

## ARTICLE 26 DISCIPLINE

### Section 1. Probationary Period

All Troopers shall serve a probationary period of 18 months from the date of original enlistment, during which time they may be dismissed by the Commissioner for violations of rules and regulations, incompetency, and inefficiency without action of a Court-Martial Board, the right of appeal to a civil court, or the grievance procedure.

### Section 2. Suspension Without Pay

A member shall not be suspended without pay unless the conduct falls within the purview of the Governor's Code of Conduct or the member is notified of dismissal after selecting the grievance procedure or recommendation for probationary review.

In disciplinary cases that could reasonably be construed to result in termination other than those referenced in the above paragraph, the Department shall limit suspensions without pay pending investigation of the conduct to no more than twenty (20) working days. If, upon expiration of the twenty (20) working day period of suspension without pay, the Department has not completed its investigation, the Member shall be placed on suspension with pay, be returned to restricted duty status, and/or be temporarily re-assigned or transferred to a reasonably situated station or assignment, until such time as the Notice of Disciplinary Penalty has been issued. The Department, at its discretion, may elect which of these options to utilize in any given case. The use of these options by the Department shall not prevent subsequent disciplinary action from being taken, and any subsequent disciplinary action shall not constitute double jeopardy; nor shall the use of these options be used as a defense in any subsequent disciplinary proceeding.

Nothing in this Section shall be construed to impose temporal or other limits on the Department's right to impose suspension without pay as a form of disciplinary penalty.

### Section 3. Fringe Benefits During Suspension Without Pay

A member suspended without pay who has not been charged with a felony or misdemeanor under the laws of the United States, Commonwealth of Pennsylvania, any other state(s) of the United States, and/or subdivisions thereof shall continue to receive the benefits provided under the State Police Health Program, the State Police Supplemental Benefits Program, and the Group Life Insurance Program during the period of suspension until such time as the cost of the benefits paid equals the amount of the member's accumulated retirement deductions and interest, plus the amount of all eligible leave payouts; at such time, the above benefits will terminate. If the member elects not to file a

grievance, or the grievance is denied wholly or in part, for any reason, the member shall reimburse the Commonwealth for the cost of the benefits within 90 days of the final disposition or upon separation from the Department, whichever shall occur sooner. The member will be required to repay the Commonwealth for the cost of such benefits as follows:

a. For the State Police Health Program and the State Police Supplemental Benefits Program, the member will pay the monthly individual or multiparty premium that is charged to COBRA subscribers during the period of the suspension, minus the 2% administrative charge;

b. For the Group Life Insurance Program, the member will pay the monthly contribution rate that the Agency would have paid during the period of suspension.

Such premiums will be paid whether or not any actual claims were incurred during the period of the suspension.

Suspensions of members who have been charged criminally with misdemeanors or felonies under the laws of the United States, Commonwealth of Pennsylvania, any other state(s) of the United States, and/or subdivisions thereof, shall be reviewed by the Office of Administration on a case-by-case basis, in consultation with the PSTA and the Department, as necessary, to determine whether benefits will continue in accordance with the provisions of this Section. A decision will be rendered as soon as possible, but not later than 20 working days from the date the Department is notified of the filing of charges in the case of a member who has been charged criminally with a felony or work-related misdemeanor and not later than 20 working days from the date the Department notifies the member that the member is being suspended in the case of a member who has been charged criminally with a non work-related misdemeanor. If the aforementioned time limits are exceeded, benefits will continue in accordance with the provisions of this Section. The determination of the Office of Administration will not be subject to the grievance and arbitration procedures.

Benefits during suspensions of one full pay period or less shall be processed in accordance with the current practice.

#### Section 4. Court-Martial Board

Court-martial proceedings shall provide that the accused may name, or designate the PSTA to name one of the three members of the Court-Martial Board.

#### Section 5. Rights

a. A member shall be advised of their Garrity/Miranda Rights when applicable.

b. A member who is the subject of an administrative inquiry or internal investigation shall be advised of and upon request, be afforded PSTA representation at any interview, predisposition conference, DAR issuance, or any hearing.

c. Absent exigent circumstances, the member shall receive reasonable notice to arrange for PSTA representation and the member shall be required to arrange such representation within a reasonable time period. However, this does not give the interviewee the right to a specific representative, only to one that is nearest and most readily available.

d. Any member who is interviewed in regards to an investigation and has reason to believe that their statements could result in administrative action being taken against them, shall be afforded PSTA representation if requested.

e. A member, prior to the issuance of a DAR, shall be afforded the rights under Article 28, Section 2 of the grievance procedure.

f. If a tape recording is made by the interviewer, a copy shall be furnished to the member upon written request within 15 working days of the completion of the interview of the subject of the investigation. In cases involving multiple subjects of investigation, the tape recording shall be furnished within 15 working days after the last interview is completed. During tape recorded interviews, members shall also be permitted to simultaneously tape record the interview consistent with those procedures jointly agreed to between the parties.

g. Upon the issuance of a DAR, issued on or after January 1, 2005, The Association shall be given all information, evidence, reports and statements obtained by the Department related to the charge or charges; provided, however, that the Department shall not be obligated to turn over any information, evidence, report or statement that may compromise, interfere with, or otherwise impede any other investigation by another law enforcement agency or the Pennsylvania State Police, including for example names of confidential witnesses.

No later than fifteen (15) calendar days prior to any arbitration hearing, the Commonwealth and the Union shall exchange (1) all available information, evidence and all complete statements, to the extent created in the course of preparing the case, for any person who may testify; and (2) the names of all persons who will testify including a statement of the subject matter of each witness's testimony.

If any of the above has not been exchanged, it may not be used by the non-producing party at the hearing; provided, however, that information which was not available or was discovered after the deadline for exchange of information

may be used if it has been provided to the other party as soon as possible after discovery.

#### Section 6. Required Correspondence

When requested a member who is involved in or witness to an incident or is the subject of a complaint allegation, other than allegations of criminal conduct, shall record all the known facts of the involved incident in writing and direct it to their Commanding Officer or other designated authority. The request for all required correspondence shall be made to the member prior to any interview. Absent exigent circumstances, a member will be provided two (2) working days to submit said correspondence. If further information/ clarification is subsequently required, the member shall be given specific questions to be answered.

#### Section 7. Statute of Limitations

In cases of alleged criminal conduct, cases which could reasonably be construed to give rise to court-martial proceedings, alleged violations of the Governor's Code of Conduct, or cases in which a prosecutorial determination is sought, the Department shall complete its investigation and the member advised of the Troop Commander/Bureau Director's notice of administrative findings within 180 calendar days. The 180 calendar days will commence on the date the member is notified of the complaint, except as provided below:

- a. In cases involving alleged criminal conduct or requests for a prosecutorial determination, the notice of administrative findings shall be issued within 90 calendar days from the date the Department receives written notice from the member of the disposition/adjudication of the criminal charge or the date the Department receives the prosecutorial determination.
- b. In all other cases the Department shall complete its investigation and the member advised of the Troop Commander/Bureau Director's notice of administrative findings within 120 calendar days of the date the Department is notified of the complaint.
- c. In court-martial cases the member shall be notified of the adjudicated penalty within 45 calendar days of the member's selection of the grievance procedure.
- d. If the aforementioned time limits are not met, no discipline in the form of a suspension without pay may be initiated. However, the time limits may be waived by the Department upon a showing of just cause or by mutual agreement of both parties.

Except in cases alleging criminal conduct or cases which give rise to court-martial proceedings, no disciplinary action consisting of a suspension without pay shall be imposed for violations of Department rules and regulations which are discovered more than one year after the date of occurrence unless mandated by

the Governor's Code of Conduct. This paragraph shall not apply upon a showing of proof that the member acted to prevent such discovery.

#### Section 8. Purging of Files

If a member is found not guilty of the charges, any information contained in the member's official personnel folder and Troop/Bureau personnel file shall be purged within 30 days of the findings and all purged material returned to the member. Unfounded, not sustained, policy void, or withdrawn investigations shall not be used for consideration in evaluations or specialized position selections. All other purging shall be in accordance with established practice.

#### Section 9. Receipt of Complaints

An investigator, upon being assigned to conduct an internal investigation as the result of a citizen complaint, shall complete a complaint verification and shall request the complainant's signature attesting to the veracity of the complaint as set forth.

Except in cases where criminal conduct is alleged or cases which could reasonably be construed to give rise to court-martial proceedings as determined by the Disciplinary Officer, no disciplinary charges shall be brought, nor shall the Department treat any Member as subject to disciplinary charges, prior to either a signed verification of allegations against the Member or in the absence of a signed verification, evidence corroborating the allegations.

#### Section 10. Outside Employment

A member who is suspended without pay and submits a Request for Approval of Supplementary Employment will be notified of the approval or denial within three working days of the Department's receipt of any such request. The member may submit the request directly to the Director, Bureau of Personnel by the most expedient means available; e.g., FAX, express mail, etc. The Department's reply shall be sent to the PSTA by the most expedient means available. If the Department fails to respond to the PSTA within the time limitations, the member's request shall be considered approved.

A member who has a previously approved Request for Supplementary Employment, and is suspended without pay, may engage in the approved supplementary employment, and except as required by law, shall not be required to offset reimbursement if the member is found not guilty of all charges.

#### Section 11. Definitions

The term member shall include probationary Troopers except where excluded.

#### Section 12. Discipline Standards

Disciplinary standards regarding termination of employment for certain specified offenses are contained in Appendix A to this Award and shall be incorporated into the collective bargaining agreement.

## ARTICLE 28 GRIEVANCE PROCEDURE

### Section 1. Scope

Grievances are limited to matters involving interpretation of this Agreement including all matters of discipline, and grant or termination of Heart & Lung Act benefits, compensation and reimbursement under FR 4-1, Loss of or Damage to State Property and Equipment if in excess of \$250, and FR 5-1, Travel and Subsistence.

### Section 2. Rights

a. Prior to the issuance of a DAR to a member at the Troop/Bureau level, the Troop Commander/Bureau Director will notify the member in writing of the pending action and furnish the member with a summary of any justification or information pertaining solely to the member, including but not limited to statements of all witnesses as well as copies of any test results being considered for use in the issuance of the proposed DAR.

Exception: The names of confidential witnesses shall not be released.

b. Upon notification the member will have three working days to request a meeting with the Troop Commander/Bureau Director. During this meeting, the member shall provide all known information (such as but not limited to additional names of witnesses or other specifics) which might mitigate or alter the decision to issue the DAR. The member shall be permitted local PSTA representation for such meetings, if so desired. The member assumes responsibility for arranging such representation within 24 hours.

c. The member and/or PSTA representative may, during this meeting, take notes and ask questions to determine the accuracy and relevancy of the information presented. The meeting will be held within five working days of the member's request.

### Section 3. Grievance Steps

**STEP 1.** The member, either alone or accompanied by a PSTA representative, or the PSTA where entitled, shall present the grievance in writing to the member's Troop Commander/Bureau Director within fifteen (15) calendar days of its occurrence or knowledge of its occurrence. Within ten (10) calendar days, the Troop Commander/Bureau Director or his/her designee shall conduct a hearing and provide a written STEP 1 decision to the member or the PSTA representative. If additional information is provided by the member or the PSTA representative, the time limits may be extended an additional five (5) calendar days to review or further investigate the data. Prior to the grievance submission to STEP 2, the grievance may be amended by the member or the PSTA representative.

A member may appeal discipline beginning at STEP 2 of the grievance procedure, within fifteen (15) calendar days of the notice of discipline the member receives from the Disciplinary Officer. The grievance must be presented in writing and received or postmarked to the Office of Administration, Bureau of Labor Relations within the fifteen (15) calendar day period to be considered timely.

**STEP 2.** In the event the grievance has not been satisfactorily resolved in STEP 1, written appeal, if made, shall be by the member or PSTA to the Office of Administration, Bureau of Labor Relations, 404 Finance Building, Harrisburg, PA 17120. The written appeal shall be made and postmarked within five (5) calendar days of the Troop Commander's/Bureau Director's STEP 1 written decision. The written appeal to STEP 2 shall contain a copy of the grievance and a copy of the STEP 1 decision. Discipline grieved directly to STEP 2 shall also include a copy of the grievant's DAR, the grievant's response, if applicable, notification of disciplinary action, the grievant's proposed witnesses and all other supporting documents. A copy will also be sent to the PSTA President, 3625 Vartan Way, Harrisburg, PA 17110.

Upon receipt of the grievance at STEP 2, either the representative from the Bureau of Labor Relations or the PSTA Grievance Board Chairman shall schedule a grievance committee meeting consisting of members from the Employer (no more than five) and the PSTA Grievance Board (no more than five). The joint committee shall meet at least one day per month, unless the parties mutually agree otherwise.

The grievance committee shall meet for the purpose of reviewing the grievance(s) previously denied in writing at STEP 1 and appealed to STEP 2 and matters of discipline grieved directly to STEP 2. A list of grievances to be discussed shall be sent to the Bureau of Labor Relations' representative and the Director of Personnel, Pennsylvania State Police by the PSTA Grievance Board Chairman, within seven (7) calendar days, when possible, prior to the grievance committee meeting.

**STEP 3.** If the grievance is not satisfactorily resolved by the grievance committee at STEP 2, the grievance may be scheduled for arbitration by the PSTA Grievance Board Chairman by serving upon the Bureau of Labor Relations' representative notice, within ten (10) calendar days of the grievance committee meeting, of its intent to proceed to arbitration. The Bureau of Labor Relations representative and the PSTA Grievance Board Chairman shall determine hearing dates and arbitrator availability. The Employer's decision at STEP 1 and the Committee's decision at STEP 2 shall not be used as a precedent for any subsequent case.

#### Section 4. Grievance Processing

An aggrieved member and PSTA representative, if member, and a reasonable number of witnesses, when required, shall be granted reasonable time during working hours, if required, to process grievances in accordance with this Article without loss of pay or leave time.

#### Section 5. PSTA Representation

The PSTA must have an opportunity to appear with the grievant at all steps of the grievance procedure. Subsequent to the issuance of the Disciplinary Officer's letter of adjudication the PSTA shall have the right to investigate all issues not incorporated within an investigation against a member, provided the issue has been brought to the attention of the Department and the Department chooses not to investigate the issue. Such follow-up investigation shall occur during off-duty hours, a member's badge of office shall not be used, and any expenses incurred therewith shall be borne exclusively by the PSTA.

#### Section 6. Grievance Resolution

The PSTA Grievance Board shall have the authority to settle or withdraw any grievance which does not have merit, does not comply with the time frames stated previously above, or does not comply with the guidelines established by the PSTA.

#### Section 7. Arbitrator and Site Selection

Five (5) neutral arbitrators are to be selected by the parties jointly to hear cases in the above procedure. Either party may, at any time, remove a neutral arbitrator, selected by the parties, after giving the other party at least fifteen (15) days notice.

When a vacancy exists on the list of arbitrators, the parties should attempt to agree on a replacement within ten (10) calendar days. If the parties cannot agree, the parties shall request the American Arbitration Association to submit a list of seven (7) arbitrators. Upon receipt of such list, the parties shall alternately strike until one arbitrator needed to fill a vacancy remains. A new list shall be requested from the American Arbitration Association for each arbitrator to be selected. Only one arbitrator is to be selected from each list. The Commonwealth shall strike first.

The parties may mutually agree to schedule a hearing at a location agreeable to both. For discipline grievances, the hearing site will be at a neutral location within the geographical area of the Troop where the grievance arose, unless mutually agreed otherwise. When the parties cannot agree to a hearing location due to a disagreement over the nature of the case, then the hearing site will be decided by the neutral arbitrator.

#### Section 8. Arbitrator Responsibility

Issues concerning timeliness or procedurally defective cases or matters on arbitrability will be decided prior to hearing the merits of the grievance. The

arbitrator shall neither add to, subtract from nor modify the provisions of this Agreement or of the arbitration awards. The arbitrator shall confine himself/herself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her. In those matters involving discipline for actions specifically set forth in Article 26, Section 12, Appendix A, Subsections [1] – [12], the arbitrator shall be limited to determining just cause and may not alter the penalty imposed by the Department.

The decision of the arbitrator shall be final and binding on both parties. The arbitrator shall be requested to issue his/her decision within 30 days after the record is closed, but not to exceed 60 days.

If briefs are to be submitted, they must be postmarked within fifteen (15) working days of the hearing or the arbitrator shall decide the case without the late party's brief.

All of the time limits contained in the Article may be extended by mutual agreement. If the Commonwealth fails to respond in a timely manner in any step of the grievance procedure, the grievant and/or the PSTA may process the grievance to the next Step in the procedure.

All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case. Either party desiring a record of the proceedings shall pay for the record and make a copy available without charge to the arbitrator.

#### Section 9. Heart and Lung Claims

Matters dealing with Heart & Lung shall be addressed in AR 4-4 as agreed to. Subsequent changes in AR 4-4 Heart & Lung Procedures shall be subject to bargaining.

#### Section 10. Reimbursement/Compensation Issues

All issues dealing with the application of compensation and reimbursement under FR 4-1, Loss of or Damage to State Property or Equipment, and FR 5-1, Travel & Subsistence, as presently written or modified by the Department, shall be submitted to a Board made up of one representative from the Department, one from the Office of Administration and one from the PSTA. The findings of the Board shall be final and binding. It is understood by the parties that the Board shall have no authority to amend the Commonwealth's travel regulations.

#### Section 11. Grievance/Court-Martial Procedure Selection

In the event a member is accused of an offense that would otherwise be subject to court-martial proceedings under Article 26, he/she shall be advised as follows:

Subsequent to the issuance of a DAR by the Troop Commander, if the Disciplinary Officer, with the concurrence of the Deputy Commissioner of

Administration, directs that the member be court-martialed, the following shall apply for the selection of either court-martial procedure or grievance procedure:

a. The member will receive written notice (form) that he/she may elect to challenge the accusation either through the court-martial procedure or the grievance procedure within seven (7) calendar days. When made, the election shall be irrevocable. If not made in a timely manner, it shall be conclusively presumed that the member has elected the grievance procedure.

b. The written notice (form) will state no matter which procedure the member selects, he/she is subject to disciplinary action up to and including but not limited to dismissal, transfer, reduction in rank and/or potential suspension in excess of thirty (30) days.

c. If the member selects the court-martial procedure, a request will be made of the Governor to convene such proceedings at which time charges and specifications will be issued, in writing, to the member.

d. If the member selects the grievance procedure, the Commissioner will determine the appropriate penalty, and a written notice will be issued to the member stating the disciplinary action to be taken and the underlying facts in support thereof within forty-five (45) working days. After receiving the Commissioner's decision the normal grievance procedure will then apply.

#### Section 12. Penalty Imposition

Effective with Notices of Penalty issued on or after April 1, 2005 and subject to the provisions of Article 26, Section 5, Subsection g, a penalty of suspension without pay shall be implemented at any point in time following receipt of the Notice of Disciplinary Penalty by the member accused of misconduct. The implementation of the penalty can be delayed upon mutual agreement of the parties.

Notwithstanding the foregoing provisions of Sections 11 and 12 herein above, where removal from duty is required at any time due to the nature of the offense, the Department may suspend a member in accordance with Article 26, Section 2.

#### Section 13. Administrative Leave

Administrative leave shall be for the time that coincides with the grievant's or witnesses' work schedule, not to exceed a full shift. On the day of the hearing, the grievant/witness shall be scheduled on a day shift (a shift for which shift differential is not paid). For this accommodation, no overtime can be charged by the grievant/witness in respect to other sections of this contract.

A grievant and/or witnesses, when required to travel a distance exceeding 100 miles from his/her regular station to the arbitration site, shall not be required to work a shift commencing after 8:00 a.m. the day prior to the arbitration hearing date unless a clear and present danger/emergency exists. All witnesses granted administrative leave time shall be required to testify unless excused mutually by the parties.

Requests for administrative leave shall be presented in writing to the Office of Administration, Bureau of Labor Relations, at least 14 days prior to the arbitration hearing date, except for unforeseen circumstances, in which case leave shall not be unreasonably denied.

Up to five (5) members appointed by the PSTA to serve on the Grievance Board shall receive sufficient time to review grievances and attend STEP 2 Grievance Committee meetings without loss of leave or compensation. It is agreed that all members appointed by the PSTA shall be active members.

#### Section 14. Annual Review

The Commonwealth and the PSTA shall meet yearly to review the grievance procedure. The procedure can be modified at any time by agreement between the parties.

#### Section 15. Agreement

The foregoing represents the parties' entire agreement with regard to Article 28, Grievance Procedure, and any previous side-letters concerning this Grievance Procedure Article are no longer in effect.

#### Section 16. Definitions

The term member shall include probationary Troopers except where excluded.

#### Section 17. Expedited Arbitration Procedure

In any case where (1) a disciplinary penalty has been imposed on a Member following service of a Notice of Disciplinary Penalty on or after April 1, 2005, and (2) the Association has made a written demand for arbitration to the Commonwealth's Bureau of Labor Relations within ten (10) calendar days of service of the Notice upon the Association, the matter shall be heard before an arbitrator or a court martial board within sixty-one (61) calendar days following service of the Notice. In the event the matter is not heard within that time period, and the delay is not attributable to the Association or the member, the penalty must be rescinded until such time as an arbitrator sustains the penalty. Delays attributable to the Member or Association, including the failure to make a demand for or to schedule the arbitration, shall not result in rescission of the penalty. Should the Association not make a written demand for arbitration within the ten day time period, the right to arbitration shall be deemed to have been waived.

To implement the sixty-one day requirement, the parties shall immediately appoint a panel of arbitrators to be designated as the Disciplinary Arbitration Panel. The appointments shall be made in accordance with section 7 of this Article. The Disciplinary Arbitration Panel shall consist of not less than seven (7) arbitrators, which number may be expanded as the parties deem necessary to satisfy the sixty-one day requirement. Each arbitrator shall provide the parties with a minimum of two dates per every calendar month commencing April 1, 2005. Arbitrators appointed to the Disciplinary Arbitration Panel shall serve two-year terms, but in no event shall an arbitrator be removed from the Disciplinary Arbitration Panel without the mutual concurrence of the parties, prior to a date twenty-four months after the arbitrator's last appointment to the Panel. An arbitrator sitting on the Panel shall render his or her decision within ten (10) calendar days of the close of the hearing. Written summations shall not be accepted from either party without the consent of the other. Should written summations be submitted, they shall be received within ten (10) days of the hearing, at which point the hearing will be deemed closed. In the event that notes of testimony are taken by a reporter, the parties shall direct that the notes be transcribed and forwarded to the parties and the arbitrator on an expedited basis and in no event more than 48 hours after the close of evidentiary hearing. A written opinion may be required of the arbitrator by either party and, if required, shall be submitted within thirty (30) calendar days of the close of the hearing.