usage of sick leave.

ARTICLE 13
JURY AND WITNESS DUTY

Section 1. Employees summoned to serve as jurors or witnesses shall be granted leave in accordance with 2-18-619, M.C.A, and Montana Operations Manual, Policy 3-0322.

ARTICLE 14
ANNUAL LEAVE

Section 1. Employees shall be granted annual leave as prescribed by Sections 2-18-611 through 2-18-617, M.C.A, and Montana Operations Manual, Policy 3-0305.

Section 2. Vacation leave will be measured and charged to the nearest one-tenth of an hour. However, this provision shall have no effect on the crediting of vacation leave time or upon the procedures governing usage of vacation leave.

ARTICLE 15
MILITARY LEAVE

Section 1. Employees will be granted military leave for active duty in accordance with the provisions set forth in Section 10-1-604, M.C.A., and Montana Operations Manual 3-0321.

ARTICLE 16
MATERNITY, PARENTAL AND ADOPTIVE LEAVE

Section 1. Permanent members of the bargaining unit are entitled to maternity, parental or adoptive leave according to the provisions set forth in Sections 49-2-310, 49-2-311, and 2-18-601, M.C.A.

ARTICLE 17
INDUSTRIAL ACCIDENT LEAVE

Section 1. Leave and benefits for industrial accident will be administered according to statute and agency policy.

ARTICLE 18
TRAINING AND OTHER LEAVES

Section 1. The Employer and Federation view training and continuing education as important to the mission of Montana Developmental Center. The Employer recognizes that training and education benefit the agency and residents of Montana Developmental Center.

Section 2. A leave of absence without pay may be granted by the Employer upon written request of the employee. The request shall state the approximate length of time off the employee requires. Any accrual of annual and sick leave may be retained by the employee up to those time limits prescribed by State statute.

Section 3. Education leave (in excess of 30 days). Any employee who gives evidence of being able to become more useful to the Department of Public Health and Human Services if he/she obtains further professional training may be granted an education leave with approval of the Superintendent and the Department of Public Health and Human Services. The granting of this leave will be determined by such factors as:

- a. Benefit to the institution or field service.
- b. Benefit to resident training and treatment.
- c. Will it increase the value of programs in use.

This type of leave will be allowed without pay except under special consideration with the approval of the Superintendent and the Department of Public Health and Human Services; the Director may approve an education leave with pay. This is limited to a continuous period of 10 months and requires a signed agreement by the employee to work in the Department of Public Health and Human Services two months for every month of educational leave awarded.

Section 4. The Employer shall make every effort to allow employees in the bargaining unit at least 24 hours per fiscal year of paid time in order to attend management approved training sessions, or to engage in research related to the performance of an employee's duties and responsibilities, with prior approval. It is understood that this shall be afforded not

necessarily on a seniority basis, or by first-come, first-served, but as determined solely by management.

Section 5. Employees whose positions require licensure or certification and who are required to continue their education to maintain certification or licensure will be granted the necessary paid release time to attend classes and/or training seminars subject to the service requirements of the facility and/or budgetary constraints. The employee is responsible for schedule the requests within 10 working days to avoid last minute deadlines.

ARTICLE 19

SENIORITY AND LONGEVITY

Section 1. Seniority means an employee's length of continuous service in a classification (title and grade) in the bargaining unit. When length of continuous service is identical, the tie shall be broken with a coin toss. Seniority shall not be interrupted by reclassification, involuntary transfer, or an employee transferring to another classification in the bargaining unit because his or her position is scheduled for elimination.

Section 2. Seniority shall be considered unbroken for:

- a. layoff not exceeding one year;
- b. leaves without pay not in excess of 15 days except when such leave is granted in cases of personal illness or for the pursuit of further education or training which permit an extension of leave time;
- c. military service as defined by State law and Department of Administration rulings;
and
- d. paid leaves provided for in this Agreement or worker's compensation leave of 60 days or less.

Section 3. Whenever experience, qualifications, and abilities are similar, seniority at the Montana Developmental Center shall be the determining factor in filling new or vacated positions within the bargaining unit.

Section 4. Employees subject to layoff shall be given 21 calendar days advance notice except for temporary layoffs caused by emergencies. In selection of employees for layoff, seniority within a classification shall be the determining factor, provided said employee has the needed qualifications, and has necessary endorsements, licenses, or other occupational requirements at the time of layoff. When all the above factors are equal, the employee's work record may be utilized as the tiebreaker.

Section 5. Recall from layoff shall be in accordance with the considerations outlined in Section 4 above. The Employer shall notify the employee to return to work and furnish the Federation a copy of such notification. If the employee fails to notify the Employer within 10 calendar days of their intention to return to work, such employee shall be considered as having forfeited their right to return to work.

Section 6. No permanent employee shall be laid off while temporary, part-time, or probationary employees in the same skill are retained.

Section 7. The Employer and the Federation agree that if the Employer determines to lay off any bargaining unit member(s) during this contract term, the parties shall meet at the request of either party to discuss issues germane to that layoff.

ARTICLE 20 **GRIEVANCE PROCEDURE**

Section 1. The Employer and the Federation agree to promptly attempt to adjust all complaints, controversies or other grievances between them involving questions of interpretation or application of terms and provisions of this Agreement.

Section 2. Procedure

Step 1: Any grievance shall be put in writing and presented to the employee's immediate supervisor within 15 working days of the event leading to the grievance. The immediate supervisor shall have 15 working days to respond to the grievance in writing.

Step 2: If the Federation determines that the grievance is not resolved at Step 1, it may be presented to the Superintendent or their designee within 15 working days of the receipt of the Step 1 response. The Superintendent or their designee shall have 15 working days to respond to the grievance in writing.

Step 3: If the Federation determines that the grievance is not resolved at Step 2, it may be presented to the Director of the Department of Public Health and Human Services or their designee with a copy to the Chief Personnel Officer, within 15 working days of the receipt of the Step 2 response. The Director or their designee shall have 10 working days to respond to the grievance in writing.

Step 4: Should the Federation consider the decision of the Director to be unsatisfactory, the Federation may, within 20 days of receipt of such decision, notify the Director of the Department of Public Health and Human Services and the Chief of the Office of Labor Relations in writing, of its intention to have such grievance referred to final and binding arbitration.

Section 3. Alternative Resolution Process. The above grievance procedure does not preclude the possibility of the Employer and the Federation from mutually agreeing to attempt resolution of any grievance through an alternate process following Step 1 while at the same time pursuing the procedure set forth above.

Section 4. Rules of Grievance Processing.

1. Time limits of any stage of the grievance procedure may be extended by written mutual agreement of both parties.

2. A grievance not filed or advanced by the Federation within the time limits provided shall be deemed permanently withdrawn as having been settled on the basis of the decision most recently received. Failure on the part of the Employer and/or designee to answer within the time limit set forth in any step will entitle the grievance to proceed to the next step.
3. An appointed authority may replace any titled position in the grievance procedure, provided that such appointee has full authority to act in the capacity of the person being replaced.
4. When the grievance is presented in writing there shall be set forth all of the following:
 - a. A complete statement of the grievance and facts upon which it is based.
 - b. The rights of the individual claimed to have been violated.
 - c. The remedy or correction requested.
5. Those employees desiring to use alternative procedures to resolve their grievance may not pursue the same complaint under the provisions of this contractual procedure.
6. In the event of a classification related grievance, the statutory classification appeal route shall be followed wherein the grievance may be submitted to the Board of Personnel Appeals for final resolution. Where a question arises as to whether the matter falls under the jurisdiction of the Board or could possibly be arbitrated, the matter may be referred to the Board for a decision.

Section 5. Mediation. The Union has seven (7) calendar days from receipt of the written response of the Director to submit the grievance to the Federal Mediation and Conciliation Service with a request to assign a Mediator to the dispute. By mutual consent the parties may request mediation services from a source other than the Federal Mediation and Conciliation Service. The Mediator shall consult with the parties in an attempt to bring about resolution to the grievance. The Mediator shall not produce any records or testimony nor make any statement with regard to any Mediation conducted by him in any forum or proceeding before any court, board, investigatory body, arbitrator, or fact finder.

Section 6. Rules of Arbitration.

1. Within 10 working days after such written notice of intention to arbitrate is delivered to the director the Federation shall call on the Federal Mediation and Conciliation Services to provide a list of five arbitrators.
2. Each party shall be entitled to strike one name from the list in alternate order and the name so remaining shall be the arbitrator. The arbitrator shall consider the grievance within a reasonable length of time that decision shall be final and binding.

3. Each party shall share equally the cost of the impartial arbitrator. In the event one of the parties wants transcripts from the proceedings of the arbitration, the party requesting the transcripts shall pay all costs. If each party requests a transcript, they shall equally share the cost.
4. Any failure or refusal to abide by the terms of this grievance or arbitration procedure shall constitute a waiver by the party who breaches the Agreement, of the rights and constraints created.
5. No arbitrator has the power to add to, detract from, or modify the terms of this Agreement.

ARTICLE 21 **JOB SECURITY**

Section 1. Probationary Period. The probationary period shall be utilized for the most effective adjustment of a new employee and for the termination of any employee whose performance does not, in the judgment of their supervisor, meet the required standards of performance.

- a. All new bargaining unit members shall serve a six-month probationary period.
- b. If the Employer determines at any time during the probationary period that the services of the probationary employee are unsatisfactory, the employee may be separated upon written notice from the Employer without recourse to the grievance procedure. However, probationary employees may not be terminated for reasons of unlawful discrimination as prohibited in Article 7.

Section 2. Dismissal. The Employer may remove any employee with permanent status only for just cause. The Employer shall furnish the employee with a statement in writing, of the grounds and the specific reasons for dismissal.

- a. An employee with permanent status may appeal their dismissal through the grievance procedure.
- b. Any suspension which results in time off without pay may be appealed through the grievance procedure.

ARTICLE 22 **VACANCIES AND PROMOTIONS**

Section 1. All position vacancies and job openings at the Montana Developmental Center for which a bargaining unit member might generally qualify shall be posted in conspicuous places for a period of five working days except in cases of lay-offs caused by executive mandate or legislative action. The posting shall include a general statement of job duties, salary range, minimum qualifications, and requirements, where application can be made and the cut-off date for applications.

Section 2. All bargaining unit members who apply for posted positions will be considered in the selection process.

Section 3. Unsuccessful applicants will be so notified in writing at the completion of the selection process.

ARTICLE 23 **POSITION DETAIL**

Section 1. An employee may request and receive a copy of their current class specification once each year or upon change.

Section 2. When performance evaluations are prepared by the employee's immediate supervisor and the next higher supervisor, the results of the combined evaluation shall be transmitted to the employee in the form of a copy of their performance evaluation.

Section 3. The immediate supervisor shall discuss the evaluation with the employee and note by signature retained in the personnel file that the evaluation has been discussed with the employee. If an employee is given an unacceptable rating, the evaluator will comment in writing to the employee to explain the rating and communicate a plan for improvement. If within 15 working days of receiving the evaluation, the employee desires to submit a brief written statement in explanation or mitigation of any remark on the performance evaluation form, the statement shall be attached to the performance evaluation form in the personnel file.

Section 4. If an employee disagrees with the evaluation he/she may attach a rebuttal and or request a review by a higher-level supervisor within the chain of command.

ARTICLE 24 **CASELOAD**

Section 1. In the event that a bargaining unit member's caseload is increased due to a recruitment problem, unscheduled vacancy, or vacancy savings the Employer and the Federation shall meet to attempt to devise an equitable method of addressing the increase.

ARTICLE 25 **PREPARATION TIME AND REST BREAKS**

Section 1. Management acknowledges the need for bargaining unit members to receive an appropriate amount of time to prepare and complete paperwork. Each member of the bargaining unit is also entitled to one 15-minute rest break in the first half of the shift and one 15-minute rest break in the second half of the shift. An employee's rest break can be interrupted for service.

ARTICLE 26
HEALTH AND SAFETY

Section 1. Both the Employer and the Federation affirm their commitment to cooperate in the maintenance of a safe and healthful working environment. Employee concerns or complaints of a health and safety nature shall be submitted simultaneously to the employee's supervisor and to the safety officer. If the employee finds the result unsatisfactory, the employee has the option to refer the issue to the Labor Management Committee, which shall attempt to resolve the complaint.

ARTICLE 27
COMMERCIAL DRIVERS LICENSE

Section 1. The Employer will reimburse employees for the cost of a CDL-required physical, up to \$100, if they are required by the Employer to hold a commercial driver's license.

ARTICLE 28
PUBLIC EMPLOYEES RETIREMENT SYSTEM

Section 1. Employees shall receive retirement benefits as prescribed by Sections 19-3-101-1404, M.C.A.

ARTICLE 29
MODIFICATION

Section 1. The Employer shall give the Federation advance notice and an opportunity to comment on any layoff, including a list of the employees affected.

Section 2. The Employer shall insure reasonable access to the Federation and each employee an up-to-date policy manual of its rules, regulations, and policies on employment related matters. The Federation shall be notified of any proposed changes or additions to personnel rules, regulations and policies issued by the Department of Administration that have agency wide applicability sufficiently in advance to allow discussion and comment by the Federation. The Montana Developmental Center shall not be held responsible for the execution of this provision.

ARTICLE 30
SEVERABILITY

Section 1. In the event that any provisions of this Agreement shall be declared invalid at any time or unenforceable by any court of competent jurisdiction or through the passage of a law, such decision or law shall not invalidate the entire Agreement, it being the expressed intention of the parties hereto that all other provisions not declared invalid or unenforceable, shall remain in full force and effect.

ARTICLE 31
ENTIRE AGREEMENT

Section 1. The parties acknowledge that during negotiations which resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Therefore, the Employer and the Federation for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter specifically referred to or covered by the Agreement. This Article shall not be construed to in any way restrict parties from commencing negotiations under Article 32 or under the applicable law on any succeeding agreement to take effect upon termination of this Agreement.

Section 2. The parties recognize the right, obligation, and duty of the Department of Administration, the Department of Public Health and Human Services, the Montana Developmental Center and its duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary insofar as such rules, regulations, directives and orders that affect the members of the bargaining unit covered by this Agreement are not inconsistent with the terms of this Agreement, and are not inconsistent with the laws of the State of Montana and Federal laws.

ARTICLE 32
TERM

Section 1. This Agreement is effective as of the first day of July 2019 and shall remain in full force and effect through the 30th day of June 2021.

Section 2. Should either party seek to modify this Agreement, it shall give written notice of such intention not less than 90 days prior to the expiration date of this Agreement. Negotiations may commence after the notice at mutually agreed-upon times and places.

Section 3. If, during the term of this Agreement, Management agrees to open a contract to negotiate or awards shift differential to another employee group within the Department of Public Health and Human Services, then this contract can be opened by the Federation to negotiate the same issue.

Section 4. In the event the Attorney General determines that any current practice or language incorporated under Article 9, Section 5 of this Agreement is illegal, the Federation agrees to open the contract to negotiate those items.

EXECUTED AND ENTERED into this 2/12/2020 day of 2/12/2020 2020.

FOR: STATE OF MONTANA

Sheila Hogan

Sheila Hogan, Director
Department of Public Health
and Human Services (DPHHS)

Rebecca de Camara

Rebecca, de Camara, Administrator
Developmental Services Division
DPHHS

Mike Manion

Michael P. Manion, Chief Negotiator
State Office of Labor Relations

FOR: THE FEDERATION

Brian R. Ehli

Brian R. Ehli, Field Consultant
Montana Federation of Public
Employees (MFPE)

Anthony Zufelt

Anthony Zufelt, President
Professional Interdisciplinary
Federation
Local 3399, MFPE

PAY SCHEDULE A

TITLE	PER	MINIMUM	MIDPOINT	MAXIMUM
Training Development Specialist	HOUR	\$21.58	\$24.27	\$26.97
Registered Nurse	HOUR	\$31.00	\$34.85	\$38.70

ADDENDUM A

BROADBAND PAY PLAN PROVISIONS

This agreement represents the parties' full and complete agreement for all provisions of the Broadband Pay Plan under the term of this contract.

Section 1. Across the Board Pay Adjustments.

The State shall increase each employee's base salary by \$.50 per hour effective the first full pay period that includes January 1, 2020 and \$.50 per hour the first full pay period that includes January 1, 2021.

Further, in accordance with Section 2-18-303(4)(a)(i), these adjustments will not be provided to employees until the State receives written notice that the employee's collective bargaining unit has ratified the agreement. If that notice is received after the effective date of the pay adjustment, the adjustment will be paid retroactively.

Section 2. Longevity. All of the calculations are base rates and not inclusive of longevity.

Section 3. Hiring rates. Employees new to state government will typically be hired at the entry for the occupation. In determining a new employee's hiring rate above entry, the Supervisor, or designee, shall consider criteria such as: the employee's job-related qualifications and competencies; existing salary relationships within the job class, band and work unit; department affordability; and the competitive labor market.

Section 4. Training Assignments. The Supervisor or designee may establish written training assignments to enable an employee to gain the additional experience and training required for the job for a period of time not to exceed two years. At the completion of the training assignment, the employee's pay will be set no less than the entry rate of pay for the occupational pay band.

Section 5. Market-based pay: Pay awarded to employees based on comparisons to how other employers compensate employees in similar jobs. Market-based comparisons consider not only base pay, but also other types of compensation and benefits having a definable dollar value. The Department may consider market-based pay adjustments on a case-by-case basis.

Section 6. Competency-based pay: Pay based on an assessment of an employee's job-related competence. The Department may consider competency-based pay adjustments on a case-by-case basis.

Section 7. Results-based pay: Pay awarded to employees or employee teams based on accomplishments. Results-based pay may be awarded for specific outcomes or outputs. The Department may consider results-based pay adjustments on a case-by-case basis.

Section 8. Strategic pay: Pay awarded to attract and retain key employees with competencies critical or vital to achievement of the Department's mission or strategic goals. The Department may consider strategic pay on a case-by-case basis.

Section 9. Situational pay: Pay based on circumstances that occur that are not encountered in either the majority of jobs in state government or jobs used to make market comparisons. It is intended to address difficulties in recruitment and retention. It may be considered when atypical requirements exist in a position, for example, unusual hours, extreme physical demands, or environmental hazards that are causing recruitment and retention problems. The Department may consider situational-based pay on a case-by-case basis.

MEMORANDUM OF UNDERSTANDING

by and between

**State of Montana
Department of Public Health and Human Services**

And

Montana Federation of Public Employees

AFSCME

Montana Nurses Association

International Brotherhood of Teamsters

Intensive Behavior Center Craft Council

Montana State Hospital Craft Council

Effective Saturday, April 11, 2020, a \$4.00/hour temporary pay differential has been authorized for up to 40 hours per week for the following State of Montana DPHHS Facilities staff during the COVID-19 crisis:

1. State of Montana, Department of Public Health and Human Services staff who are required by the Department Director, their Branch Manager and Division Administrator to work at the following care facilities, without the option to telework, during the COVID-19 state of emergency:
 - a. **Intensive Behavior Center-Boulder**
 - b. **Montana Chemical Dependency Center-Butte**
 - c. **Montana Mental Health Nursing Care Center-Lewistown**
 - d. **Montana State Hospital-Warm Springs**
 - e. **Montana Veterans' Home-Columbia Falls**
2. DPHHS employees working in the above facilities are eligible for the \$4.00/hour pay differential if they are required by their agency administration to work within the above-identified facilities as their primary work location.
3. Employees who telework or have the ability to telework but choose not to are not eligible for the differential.
4. The temporary COVID-19 pay differential is only for time worked at the above-identified facilities. Differential pay will not be provided for leave time taken (including approved paid COVID-19 leave) or time worked outside the above-identified facilities.
5. The temporary COVID-19 pay differential will be considered part of the employee's base pay for the purposes of calculating overtime for non-exempt employees who have elected to receive overtime rather than compensatory time.

FOR EXAMPLE: An FLSA non-exempt employee being paid a base rate of \$10/hour and a differential of \$4/hour works 50 hours in a week. The employee will receive 40

hours of pay at \$14/hour and 10 hours at an overtime rate of \$14/hour X 1 ½ times at \$21/hour. Total pay for the week will be (40 hours X \$14/hour) + (10 overtime hours X \$21/hour). Total pay for the week is \$560 + \$210 = \$770.

6. Employees who misuse leave during the COVID-19 state of emergency lose any eligibility for differential pay.
7. Payroll will process the differential based on actual hours worked at the above-identified facilities. For staff who work in multiple locations inside and outside of the above-identified facilities, supervisors must differentiate for payroll the time that the employee is mandated to work within the above-identified facilities by indicating such time in the description field of the time sheet.
8. Differential pay is a privilege, not a right or entitlement. Management intends to continue this differential pay as long as the COVID-19 related emergency staffing status is in place. However, management reserves the right to discontinue with differential pay for any reason at any time upon 24 hours' notice.

4/10/2020

Dated this _____.

For: THE STATE OF MONTANA

Department of Public Health and

Human Services

DocuSigned by:
Sheila Hogan
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Sheila Hogan, Director, DPHHS

DocuSigned by:
Mike Manion
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Mike Manion, Chief,
Office of Labor Relations

FOR: UNION

DocuSigned by:
Eric Feaver
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Eric Feaver, President MFPE

DocuSigned by:
Timm Twardoski
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Timm Twardoski, Executive Director
AFSCME Montana

DocuSigned by:
Robin Haux
395DC663ECC3447...

Robin Haux, Labor Director
Montana Nurses Association

DocuSigned by:
Aaron Ralph
662419128540492...

Aaron Ralph, Business Agent
Teamsters, MHS Craft Council

DocuSigned by:
Steve Gross
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Steve Gross, Business Agent
IUOE Local #400, IBC Craft Council

Memorandum of Understanding
Between
State of Montana
DPHHS
And
Local #3399
Montana Federation of Public Employees

This Memorandum of Understanding is between the State of Montana, DPHHS, (the “State”) and the Local #3399 of the Montana Federation of Public Employees (the “Federation”).

Under the Term of Agreement section, the parties agree to extend the expiration date of their collective bargaining agreement through June 30, 2023. The remainder of the Term of Agreement section remains the same except that the Federation’s right to engage in concerted activity will occur after December 31 of even years.

The parties agree that all working conditions and terms of the collective bargaining agreement shall be final and shall not be opened or re-bargained for the duration of the agreement with the singular exception of wages or remunerations.

The State and the Federation shall retain the right to bargain and negotiate wages or other remunerations during the term of the collective bargaining agreement. Any agreement between the parties regarding wages or remunerations shall be memorialized in a document separate from the collective bargaining agreement.

Signed and dated this 12/29/2020.

FOR THE STATE:


FOR THE FEDERATION:

DocuSigned by:

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Erica Johnston, Interim Director

DocuSigned by:

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Mike Manion, Chief of Labor Relations

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Amanda Curtis, MFPE President