

MEMORANDUM OF AGREEMENT

Re: Working Conditions for Employees of the Bellingham Municipal Court

THIS MEMORANDUM OF AGREEMENT (MOA) is by and between the Bellingham Municipal Court ("Court") and the Guild of Pacific Northwest Employees, Local No. 1937 ("Local 1937"), collectively the "parties."

I. RECITALS

- A. Local 1937 represents employees in various City departments, the museum, the library, and the Court ("Bargaining Unit");
- B. The City of Bellingham ("City") and Local 1937 have entered into the Collective Bargaining Agreement ("Agreement"), effective January 1, 2022, through December 31, 2023, which covers Court employees;
- C. Washington State Court General Rule 29(f) ("GR29") requires the Court's Presiding Judge to be responsible for judicial and administrative duties concerning the Court, including but not limited to supervising the court's daily operation and employees;
- D. In compliance with GR 29, this MOA applies to Court employees' working conditions. The City is responsible for all economic subjects covering the Bargaining Unit; and

II. AGREEMENT

IN CONSIDERATION OF the mutual covenants and promises contained herein, the parties agree to the following:

1. The Agreement applies to all Court employees except for the terms provided herein.
2. The Agreement shall be modified as provided in Attachment A.
3. This MOA's terms shall supersede any conflicting working conditions in the Agreement.
4. The terms of this MOA will be incorporated in the parties' successor Agreement, unless otherwise agreed to in writing by the parties.
5. This MOA is effective upon full execution.

IN WITNESS WHEREOF, the parties have executed this MOA as their free and voluntary act on the dates below.

BELLINGHAM MUNICIPAL COURT



Hon. Debra Lev
Presiding Judge

23 Sept 2022

Date

**GUILD OF PACIFIC NORTHWEST
EMPLOYEES, LOCAL NO. 1937**



Jael Komac
Local President

9/23/2022

Date

Attachment A

ATTACHMENT A

1. The parties agree the following terms provided Articles in the Agreement apply with no changes:

Article	Subject/Issue
2	Recognition, Bargaining Unit
3	Union Membership
5	Applicable Universal Policies
7	Safety
8	Classification and Job Description
10	Washington State Sick Leave
11	Contract Sick Leave
12	Other Leave
13	Holidays
14	Vacations
15	Health and Welfare
16	Wages and Deferred Compensation
17	Disciplinary Action
21	Union Business
22	Duration
24	Labor Management Committee
25	Drug Testing
26	Savings Clause
Appendices	--

2. The parties agree to amend the terms of the Agreement for Court employees, as follows:

ARTICLE 1 - PREAMBLE

This Collective Bargaining Agreement ("Agreement") is between the City of Bellingham, hereinafter referred to as the City, and Guild of Pacific Northwest Employees Local 1937, hereinafter referred to as the Union. This agreement between the aforementioned parties has been reached as the result of collective bargaining and will be in effect for the period stated herein. The officials executing this agreement on behalf of the City and the Union are acting under the authority of RCW 41.56 to collectively bargain on behalf of the organizations which they represent.

For terms concerning working conditions in this Agreement covering Court employees, the "City" or "employer" shall refer to the Bellingham Municipal Court ("Court"). Except for Article 18 (Grievance Procedure), references to "Department Head" shall mean "Court Administrator." References to "Mayor" shall mean "Presiding Judge."

In accordance with the state Supreme Court's General Rule 29, the Presiding Judge of the Court shall supervise the Court's daily operations and shall maintain full control over the working conditions, hiring, discipline, and termination decisions of all Court employees.

ARTICLE 4 - MANAGEMENT'S RIGHTS CLAUSE

Add the following language to the Agreement:

Court Personnel Governed by GR 29(f). All terms and conditions of this Agreement apply to Bellingham Municipal Court ("Court") personnel who are bargaining unit employees. However, pursuant to the requirements of Washington's General Rule 29(f), the parties to this Agreement recognize the Presiding Judge of the Court is delegated exclusive authority over Court personnel covered by this Agreement with respect to working conditions, hiring, discipline, and discharge decisions, but excluding wages or benefits directly related to wages.

The parties also recognize the judicial and administrative duties in GR 29(f) rest exclusively with the Presiding Judge and cannot legally be delegated to the City Council, Mayor, or the City. Any provision of this Agreement referring to the City Council, Mayor, or the City will be substituted with the Court/Presiding Judge.

In compliance with GR 29, Court employees shall not be subject to the Civil Service Rules.

HOURS OF WORK

Add the following provision to the Agreement:

Court employees' work schedules shall be set by the Court consistent with the direction of the Administrative Office of the Courts (AOC) and the Presiding Judge. Unless otherwise directed by the AOC and the Presiding Judge, the regular work week for full-time employees shall be Monday through Friday, forty (40) hours per week, eight (8) hours per day and scheduled between the hours of 7:00 AM and 5:00 PM.

JOB POSTING AND VACANCIES

Add the following provision to the Agreement:

Candidate Selection

The Employer and the Union agree that permanent job vacancies shall be filled based on applicants' qualifications, skills, ability to perform the work without training, prior Court or City employment, suitability for the posted position(s), among other factors.

Posting of Vacancies

Job vacancies will be posted internally and externally for at least five (5) working days. Court employees who are absent during the full posting period will receive a notice of the posting by email or text message.

ARTICLE 9 - JOB AUDIT

9.1 Request

A job audit will be conducted when there has been a substantial and permanent change in job duties and responsibilities since the last significant revision of a job description or last job audit review. The employee may request the review by submitting a written request to the Human Resources Department. Employee job audit requests shall be submitted using the appropriate form with a justification for the request that includes the following information:

- a)** New duties and responsibilities assigned on a continuing basis must be identified. Other inaccuracies in the job description must be specifically pointed out. If the job description does not reflect essential and significant duties, assigned on a regular and recurring basis, the employee must clearly identify those duties.
- b)** The reasons for believing the job may be classified incorrectly should be clearly stated.

9.2 Court Administrator ~~Department-Head~~ Review

The Court Administrator~~department-head~~ or designee will review the justification submitted by the employee and complete their section of the job audit request form to ensure the information provided is accurate and

up to date. A copy of the comments will be provided to the employee. The ~~Court Administrator~~~~department head~~ will forward the job audit request form to the Human Resources Manager within thirty days of receipt from the employee.

9.3 HR Review

The Human Resources Manager or designee will review the request and make a ~~recommendation to the Presiding Judge whether~~ the job is accurately classified. The review may include a desk audit or discussion with the employee and the supervisor and/or ~~Court Administrator~~~~department head~~.

9.4 HR Decision

The Human Resource Manager's decision, with an explanation for the findings, will be provided to the employee, the Union, and the ~~Court Administrator~~~~department head~~ within five months of the date the complete audit request was submitted to the Human Resources Department. If the decision supports reclassification and there is a resulting increase in pay, the pay action will be effective the date the request was received in the Human Resources Department. If the decision results in a decrease of pay, the employee will retain pay but will not receive any further increases until the incumbent's pay is within the salary range for the reclassified position.

9.5 Appeals

~~An employee in a position covered by Civil Service may appeal the classification decision of the Human Resources Manager to the Bellingham Civil Service Commission.~~ A Court employee may appeal the classification decision made in Section 9.4 to arbitration within 15 calendar days of the decision. The parties agree to process the appeal under the terms of the grievance procedure commencing at Step 4. (Article 18.5, Step 4, Arbitration).

9.6 Assignment of Higher Level Duties

At any time in this process, if it is found that the employee is being assigned or performing higher level duties outside the scope of their existing classification, such duties may be withdrawn based on budgetary limitations or sound position management principles. If the decision is to continue to assign the duties to the employee, the job description or classification specification will be revised to reflect the duties and

appropriate changes in the classification ~~will be recommended to the Civil Service Commission~~. Any changes to classification wage placement will be implemented as described in Article 8.5.

~~The City agrees to meet with Local 1937 during the first quarter of 2021 to discuss opportunities for improvements.~~

ARTICLE 18 - GRIEVANCE PROCEDURE

18.1 Purpose

The purpose of this procedure is to provide an orderly method of resolving grievances. A determined effort will be made to settle such differences at the lowest possible level in the grievance procedure. Meetings or discussions involving grievances will be scheduled at mutually agreeable times.

18.2 Union Representation

An employee has a right to request and have a union representative present at any investigatory interview that the employee reasonably believes could be related to or result in disciplinary action, or disputes related to this agreement. An employee may stop any meeting in progress in order to obtain Union representation. An employee may waive the right to union representation at investigatory interviews.

- a) The employee has a right to prior consultation with the representative before an investigatory interview.
- b) The employee has a right to be informed of the subject matter of an investigation before an interview takes place.
- c) It is the employee's responsibility to contact the shop steward or representative. If a shop steward or representative is available, the interview may be conducted in accordance with the requirements of 18.2. However, if none is readily available, a reasonable period up to 2 working days will be provided for scheduling the representative. In the case of a serious disciplinary issue and formal investigation, a reasonable period of up to 3 working days may be required.

The Parties agree that a union representative may be useful in resolving a non-disciplinary matter, but there is no right to union representation for a workplace conversation or other work transaction to occur, unless such

interaction becomes investigatory or disciplinary during the course of the meeting.

18.3 Definitions

Grievant: A grievant is an employee or group of employees, or in the case of the Union's contractual rights, the Union.

Grievance: A dispute involving the application or interpretation of the specific terms of this agreement.

Civil Service Appeal: A dispute that may be appealed to the Civil Service Commission. These do not include disputes addressed in ARTICLE 17 (Disciplinary Action), which are subject to the provisions of ARTICLE 18 (Grievance Procedure). **This provision does not apply to Court employees.**

Fact-finding: A necessary step for Due Process and Just Cause. This may include pre- disciplinary questions, investigatory interviews, or any opportunity to respond to allegations that could lead to discipline.

Days: Days in this procedure are calendar days.

18.4 Timeliness

Grievances will be processed in the following manner and within the stated time limits. Time limits provided in this procedure may be extended only by mutual written agreement.

Failure on the part of the City at any step in this procedure to communicate the decision on a grievance within the specific or mutually extended time limits will permit the grievant to lodge an appeal at the next step of this procedure.

Failure on the part of the grievant (employee or Union) to present or proceed with a grievance within the specified or mutually extended time limits will render the grievance waived.

18.5 Process

Step 1: Submission to **Court Administrator**~~First-Level-Supervisor~~ - Within 15 days of the action or event giving rise to the grievance or when the event becomes known or reasonably should have been known, the employee and/or a shop steward will present the grievance to the **Court Administrator**~~first-level-supervisor~~. The presentation may be oral or written,

but it must be stated that it is intended to be Step 1 of a grievance. The following should be stated clearly:

- a. The specific action, event or practice that is being grieved and the dates of occurrences.
- b. Explanation of reason why the action is perceived to be in conflict with terms of the contract, including the specific article of the contract violated.
- c. The resolution sought.

The ~~Court Administrator~~~~immediate-supervisor~~ will respond within 15 days of presentation of the grievance. Response may be verbal, but the ~~Court Administrator~~~~supervisor~~ will clearly indicate completion of Step 1 of the grievance.

Time limits at any step of this procedure may be extended by written agreement of the management official and the grievant.

Step 2: Presentation to ~~Presiding Judge~~~~Department-Head~~ - If the grievance is not resolved at Step 1, and the grievant wishes to pursue the issue further, the grievant must submit a written grievance to the ~~Presiding Judge~~~~department-head~~ within 15 days of the response from the ~~first-level supervisor~~~~Court Administrator~~ or within 15 days of the date when such response was due. A grievance presented by the Union, representing a group of employees, must be signed by the Union president.

The written grievance must contain the information listed under Step 1. Additionally, it must state the date the grievance was presented to the ~~Court Administrator~~~~first-level-supervisor~~ and the date of the ~~Court Administrator~~~~first-level-supervisor~~'s reply. The grievant will provide a copy of the written grievance to the Union and to the Human Resources Manager.

The ~~Presiding Judge~~~~department-head~~ or their designee will review the grievance, meet with the parties concerned and provide a written reply to the grievant with a copy to the Union and the Human Resources Manager within 15 days of receiving the Step 2 grievance. The meeting may be waived when mutually agreed upon.

Step 3: Request for Mediation - The ~~Presiding Judge~~~~department-head~~ may request mediation at any point in Step 2 by submitting a request to the Human Resources Department.

If the grievance is not resolved at Step 2, the Union may submit a written request for mediation to the Human Resources Manager within 15 days of

the ~~Presiding Judge~~department head's reply or within 30 days of the submission of the grievance to the ~~Presiding Judge~~department head. If the Union, ~~and~~ the Manager of Human Resources, and the Presiding Judge agree, a mediator will be jointly selected. Efforts will be made to acquire no-cost mediation services.

The Union may bypass Step 3 and proceed to arbitration by presenting a written request to the Human Resources Manager and the Presiding Judge within 15 days of receipt of the decision at Step 2, or within 15 days of the completion of mediation.

Step 4: Arbitration

1. When a timely request has been made for arbitration, the Union, the City, and the Presiding Judge parties will attempt to select an impartial arbitrator to hear and decide the particular case. If the parties are unable to agree to an arbitrator within 15 days after submission of the written request for arbitration, the provisions in paragraph (2), below, will apply to the selection of an arbitrator.
2. In the event an arbitrator is not agreed upon as provided in paragraph (1), above, the parties will jointly request the American Arbitration Association to submit a panel of nine arbitrators from Washington and/or Oregon. Once the list of arbitrators is received, the parties will, in turn, have the right to strike a name from the panel until only one name remains. The remaining person will be the arbitrator. The right to strike the first name from the panel will be determined by coin toss.
3. Arbitration proceedings will be in accordance with the following:
 - a. The arbitrator, once appointed, will inform the parties as to the procedures which will be followed.
 - b. The arbitrator will hear and accept pertinent evidence submitted by both parties and will be empowered to request, through subpoena if necessary, data and testimony the arbitrator deems pertinent to the grievance, and will render a decision in writing to both parties within 30 days, unless mutually extended, of the closing of the record.
 - c. The arbitrator will be authorized to rule and issue a decision in writing on the issue(s) presented for arbitration, which decision will be final and binding on both parties.

- d. The arbitrator will rule only on the basis of information presented at the hearing and will refuse to receive any information after the hearing except by mutual agreement.
 - e. Each party to the proceedings may call witnesses in the order in which their testimony is to be heard. Testimony will be limited to the matters set forth in the written statement of grievance. The arguments of the parties may be supported by oral comment and rebuttal. Either or both parties may submit written briefs within a time period mutually agreed upon. The arguments of the parties, whether oral or written, will be confined to and directed at the matters set forth in the grievance.
 - f. Each party will pay any compensation and expenses relating to its own witnesses and representatives, including attorney fees.
 - g. In proceedings involving discipline and discharge, the arbitrator will specify in the award that the City or the Union, whichever is ruled against by the arbitrator, will pay the compensation of the arbitrator, including necessary expenses. In all other proceedings, the arbitrator's expenses will be borne equally by the parties.
 - h. The total cost of the stenographic record, if requested, will be paid by the party requesting it. If the other party also requests a copy, the party will pay 1/2 of the stenographic cost.
 - i. Unless otherwise agreed by the parties, challenges to the procedural arbitrability of a grievance will be bifurcated and resolved in a proceeding separate from and prior to arbitration on the merits of the grievance.
- 4. Binding Effect of Award** - All decisions arrived at under the provisions of this article by the representatives of the City and the Union at Steps 1, 2, 3 and 4, or by the arbitrator, will be final and binding upon both parties. However, in arriving at a decision, neither of the parties nor the arbitrator will have the authority to alter this agreement in whole or in part.
- 5. Limits of the Arbitrator** - The arbitrator cannot order the City to take action contrary to the law.

6. No Duty to Maintain Status Quo - The City has no duty to maintain the status quo or to restore the status quo pending arbitration. However, if a return to the status quo is ordered by the arbitrator, the return will be carried out in accordance with the arbitrator's award.

7. Freedom from Reprisal - There will be no reprisals against the grievant, or others, as a result of their participation in this process.

18.6 Applying the Grievance Process for Court Employees

Working Conditions Grievances: For grievances concerning working conditions for Court employees, Step One will be adjusted by the Court Administrator and Step Two will be adjusted by the Presiding Judge.

Example: If a grievance is filed alleging an employee's work schedule was improperly changed without the required notice, the dispute concerns a working condition subject so the Court shall adjust the grievance.

Economic Grievances: For grievances concerning economics for Court employees, the City shall adjust grievances.

Example: If a grievance is filed alleging overtime pay was improperly calculated, the dispute concerns an economic subject so the City shall adjust the grievance.

Working Conditions and Economics Grievances: For grievances concerning working conditions and economics for Court employees, the Court and the City shall jointly adjust grievances concerning their respective bargaining subjects as outlined in the above step procedures.

Example: If a grievance is filed alleging: (a) an employee's work schedule was improperly changed without the required notice and (b) resulted in the improper calculation of overtime pay, the dispute concerns both economic and working condition subjects, so the Court and the City shall jointly adjust the grievance.

ARTICLE 19 - GENERAL WORKPLACE DISPUTE AND DISCRIMINATION/HARASSMENT

19.1 General Dispute

A dispute concerning an action or practice alleged to be unfair, inequitable, or which intrudes on an employee's ability to perform their job in a non-hostile work environment, or any workplace relationship issues that affect the parties' ability to work together. The parties will review Alternative Dispute Resolution systems to more effectively resolve disputes of this nature.

19.2 Discrimination and Harassment

There will be no discrimination by the Court or the Union against any employee for membership or non-membership in the Union or for past or present Union activities, race, religion, creed, color, national origin, gender, sexual orientation, age or sensory, mental or physical disability. **** A dispute involving the application or interpretation of the specific terms of this agreement must be brought as a grievance, pursuant to ARTICLE 18 (Grievance Procedure). Complaints about discrimination that allege a violation of State or Federal law, such as race discrimination or sexual harassment, should be raised with the Presiding Judge and the Court Administrator and are not addressed in this Article or Collective Bargaining Agreement.

ARTICLE 20 - SENIORITY, ACCESS TO REGISTERS, LAYOFF AND REINSTATEMENT

Seniority will be by classification within the Court. Similarly, reduction in force and reinstatement from layoff will also follow seniority by classification within the Court.

ARTICLE 23 - DISTRIBUTION OF CIVIL SERVICE DOCUMENTS

The City agrees to provide the Union's designated Civil Service representative and the Union President with a copy of all documents affecting the bargaining unit when the complete packet is presented to the Civil Service Commission. This Article shall not apply to Court employees.