

John Q. Public
Grievant,

v.

Docket No. 2013-0000-WIDGETS

DEPARTMENT OF WIDGETS
Respondent.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between John Q. Public (Grievant) and the West Virginia Department of Widgets (Respondent).

WHEREAS, Grievant's position is classified as a Widget Technician, Pay Grade 3, with a salary of \$1,401.00 per month.

WHEREAS, Grievant alleges that the position would be more accurately classified as a Senior Widget Technician, Pay Grade 5, with a salary of \$1,546.00 per month, effective January 1, 2013.

WHEREAS, Grievant challenged his classification determination through the grievance procedure.

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

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

1. Based upon the classification review and determination by the West Virginia Division of Personnel, Respondent agrees to reallocate Grievant's position to the classification of Senior Widget Technician, Pay Grade 5, at \$1,546.00 per month, effective April 1, 2013, retroactive to January 1, 2013.

2. Considering any applicable personnel transactions (salary advancements, salary adjustments, leaves of absence, and/or overtime differences) that may have occurred between January 1, 2013, and April 1, 2013, Grievant will receive \$435.00 back pay, plus \$20.45 interest, for a total gross amount of \$455.45. Grievant agrees that any liability for federal or state tax payments upon the amount paid to Grievant pursuant to this Settlement Agreement and Release shall be the sole responsibility of Grievant. Provided, that Respondent will be responsible for the applicable standard employer payroll tax liability. It is the intent of all parties that the whole amount of these back wages be pensionable.

3. Grievant shall dismiss with prejudice this grievance and does hereby waive, release, acquit and discharge Respondent from any and all liabilities, attorney fees, claims, demands, controversies, damages, actions and causes of action of every kind and character, arising from the facts and circumstances of this grievance, which he or she may now have or may have in the future concerning the subject matter of this grievance, including but not limited to, any rights brought under the West Virginia Human Rights Act, Americans with Disabilities Act, Workers' Compensation Act or Title VII of the Civil Rights Act as well as any complaints filed and/or proceedings pending with the Public Employees

Grievance Board, West Virginia Human Rights Commission, West Virginia Equal Employment Opportunity Office, West Virginia Division of Labor, United States Equal Employment Opportunity Commission, and United States Department of Labor.

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

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

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

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

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

IT IS FURTHER UNDERSTOOD that this Settlement Agreement and Release is a preliminary document and requires the review and approval of the Division of Personnel. If the Division of Personnel determines that any of the terms are not compliant with the Division of Personnel's law, rules and policies, then this Settlement Agreement and Release is null and void.

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

Date

John Q. Public
Grievant

Date

Jane Q. Taxpayer
Grievant's Representative

Date

Joan Q. Citizen, Director
Department of Widgets
Respondent

Date

Joe Q. Attorney, Counsel
Department of Widgets

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

Date

Sara P. Walker, Director
Division of Personnel