

AGREEMENT
between the
OFFICE OF THE DEFENDER GENERAL
of the
STATE OF VERMONT

and the
VERMONT STATE EMPLOYEES ASSOCIATION, INC.

DEFENDER GENERAL BARGAINING UNIT

Effective July 1, 2010 – Expiring June 30, 2012

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THIS AGREEMENT IS MADE BY AND BETWEEN THE OFFICE OF THE DEFENDER GENERAL OF THE STATE OF VERMONT (hereinafter referred to as “ODG”, “Employer” or “Management”), REPRESENTED BY THE DEFENDER GENERAL OR THE DEFENDER GENERAL’S DESIGNEE (hereinafter referred to as “Defender General” or “DG”), **and the DEFENDER GENERAL BARGAINING UNIT OF THE VERMONT STATE EMPLOYEES’ ASSOCIATION, INC.** (hereinafter referred to as the “VSEA” or “DG Unit” or “Union”).

PREAMBLE

WHEREAS the Legislature of the State of Vermont (“State”) enacted legislation providing for collective bargaining between the ODG of the State of Vermont and its employees, and

WHEREAS it is acknowledged by the parties that the Legislature has the sole authority to appropriate State funding for the operation of the ODG and that DG has no independent ability to ensure such funding. It is further acknowledged that reference to the Defender General in this Agreement refers to the role of the Defender General in his or her official capacity. The Defender General has no individual liability with respect to the financial obligations, to include compensation levels and provision of employee benefits, entered into under this Agreement, and

WHEREAS it is the intent of the parties to promote the efficient administration of State service; to provide for the well being of employees; and to maintain high standards of work performance in behalf of the public, and

WHEREAS during the life of this Agreement, the parties agree that neither the ODG nor the Association will request the Legislature to pass legislation which alters or nullifies any provision of this Agreement,

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual covenants herein set forth, agree as follows:

ARTICLE 1 VSEA RECOGNITION

The ODG recognizes the Vermont State Employees’ Association, Inc. as the exclusive representative of the Vermont State employees in the DEFENDER GENERAL BARGAINING UNIT.

1. The ODG shall notify VSEA of all changes in designations of employees and designations of newly created positions.
2. Fifteen (15) days before notifying an affected employee, the ODG, shall under separate cover, mail to VSEA notice of the change in Bargaining Unit Designation. At VSEA’s request, the ODG will meet to discuss any such designation.
3. Employees whose designation changes for reasons other than a reclassification will be notified with a brief explanation of the decision and a statement of the employee’s right to appeal the designation to the Vermont Labor Relations Board. The “Change in Unit Designation” shall state explicitly both the old and new designations.
4. During the first two weeks of employment, the ODG will provide written information to newly hired employees identifying the VSEA as the exclusive bargaining agent to include a

VSEA informational brochure, any VSEA insurance benefit or new program information, a membership card and an envelope, and any other information agreed to by the parties. All material relating to the VSEA shall be provided to the Employer by the VSEA. The ODG shall also provide the employee with a copy of the collective bargaining agreement.

ARTICLE 2 MANAGEMENT RIGHTS

1. Subject to law, rules and regulations, and subject to terms set forth in this Agreement, nothing in this Agreement shall be construed to interfere with the right of the ODG to carry out the statutory mandate and goals of the ODG, to restrict the ODG in its reserved and retained lawful and customary management rights, powers and prerogatives, including the right to utilize personnel, methods and means in the most appropriate manner possible to take whatever action may be necessary to carry out the mission of the ODG in an emergency situation.
2. Consistent with statutory authority the ODG may contract out work and may discontinue services or programs, in whole or in part. As a result of such discontinuance a permanent status employee who is laid off shall have reduction in force rights under the Reduction In Force Article. When the ODG contemplates contracting out bargaining unit work and publishes a formal request for proposal, a concurrent notice of such publication will be sent to the VSEA Director. Upon request, VSEA shall be permitted to inspect the RFP specifications.
3. The ODG may determine that a reduction in force is necessary due to lack of work or otherwise pursuant to management rights.
4. The parties will negotiate as required by law over any dispute arising under paragraph 1, provided said condition of employment is a mandatory bargaining subject. The parties shall meet within 10 calendar days (unless mutually agreed to extend) after a request for negotiations by either party and thereafter on a regular basis. At the end of a forty-five (45) calendar day period, which shall commence with the beginning of negotiations, the ODG may implement any proposed change or new condition of employment, whether or not the parties will have bargained to impasse. The VSEA shall retain all statutory impasse procedure rights as may be lawfully available to VSEA during the life of this Agreement.
5. A dispute whether contracting out is consistent with statutory authority shall be processed initially through the grievance procedure. If the grievance remains unresolved at Step II to the extent it involves contract issues other than consistency of contracting out with statutory authority, such grievance shall be submitted to the VLRB at Step III. However, the issue of whether contracting out is consistent with statutory authority shall not be appealable to the VLRB at Step III but may be litigated in court. In any such court action, the State agrees not to raise as an objection or defense the failure of the VSEA to appeal that issue to VLRB or to exhaust VLRB procedures prior to commencing such court action.

ARTICLE 3 VSEA RIGHTS

1. The Employer shall not enter into any consultations, agreements, or informal discussions regarding employment relations matters with any other organization or individual purporting to represent any group of employees, and must not engage in any type of conduct which would imply recognition of any organization, group, or individual other than the VSEA as a representative of the employees in any bargaining unit. This is not intended to supersede the provisions of 3 VSA Ch. 27, 941 (j).

2. VSEA stewards shall be allowed to visit any ODG office in their designated areas of responsibility for the purpose of receiving or investigating grievances or complaints.

3. VSEA TIME OFF: The VSEA shall provide written notice to the ODG of the date and time of those meetings outlined in subsections (a) through (g) below with as much notice as possible. Subject to the efficient conduct of ODG business, which shall prevail in any instance of conflict, permission for reasonable time off during normal working hours without loss of pay and without charge to accrued benefits shall not be unreasonably withheld in the following instances to:

(a) Members of the VSEA Board of Trustees to attend 12 regular Trustee meetings and up to two special Trustee meetings a year.

(b) Members of the Council for attendance at any of the four regular council meetings per year. The ODG may grant permission for attendance at not more than one additional special meeting.

(c) Unit Chairperson, up to 40 hours per contract period, subject to the operating needs of the ODG for conduct of unit Labor Relations/Contract Administration business;

(d) Members of VSEA standing committees will be permitted to attend ten meetings per year;

(e) Unit executive committee members will be given time off to attend five meetings per year;

(f) Stewards for the processing and handling of complaints and grievances, including necessary appearances at all steps of the grievance procedure; up to 20 hours per steward per year shall be considered a reasonable time for processing and handling of complaints and grievances, and may be extended by mutual agreement in any instance;

(g) Any of the above or to chapter officers or to bargaining team members for the purpose of attending training sessions.

An employee will not be permitted more than a total of 120 hours time off, except that a member of the VSEA Board of Trustees will be permitted no more than 160 hours time off in any fiscal year under paragraph 3, subsections a-g above..

In any such instances, under this Section, such employees shall coordinate their absences from work to minimize the adverse impact on the efficient conduct of ODG business and in all cases must secure advance permission from appropriate supervisors and shall give the ODG as much prior notice of any such meetings as possible, including concurrent written notice to ODG Heads when VSEA sends a notice of meetings to its own representatives. "VSEA business" as referred to in this Article involves the institutional role of the VSEA as required by current law in dealing with the ODG.

4. The ODG shall provide the VSEA with sufficient space on ODG bulletin boards generally accessible to employees for the purpose of posting VSEA information.

5. Union organizing activity will not be conducted on State/ODG premises during scheduled work time, excluding all authorized breaks and meal periods.

6. If space is readily available on the premises, the ODG shall provide places where VSEA staff, representatives, and/or VSEA stewards can confer privately during working hours with employees regarding any complaints or grievances they may have. The ODG shall provide space for VSEA meetings during non-duty hours when these meetings do not conflict with established plans of the ODG. The VSEA must request the use of this space through the appropriate DG as far in advance of the anticipated meeting as is practical. For securing space to conduct VSEA elections, polling space shall be requested at least two weeks in advance.

7. The VSEA Director(s) or a representative shall be allowed to visit any ODG office during working hours for the purpose of conducting VSEA business or investigating an employee complaint or grievance, provided that permission is obtained in advance from the appropriate managers, if available, and provided that such meetings do not adversely affect the efficient conduct of ODG business. Permission shall not be unreasonably withheld.

8. VSEA shall have exclusive payroll deduction of membership dues. Dues, to include any VSEA approved insurance program premiums, shall be deducted on each pay day from each bargaining unit employee who has designated VSEA as their representative. The amount of dues to be deducted will be certified by the VSEA to the State Payroll Department.

ARTICLE 4 NO STRIKE CLAUSE

During the life of this Agreement the VSEA and employees covered by this Agreement acknowledge their statutory obligations in relation to 3 VSA 903(b) and agree to be bound thereby.

ARTICLE 5 NO DISCRIMINATION OR HARASSMENT

1. NO DISCRIMINATION, INTIMIDATION OR HARASSMENT

In order to achieve work relationships among employees, supervisors and managers at every level which are free of any form of discrimination, neither party shall discriminate against, intimidate, nor harass any employee because of race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, membership or non-membership in the VSEA, filing a complaint or grievance, or any other factor for which discrimination is prohibited by law. The provisions of this section prohibiting discrimination on the basis of sexual orientation shall not be construed to change the definition of family or dependent in an employee benefit plan.

2. ENFORCEMENT RESPONSIBILITIES

(a) The ODG will notify all state employees that any person who by action or condonation, subjects any other employee to harassment in the form of uninvited physical or verbal attention, insults or jokes based upon a factor for which discrimination is prohibited by law, or upon a person's sexual orientation, or who invites or provokes such conduct, shall be subject to appropriate disciplinary action.

(b) By the VSEA -

(1) The VSEA acknowledges its obligation to inform its members, officers, and agents of their obligations to abide by the laws, regulations and policies which prohibit discrimination, intimidation, or harassment.

(2) The VSEA further acknowledges its obligation to train its officers, agents and stewards to be sensitive to the requirements of this Article.

ARTICLE 6 EXCHANGE OF INFORMATION

1. The ODG shall furnish the VSEA with the records and documents specified in this section when they become available unless the ODG discontinues their compilation:

(a) One copy of each new or revised job specification;

(b) One copy of any master list of all bargaining unit, management and supervisory designations;

(c) Lists of new employees, separations, transfers, position reallocations, reassignments, and promotions; and

(d) On a one-time basis, single copies of all forms currently in use by the ODG to maintain records and implement policies; and,

(e) One copy of the ODG's organizational chart; and

(f) One copy of all addresses, worksites, address changes of employees who have completed their original probationary period.

2. The ODG shall furnish the VSEA with the records specified in this section as they become available to the ODG unless the ODG discontinues their compilation:

(a) One copy yearly of all employees having dues deducted;

(b) One copy of pay period changes in dues deductions.

3. The VSEA shall furnish the ODG with the following information and documents, and amendments or changes to these documents as they become available.

(a) A list of the VSEA's officers, trustees, council, chapter presidents, and standing committee members.

(b) A list of the VSEA's stewards, the stewards' places of employment and the stewards' designated areas of responsibility for each bargaining unit;

(c) A list of names of the VSEA's staff members and legal counsel; and

(d) The number of the VSEA's members in each unit on an annual basis.

4. Upon request by the VSEA, information which the ODG is required to furnish under this Article which can be made available in a computer, tape or other machine-readable format shall be furnished in such format to the VSEA providing, however, that such request would not result in more than a negligible cost differential relative to hard copy.

5. The ODG will also provide such additional information as is reasonably necessary to serve the needs of the VSEA as exclusive bargaining agent and which is neither confidential nor privileged under law. Access to such additional information shall not be unreasonably denied. Failure to provide information as required under this Article may be grieved through the grievance procedure to the Vermont Labor Relations Board (VLRB); provided, however, the VSEA agrees that it will not pursue under this Agreement or under 1 VSA, Sections 315

to 320, disclosure of a document which the DG asserts in good faith is a privileged matter of labor relations policy as, for example, a strike contingency plan.

ARTICLE 7 LABOR MANAGEMENT COMMITTEE

1. A Statewide Labor Management committee consisting of not more than three (3) members selected by the VSEA Defender General Bargaining Unit and not more than three (3) managers selected by the Defender General shall meet periodically to discuss a mutually agreed upon agenda which may include methods of improving labor relations, productivity, safety, and health problems of a continuing nature, or other problems which have an impact on conditions of employment; provided, however, these sessions are not for the purpose of discussing pending grievances or for collective bargaining on any subject.

2. The committee shall meet as needed to discuss issues of mutual concern; provided, however, these sessions are not for the purpose of discussing pending grievances or for collective bargaining on any subject. In the event the parties call a meeting, the Defender General and the VSEA central office shall be notified at least three (3) working days prior to the meeting and may participate.

Agreements which result from labor-management discussions shall not produce any modifications to the collective bargaining agreement unless signed off by the VSEA's Director(s) and the Defender General. Participation in labor-management discussions shall not be construed as a waiver of the right of access to the collective bargaining process over mandatory subjects for collective bargaining.

3. Appropriate agenda items may include, but shall not be limited to, the following examples
- use of annual leave
 - expense reimbursement practices and procedures
 - late paychecks
 - vehicle parking
 - workplace safety and health issues
 - health risks from service populations
 - staffing levels/problems
 - career ladders systems
 - problems of caseload/workload equity
 - problems in seeking productivity gains and cost savings

A request to include work related items as agenda items for continuing discussion or recommendation shall be carefully considered and shall not be unreasonably denied.

ARTICLE 8 PROBATIONARY EMPLOYEES

1. All newly hired employees shall serve an initial term of probation in their employment.

The purpose of the probationary period is to provide a working test period to determine if the employee demonstrates satisfactory performance of the required job duties and meets the standards established by management for permanent employment.

2. The initial term of probation shall be six months from the date of hire. Probationary employees may be extended in their probationary status at the discretion of the ODG for an additional six-month period.

3. Probationary employees, upon hire and while serving in their initial and extended terms of probationary status, shall be represented by the VSEA and shall be covered by the terms of this Agreement except as provided below.

4. Probationary employees may be evaluated, disciplined, laid off and/or dismissed by the ODG solely at the ODG's discretion during the initial and extended terms of probation without regard to the provisions of this Agreement and with no right to the grievance process regarding their evaluation, discipline, lay off or dismissal.

(a) In addition, the following additional provisions of the Agreement shall not apply to probationary employees:

- Military Leave with Pay
- Medical Leave of Absence
- Sick Leave Bank and LTD
- Tuition Reimbursement
- Injury on the Job – Disability RIF
- Parental Leave/Family Leave.

(b) Probationary employees hired into another position shall be considered, for all purposes, to be a new hire.

5. Permanent employees who are promoted to a new position in a higher pay grade shall serve an initial probationary period of three months and such term may be extended by management for an additional three-month period. If management determines that such employee has not satisfactorily completed the probationary period, the DG may determine that the employee will not be retained in the new position and such decision shall not be subject to grievance. An employee who is not retained may return to his/her former position, if the position has not been eliminated. In the event that the employee's prior position has been filled, the employee hired to fill such position shall be terminated or provided with a notice of layoff, as applicable. If the former position no longer exists, the employee shall be given a notice of layoff and the provisions of the RIF provisions of this Agreement shall apply.

ARTICLE 9 EMPLOYEE ASSISTANCE PROGRAM

The Defender General bargaining unit employees shall have access to and be covered by the provisions of the state Employee Assistance Program.

**ARTICLE 10
ETHICAL RESPONSIBILITIES**

Defender General Unit members acknowledge that they have an ethical responsibility to represent the interests of the clients of the ODG. It is expressly acknowledged that all Defender General Unit employees agree to maintain client confidentiality and work to advance the interests of the client within the bounds provided by law.

**ARTICLE 11
EMPLOYEE PERSONNEL RECORDS**

1. An employee's personnel file shall be maintained at the ODG central office in Montpelier.
2. With the exception of material that is confidential or privileged under law, an employee will be allowed access to his/her official personnel file during normal working hours. Subject to the exception stated above, copies of all documents and materials placed in an employee's official personnel file are to be given, on a one-time basis, to the employee at no cost to the employee. Additional copies will be provided to the employee and/or his/her representative at the employee's request at the going rate for photocopy cost per page.
3. Any material, document, note, or other tangible item which is to be entered or used by the employer in any grievance hearing held in accordance with the Grievance Procedure Article, of this Agreement, or hearing before the Vermont Labor Relations Board, is to be provided to the employee on a one-time basis, at no cost to him/her.
4. The employee has the right to provide written authorization for his/her bargaining representative or attorney to act for him/her in requesting access to his/her personnel file and receiving the material (s)he is entitled to have in accordance with the preceding part of this Article. The ODG will honor this authorization upon its receipt.
5. Letters of reprimand or warning, supervisors' notes, or written records of relief from duty (including investigation notes) which are more than two years old and have not resulted in other discipline or adverse performance evaluation against the employee will be removed, on the employee's request, from the employee's official personnel file and destroyed. No grievance material or any other VSEA-related material will be placed in an employee's official personnel file. Grievance material or any other VSEA-related material placed in an employee's official personnel file prior to the effective date of this Agreement, shall be removed upon the request of the employee.
6. An employee shall be allowed to place in his/her official personnel file a written rebuttal to a letter of reprimand, warning, counseling letter, disciplinary suspension, or personnel evaluation. Such rebuttal must be submitted within thirty (30) work days after receipt of such adverse personnel action (except in case of a later grievance settlement).
7. An employee shall have the option of placing in his/her official personnel file any work-related commendations.

ARTICLE 12 PERFORMANCE APPRAISAL

1. Policy and Purpose:

It is the goal of the ODG to:

- (a) Assure communication between supervisors and employees;
- (b) Promote excellence in job performance; and
- (c) Be fair and consistent in the treatment of personnel.

As part of achieving this goal the supervisor, using the current job description shall establish areas of responsibility for each position and, with the employee, develop appropriate performance standards for those responsibilities.

2. Performance Appraisal Procedures. The ODG shall establish, and revise as deemed appropriate, a performance appraisal procedure:

(a) The determination of reasonable performance evaluation standards and criteria is understood to be the exclusive prerogative of the ODG, consistent with this article, and provided the ODG will notify VSEA, forty-five (45) days prior to the date of implementation, of any proposed change in the form or of such standards and criteria as they appear on the form and give VSEA an opportunity to respond and suggest alternatives to the changed form prior to its implementation.

(b) Performance evaluations shall be based exclusively on job duties, responsibilities, and other performance related factors. Once the standards are developed and communicated to employees, the supervisor will monitor their performance, and then counsel and guide employees to help optimize performance. The supervisor will accommodate a reasonable request by an employee for a meeting to discuss any such work deficiency, suggested improvement, or rating or any performance evaluation standard or criterion that the employee considers unreasonable or not achievable.

3. Unsatisfactory Performance. The supervisor shall communicate to employees the duties the employee is to perform and the expected level of performance the employee is to achieve. After achieving permanent status, if an employee is not achieving the expected level of performance, the supervisor shall notify the employee as soon as possible of the deficiencies in the employee's performance. The supervisor has the responsibility and is expected to give counsel and assistance to an employee to help the employee improve job performance and meet job performance expectations. Employees shall be warned in a progressive manner of poor job performance.

(a) Step I – Oral Warning. The supervisor will verbally notify the employee that the employee is not performing the job to established standards. The employee must be informed of what standards are to be achieved and when these standards should be achieved. A notation of this warning shall not be included in the employee's personnel file. (b) Step II – Written Warning. If the supervisor feels the employee has not responded adequately to the Step I warning, the supervisor may give the employee a Step II warning. The Step II warning is a formal letter to the employee describing performance deficiencies and what improvement is expected. The Step II warning shall contain a specific date on which a review of the employee's progress toward improvement will occur and the warning shall also notify the employee that, if significant progress has not occurred by the date of review, the employee may be placed on probation.

(c) Step III. Probationary Period. A probationary period shall be established by the ODG for employees who have not significantly improved their performance as a result of a written warning. The probationary period shall have a reasonable final date by which an employee must consistently perform the job to expected standards. If the evaluation of the employee's performance still results in unsatisfactory performance, the employee may be demoted or terminated.

4. Employee Rebuttal and Appeal. An employee shall be allowed to place in their personnel file written rebuttal to a letter of reprimand, warning, counseling or a performance evaluation. Such rebuttal must be submitted within thirty (30) work days after receipt of such adverse personnel action (except in case of a later grievance settlement). Employees may appeal Step II and Step III warnings to Step II.

ARTICLE 13 CLASSIFICATION REVIEW and CLASSIFICATION GRIEVANCE

1. DEFINITIONS

(a) Classification Review is defined as the process whereby either employees or management may initiate a review to determine whether an individual position, or any group of positions is incorrectly assigned to pay grade.

(b) Classification Grievance is defined as a dispute over whether the position of an individual employee, or the positions of a group of employees is incorrectly assigned to pay grade.

2. MANAGEMENT RIGHTS

Nothing herein shall be construed in a manner which prevents or interferes with the Defender General's unilateral authority to reallocate a position into a new or existing class; to assign a class into a different pay grade; to utilize a point factor rating system for the classification of positions, to include the use of the point factor system used by the State of Vermont Human Resources Department ("Human Resources Department") as provided at 3 V.S.A. §310, or to conform with or perform any other statutory requirement. Nothing herein shall constrain the Defender General's right to direct an employee to perform the duties (s)he was hired to perform, and the exercise of this right at any stage of the classification review or classification grievance process, or at the conclusion of the process, shall not be deemed as unlawful retaliation or a violation of any rights arising out of this Article or Agreement. It is acknowledged and agreed that the ODG may work in consultation with the State Human Resources Department on classification review requests and classification grievances for ODG employees.

3. PROCEDURE FOR REVIEW OF CLASSIFICATION

(a) In order to be eligible for consideration for reclassification, a significant change(s) in job function since the last classification review of the position must have occurred.

(b) Employee and management requests for classification review shall be made on a form provided by the ODG. The VSEA may offer comments to the ODG regarding content and format of the form at any time. The form shall be fully completed by the employee or management as appropriate. With the Defender General's approval, VSEA may submit a class action Request for Review ("RFR") on behalf of employees in the same position, filing one package of the same information as required herein. The RFR shall state with

particularity the change(s) in duties or other circumstances which prompt its filing. The position's supervisor shall review the information provided on the form within ten (10) workdays, completing that portion which requests supervisory responses, and submit further written comments as appropriate. The RFR form shall then be submitted to the Defender General.

(c) An incomplete RFR shall be returned for completion to the originator. Completed forms received by the ODG shall be logged in chronological order. In its discretion, the Department of Human Resources or the ODG may conduct field audits as necessary. Normally within sixty (60) days for a single position and ninety (90) days for a multiple position class, the ODG will review and respond to complete requests for review. Such written report will respond directly and pointedly to the specific reasons listed in the request for review and will specify any change in the point factor rating for that position. The definitions of the sub-factors used in the point factor ratings will be provided as a guide to interpreting the point factor rating.

(d) Within ten (10) workdays of receipt of the notice from the Defender General, an employee may request an informal meeting with the Defender General for a discussion of the decision. Subject to the operating needs of the Defender General, s(he) will be available within fifteen (15) workdays of request receipt for such discussion with the employee and/or VSEA representative, unless a postponement is mutually agreed to, in which case the meeting shall be rescheduled as soon as practical.

(e) Notwithstanding the above, if corrective action results from either classification review or a classification grievance, any pay adjustment shall be retroactive to the date when a completed Request for Review was logged by the ODG, unless the Defender General determines that the circumstances giving rise to such corrective action came into existence after such completed filings, in which case retroactivity shall be effective on that later date.

(f) If a request for reclassification for a position is denied by the Defender General and/or any grievance relating to that denial is upheld, that position may not be proposed for reclassification for a period of one (1) year from the date of the Defender General's decision.

4. CLASSIFICATION GRIEVANCE

(a) Notwithstanding any contrary provision of this Article, a classification grievance may be filed only if the position submitted for review was not changed to a higher pay grade.

(b) No classification grievance may be filed by an employee until the employee has first complied with the provisions of this Article regarding classification review and has received official notification from the ODG. If the Defender General does not issue a written notice within the time frames specified in Section 3, c, above, an employee may resubmit his or her classification request in the form of a classification grievance to be forwarded to the Defender General.

(c) A classification grievance shall be filed within thirty (30) days of receipt of the classification review official notification, or within fifteen (15) days of the date of the notice of the results of the informal meeting with the Defender General if such an informal meeting is requested. Failure to file within such time limits means that the right to pursue a grievance is waived.

(d) A grievance as defined in this Article shall be filed in writing (original and one copy) with the Defender General and shall minimally include the following:

- (1) Name and home address of the employee submitting grievance;
- (2) Position number, class title, and pay grade of the position under appeal, plus the department/division/section in which located;
- (3) A brief statement why the response to the RFR is being grieved. Such response should refer both to the original statement as to why the RFR was being sought and also to the response thereto. It should also contain a statement specifying the change in duties critical to the classification of the position sufficient to produce a reallocation to class or reassignment to pay grade.
- (4) A written summary of the employee's reasons as to why the position is allocated to the wrong class and/or the class is assigned to a wrong pay grade, if different or in addition to reasons given in item 3 above.
- (5) Remedial action requested including title and pay grade which grievant believes should apply.
- (6) Copies of all material submitted in the initial request for classification review, plus the decision notification received from the Defender General.

5. BURDEN OF PROOF

In any stage of proceeding under this Article the burden shall be on the grievant to establish that the present classification, pay grade assignment, or any subsequent classification decision arising from the application of these procedures, is erroneous under the standards provided by the point factor analysis system utilized.

6. EXCLUSIVE REMEDY

The grievance and appeal procedures provided herein for classification disputes shall be the exclusive procedures for seeking review of the classification status of a position or group of positions.

7. APPEAL TO VLRB

An employee aggrieved by an adverse decision of the DG may have that decision reviewed by the Vermont Labor Relations Board on the basis of whether the decision was clearly erroneous in applying the point factor system utilized to the facts established by the entire record. Any appeal to the Board shall be filed within thirty (30) days of receipt of the Commissioner's decision, or the right to appeal shall be waived. The board shall not conduct a de novo hearing, but shall base its decision on the whole record of the proceeding before, and the decision of the DG (or designee). The VLRB's authority hereunder shall be to review the decision(s) of the DG, and nothing herein empowers the Board to substitute its own judgment regarding the proper classification or assignment of position(s) to a pay grade. If the VLRB determines that the decision of the DG is clearly erroneous, it shall state the reasons for that finding and remand to the DG for appropriate action. Upon remand, the DG shall address those aspects of the original decision that the VLRB found to be clearly erroneous and thereafter shall issue a decision on the matter. This decision shall also be subject to review by the VLRB solely to determine whether this subsequent decision is clearly erroneous. The parties waive judicial review by the Vermont Supreme Court of any ruling of the VLRB that the decision by the DG was, or was not, clearly erroneous. In the event that the DG, upon remand, fails to address aspects of a classification decision which the Vermont Labor Relations Board has determined to be clearly erroneous, the sole avenue of relief for an employee shall be to petition the VLRB for enforcement of its order in the Superior Court, in accordance with Board rules and the Rules of Civil Procedure.

8. IMPACT OF CLASSIFICATION BOARD DECISIONS AND SETTLEMENTS

A classification decision shall not constitute a binding precedent regarding the internal comparability of a position reviewed or grieved to positions not subject to the original classification review and grievance. Nothing herein shall prevent the settlement of a classification grievance at any point in the process.

ARTICLE 14 DISCIPLINARY ACTION

1. No permanent or limited status employee covered by this Agreement shall be disciplined without just cause. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the ODG will:

- (a) act promptly to impose discipline or corrective action within a reasonable time of the offense;
- (b) apply discipline or corrective action with a view toward uniformity and consistency;
- (c) impose a procedure of progressive discipline or progressive corrective action;
- (d) In misconduct cases, the order of progressive discipline shall be:
 - (1) oral reprimand;
 - (2) written reprimand;
 - (3) suspension without pay;
 - (4) dismissal.
- (e) In performance cases, the order of progressive corrective action shall be as follows:
 - (1) feedback, oral or written; (records of feedback are not to be placed in an employee's personnel file except in compliance with the Performance Evaluation Article.);
 - (2) written performance evaluation, special or annual, with a specified prescriptive period for remediation specified therein, normally 3 to 6 months;
 - (3) warning period of thirty (30) days to three (3) months, extendable for a period of up to six (6) months. Placement on warning status may take place during the prescriptive period if performance has not improved since the evaluation;
 - (4) dismissal.
- (f) The parties agree that there are appropriate cases that may warrant the State:
 - (1) bypassing progressive discipline or corrective action;
 - (2) applying discipline or corrective action in different degrees;
 - (3) applying progressive discipline for an aggregate of dissimilar offenses, except that dissimilar offenses shall not necessarily result in automatic progression; as long as it is imposing discipline or corrective action for just cause.
- (g) The forms of discipline herein listed shall not preclude the parties from agreeing to utilize alternative forms of discipline, including demotion, or combination of forms of discipline in lieu of suspension or dismissal, or as a settlement to any of those actions. Nothing in this Agreement shall be construed to limit the ODG's authority or ability to demote an employee under section 1,d and/or 1,e of this section, for just cause resulting from misconduct or performance, but the ODG shall not be required to do so in any case. The VLRB may not impose demotion under this Article.

2. The DG, after complying with the provisions of paragraph 4 of this Article, may dismiss an employee for just cause with two weeks' notice or two weeks' pay in lieu of notice.

Written notice of dismissal must be given to the employee within twenty-four (24) hours of verbal notification. In the written dismissal notice, the DG shall state the reason(s) for dismissal and inform the employee of his or her right to appeal the dismissal before the State Labor Relations Board within the time limit prescribed by the rules and regulations of the Board.

3. Notwithstanding the provisions of paragraph 2 above, the DG, after complying with the provisions of paragraph 4 of this Article, may dismiss an employee immediately without 2 weeks' notice or 2 weeks' pay in lieu of notice for any of the following reasons:

- (a) gross neglect of duty;
- (b) gross misconduct;
- (c) refusal to obey lawful and reasonable orders given by supervisors;
- (d) conviction of a felony;
- (e) conduct which places in jeopardy the life or health of a co-worker or of a person under the employee's care.

4. Whenever the DG contemplates dismissing an employee, the employee will be notified in writing of the reason(s) for such action, and will be given an opportunity to respond either orally or in writing. The employee will normally be given 24 hrs. to notify the employer whether he or she wishes to respond in writing or to meet in person to discuss the contemplated dismissal. The employee's response, whether in writing or in a meeting, should be provided to the employer within five work days of receipt of written notification of the contemplated dismissal. Deadlines may be extended at the request of either party, however if the extension is requested by the employee, the employee will not be carried on the payroll unless it is charged to appropriate accrued leave balances. At such meeting the employee will be given an opportunity to present points of disagreement with the facts, to identify supporting witnesses or mitigating circumstances, or to offer any other appropriate argument in his or her defense.

5. An employee who is charged with misconduct in collusion with his or her superior shall not be exonerated solely because the superior was found guilty.

6. No written warning or other derogatory material shall be used in any subsequent disciplinary proceeding or merged in any subsequent evaluation unless it has been placed in an employee's official personnel file.

7. Whenever an employee is required, by his or her supervisor or management, to give oral or written statements on an issue involving the employee, which may lead to discipline against the employee, or whenever an employee is called to a meeting with management where discipline is to be imposed on the employee, he or she shall be notified of his or her right to request the presence of a VSEA representative and, upon such request, the VSEA representative shall have the right to accompany the employee to any such meeting. The notification requirement shall not apply to the informal initial inquiry of the employee by his or her supervisor without knowledge or reason to believe that discipline of the employee was a likely possibility. Subject in all cases to the consent of the employee involved, in those cases where VSEA is not representing the employee, the VSEA reserves the right to attend such meetings as a non-participating observer if in its judgment the ramifications of such meetings are likely to impact on the interests of VSEA members.

(a) If the employer tapes an investigative interview of an employee against whom disciplinary action is contemplated:

- (1) a duplicate tape will be promptly provided to the interviewee;

- (2) the employer tape will be the official transcript;
 - (3) the interviewee or his/her representative may also tape the proceeding and will promptly provide a duplicate tape to the employer.
 - (b) If the employer tapes a witness interview or other employee interview where disciplinary action is not contemplated against the interviewee, a duplicate tape will be promptly provided to the interviewee upon request. Paragraphs 7(a)2 and 3 above, will apply here as well.
 - (c) If the employer does not tape an interview, no other taping will be permitted without the employer's consent in any instance.
8. The DG may suspend an employee without pay for reasons for a period not to exceed thirty (30) workdays. Notice of suspension, with specific reasons for the action, shall be in writing or shall be given personally by the DG or designee and confirmed in writing within twenty-four (24) hours. The provisions of this paragraph shall not preclude the settlement of dismissal cases with respect to suspensions in excess of thirty (30) workdays.
9. The DG may relieve employees from duty temporarily with pay for a period of up to thirty (30) workdays: a). to permit the DG to investigate or make inquiries into charges and allegations made by or concerning the employee; or, b). if in the judgment of the DG the employee's continued presence at work during the period of investigation is detrimental to the best interests of the ODG, the public, the ability of the office to perform its work in the most efficient manner possible, or well being or morale of persons under the ODG's care. The period of temporary relief from duty may be extended by the DG. Employees temporarily relieved from duty shall be notified in writing within twenty-four (24) hours with specific reasons given as to the nature of the investigation, charges and allegations. Notices of temporary relief from duty with pay shall contain a reference to the right of the employee to request representation by VSEA, or private counsel in any interrogation connected with the investigation or resulting hearing.
10. In any misconduct case involving a suspension or dismissal, should the Vermont Labor Relations Board find just cause for discipline, but determine that the penalty was unreasonable, the Vermont Labor Relations Board shall have the authority to impose a lesser form of discipline.
11. In any case involving dismissal based on performance deficiencies, the Vermont Labor Relations Board shall sustain the ODG's action as being for just cause unless the grievant can meet the burden of proving that the ODG's action was clearly erroneous. It is understood that this paragraph does not bar a grievance alleging that progressive corrective action was bypassed.

ARTICLE 15

GRIEVANCE PROCEDURE

1. PURPOSE

- (a) The intent of this Article is to provide for a mutually satisfactory method for settlement of complaints and grievances, as defined in Section 2 of this Article, filed by an individual, unit, or the duly certified bargaining representative. It is expected that employees and supervisors will make a sincere effort to reconcile their differences as quickly as possible at the lowest possible organization level.

2. DEFINITION

(a) "Complaint" is an employee's or group of employees' informal expression to the immediate supervisor of dissatisfaction with aspects of employment or working conditions under a collective bargaining agreement.

(b) "Grievance" is an employee's, group of employees' or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under a collective bargaining agreement or the discriminatory application of a rule or regulation.

(c) A grievance shall contain the following information:

- (1) The full name and address of the party or parties submitting the grievance;
- (2) A statement of the facts concerning the grievance;
- (3) Specific references to the pertinent section(s) of the contract or of the rules and regulations alleged to have been violated;
- (4) A statement of the remedial action sought;
- (5) A request for a grievance meeting, if desired.

3. GRIEVANCE PROCEDURE The following procedures are established for settlement of complaints and grievances.

(a) Step I (Immediate Supervisor Level)

(1) The employee, or his/her representative, or both, shall notify his/her immediate supervisor of a complaint within fifteen (15) workdays of the date upon which the employee could have reasonably been aware of the occurrence of the matter which gave rise to the complaint.

(2) A supervisor may elect not to meet with the employee and/or his/her representative in a Step I meeting, and if such election is made, the supervisor shall advise the employee within two (2) workdays of receiving notice of the complaint or grievance. The employee will then have ten (10) workdays to file his/her complaint or grievance, in writing, to Step II – Defender General.

(3) If a Step I is initiated, the complaint shall be discussed informally by the aggrieved employee, or his/her representative, or both, and the immediate supervisor. If the issue remains unresolved, an employee must comply with the following time frames for filing to the Step II level within ten (10) workdays after receipt of the Step I decision.

(b) STEP II (Defender General Level)

(1) If no satisfactory settlement is reached at Step I the complaint shall be reduced to writing, in accordance with section 2(c) above, and shall be submitted for action by the aggrieved party or representative to the DG within the time frames outlined in Section 3(a) above, otherwise the matter shall be considered closed. On request of a VSEA Director, and with the approval of the ODG, the time limits for filing a Step II grievance may be extended for a specific period of time, not to exceed ten (10) workdays.

(2) The grievance shall be discussed informally, either in person or via telephone, within ten (10) workdays of its receipt, between the employee, and/or his/her representative, and the ODG head or designee.

(3) The employee shall be notified in writing of the DG's decision within ten (10) workdays after the discussion. The parties may mutually agree to postpone the discussion, but shall hold it as soon as practical.

Failure to issue a written decision within the time frames specified in this subsection shall result in the automatic granting of the contractual remedy requested by and directly applicable to the grievant. Any dispute over what the contractual remedy will be, shall be decided by the VLRB. If the DG is on leave at the time the ODG receives notice from the VSEA, the ten (10) day requirement shall automatically be extended for the duration of the leave period, not to exceed ten (10) workdays, at which time the VSEA reserves the right to process the grievance to the next step or wait for the DG to return from leave. Notice shall be sent to the DG if the grievance is processed to the next step.

(c) STEP III (Board Level)

The appeal from the DG's decision shall be to the Vermont Labor Relations Board in accordance with the rules and regulations established by the Board and such appeal shall be filed within thirty (30) days after receipt of the Step II decision or the matter shall be considered closed. If within the time set by the VLRB for appealing such decision, VSEA submits a written request for reconsideration, the DG may respond in writing to such a request, and if it does so, the time for appealing the decision of the DG shall begin to run from the date of receipt of the DG's written reconsideration response. However, in no event shall the time for appealing the DG's decision exceed forty-five (45) calendar days from the date of receipt of the original Step II decision.

4. GENERAL PROVISIONS

(a) Grievances may be initiated at Step II if the subject matter of the complaint is clearly beyond the control of the supervisor.

(b) Grievances initially filed at Step II shall be submitted within fifteen (15) workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to the grievance.

(c) An employee may appeal his or her dismissal directly to the Vermont Labor Relations Board.

(d) Complaints concerning the conduct of a supervisor shall be grievable directly to, but not beyond, Step II.

(e) When a grievance meeting is held at Step III, the VSEA (whether or not it is representing the aggrieved employee) shall be notified by the ODG and shall have the right to be present, to participate in the proceedings as a party at interest, and to submit a statement (oral or written) to the ODG of its opinion of the merits or demerits of the grievance and the effect of any proposed solution on other employees. The VSEA will be sent a copy of any such grievance decision concerning bargaining unit employee(s).

(f) In the event the employer fails to render a decision at Step I or II within the prescribed time, the grievant may proceed to the next Step within the time limits established above.

5. Employees submitting complaints or grievances, employees involved in complaint and grievance investigations, and employees participating in complaint and grievance meetings and proceedings may do so during working hours without loss of pay and without charge to accumulated leave, after requesting permission from the supervisor to do so, which permission shall not be unreasonably withheld.

6. The parties agree, subject to applicable law, that every employee may freely institute complaints and/or grievances without threats, reprisal, or harassment by the employer.

7. In appropriate cases, the time limits for filing and processing a grievance may be waived by mutual consent of the parties in order to correct a long-standing injustice provided in no case shall retroactive pay predate the effective date of this Agreement.
8. For the purpose of this Article, "workday" shall mean Monday through Friday, excluding legal and administrative holidays and the day after Thanksgiving.

ARTICLE 16

AGENCY, DEPARTMENT AND INSTITUTION WORK RULES

1. ESTABLISHMENT OF RULES

- (a) The ODG may put into writing those rules of conduct and procedure it deems necessary for its efficient operation. All changes to these rules must be in writing.
- (b) ODG work rules shall not be in conflict with existing law, contract provisions.
- (c) Work rules shall relate to aspects of employment and not to fundamental conditions of work which give rise to a statutory bargaining obligation.

2. NOTIFICATION AND DISTRIBUTION OF RULES

- (a) All employees affected by ODG work rules must be notified in writing, by posting or otherwise, of those rules and changes to those rules at least 15 days prior to the date they become effective, except that the 15-day notice shall not apply in case of emergency. Emergency rules may be implemented pursuant to the Management Rights Article, Section 1, of this Agreement. In any such instance, the VSEA's Director shall be notified as soon as possible, and provided with opportunity to meet with appropriate ODG officials.
- (b) The ODG shall provide written notification to the VSEA of all new rules and changes to existing rules concurrent with the notice to employees.
- (c) The ODG shall properly maintain all work rules in a manner and location readily accessible to employees affected by them. The availability of these rules and their whereabouts shall be posted in prominent areas of the workplace and made available to employees and the VSEA upon request.

3. REASONABLENESS AND APPLICATION OF RULES

- (a) An employee or the VSEA may grieve the reasonableness of any rule promulgated under this Article and, further, may grieve any action taken against an employee based upon any such rule. In either case, the grievance may include a claim that the rule is unreasonable in its application to the employee or group of employees so aggrieved. The time limits for any claim that the rule is inherently unreasonable shall run from the date the rule becomes effective.

ARTICLE 17

VACANCIES/PROMOTION

1. When the ODG decides to fill a permanent, vacant bargaining unit position through competitive procedures, notice shall be posted for ten (10) workdays prior to the application deadline, statewide in the case of a state promotional or open competitive procedure. If a

change is made in the minimum qualifications after the announcement is posted, the new vacancy notice shall be posted for a period of five (5) workdays.

2. Vacancy notices shall include entry KSA's ("knowledge, skills or abilities") or examination subject areas, a brief description of duties, and any special skills required.

3. The ODG may elect to define posting parameters for a particular position.

4. In filling vacancies and/or promotional opportunities, the DG shall consider the experience and seniority of unit members applying for such positions.

ARTICLE 18

EMPLOYEE WORKWEEK/WORK DAY/WORK HOURS

1. An employee's basic weekly salary and eligibility for overtime/compensatory time compensation shall be based on a 40-hour workweek schedule.

2. Workday, as referred to in this Agreement shall normally be considered to be Monday through Friday, excluding legal and administrative holidays and the day after Thanksgiving.

3. ODG offices shall normally be open from 7:45 a.m. until 4:30 p.m., unless otherwise directed by the State of Vermont or the DG. Employees shall receive a 45 minute unpaid lunch period. In ODG offices where there is more than one employee, employees shall schedule their time so that one employee is present in the office during the lunch period. Employees shall also receive two fifteen (15) minute paid work breaks which shall include smoking breaks, with one such break to occur in the forenoon, and the other in the afternoon.

4. ALTERNATE WORK SCHEDULES

(a) It is acknowledged that ODG investigators may need to adjust their schedules in order to assist in the preparation of client cases, locate and interview witnesses, and assist in hearing and trial preparation. At the direction of the designated supervisor and with a minimum of forty-eight (48) hours advance notice, ODG investigators shall temporarily adjust their daily and weekly schedules in order to meet the operating needs of the ODG. Adjustment of schedules may include coming in earlier or later in the day and leaving work at a related earlier or later time. Such alternate work schedules if the work week exceeds forty (40) hours shall be compensated as compensatory time off. However, if the ODG investigator is directed to work an alternate work schedule by his or her designated supervisor and he or she is not provided with at least forty-eight (48) hours advance notice, such hours worked in excess of forty (40) hours a week may be compensated in cash at time and one half the base hourly rate, or in compensatory time off at the election of the investigator, not the ODG.

(b) In addition, in response to an employee request, and subject to the operating needs of the ODG, the DG may, after consultation with the VSEA, establish alternative work schedules in which starting and quitting times, as well as length of meal breaks, for individual employees may permanently vary from pre-established standard work schedules. Any newly established alternative work schedule shall be with the mutual agreement of management and the employee and subject to the concurrence of the VSEA. Alternative work schedules include job sharing, four-day workweek, alternative schedules with core time, and actual flex time.

ARTICLE 19
OVERTIME/COMPENSATORY TIME

1. It is the policy of the ODG that any additional work beyond the regular 40-hour workweek is to be held to a minimum consistent with the efficient and effective representation of ODG clients. An employee may not work overtime or accrue compensatory time without the prior approval of the DG.
2. Where adjustment to the regular 40-hour workweek schedule as provided in Article 17 is not sufficient to accomplish specific required tasks and additional worktime is necessary, the ODG may authorize bargaining unit employees to work additional hours in excess of 40 hours in a regular workweek.
 - (a) A FLSA non-exempt bargaining unit member who has received authorization to work additional hours shall receive overtime compensation at the rate of one and one-half times their regular hourly rate for all hours worked in excess of 8 in any work day or 40 in any work week.
 - (b) Bargaining unit employees who are not covered by the FLSA ("exempt employees") who have received authorization to work additional hours shall accrue compensatory time off at a rate of one and one-half hours for each hour worked in excess of the regular 40-hour work week.
3. Any approved overtime hours worked in excess of the regular 40-hour workweek shall be reported on the employee's timesheet.
4. Accrued compensatory time shall be taken as soon as possible following its accrual (ex: following the conclusion of the trial or extended work hours). Unused compensatory time off earned during the fiscal year (the first full pay period in July through the pay period including June 30th) may be carried over until the end of the next fiscal year, but not thereafter.

ARTICLE 20
JOB SHARING

1. In an effort to accommodate requests from employees for permanent part-time work, the DG may authorize two (2) employees to share one (1) full-time position or may authorize a full time employee to work less than full time, provided, no employee so authorized will be involuntarily assigned to work less than forty (40) hours biweekly. Each employee shall be responsible for completing his or her weekly time sheet. Leave and other pay benefits will be prorated accordingly. Both participants in a job sharing situation will be eligible for the State Employee Medical Benefit Plan, providing each employee meets the eligibility requirements of the Plan.
2. For the purpose of skill development and career mobility, subject to the approval of the DG, two employees in different positions may be allowed to swap for a limited time, a portion of tasks and duties of their mutual jobs. Experience obtained pursuant to this paragraph shall not be used in support of any claim for reclassification, reallocation or upgrading.
3. The employer may, at its discretion, terminate job sharing arrangements, or require either employee, or both, to work full-time and those who elect not to work full-time shall be

placed directly on the RIF reemployment list as outlined in the RIF Article. Declining that offer to work full-time shall be considered as declining a “mandatory offer” of reemployment. In addition that employee’s mandatory reemployment rights shall only apply for part-time employment. Employees affected by such decisions shall receive thirty (30) days notice prior to the effective date of implementation.

ARTICLE 21 OBSERVANCE OF HOLIDAYS

1. HOLIDAYS

The following legal holidays as established by 1 VSA, Section 371, shall be observed by ODG offices:

- New Year’s Day, January 1
- Martin Luther King Jr.’s Birthday, Third Monday in January
- Washington’s Birthday, Third Monday in February
- Town Meeting Day, First Tuesday in March
- Memorial Day, last Monday in May
- Independence Day, July 4
- Bennington Battle Day, August 16
- Labor Day, First Monday in September
- Veteran’s Day, November 11
- Thanksgiving Day, Fourth Thursday in November
- Christmas Day, December 25
- Floating Holiday in lieu of Columbus Day, the second Monday in October.

2. WEEKEND OBSERVANCE

Any legal holiday which falls on a Saturday shall be observed on the preceding Friday. Any legal holiday which falls on a Sunday shall be observed on the following Monday.

3. FLOATING HOLIDAY

Columbus Day, the second Monday in October, shall be a regular workday for ODG employees. Employees assigned to work that day, or who have that day as a regularly scheduled day off, shall as a “floating holiday” receive compensatory time off at straight time rates for a full day. Such “floating holiday” day off shall be scheduled with at least a month’s advance notice by the employee with the approval of the ODG. If an employee is subsequently required to work on such scheduled “floating holiday” day off, he or she shall be paid for that day as if it were a designated time-and-one-half holiday.

4. DAY AFTER THANKSGIVING

Subject to the operating needs of the ODG, leave without loss of pay shall be granted on the day after Thanksgiving Day, and treated as follows:

Such day shall not be considered as a holiday under this Article; provided, however,

Leave granted shall be considered as time actually worked for the purpose of determining eligibility for overtime compensation. Employees who work on that day will get up to eight (8) hours (hour for hour) compensatory time off above minimum regular pay.

Employees who have that day as a regularly scheduled day off and do not work shall receive up to eight (8) hours compensatory time off.

The provisions of sections 9 and 10 apply to the day after Thanksgiving.

5. ADMINISTRATIVE DECLARATION

The Governor may also declare an administrative holiday.

State offices shall close on such a day except for those operations which must maintain essential services.

Time worked on an administrative holiday shall be compensated for in the same manner as time worked on a straight time legal holiday.

6. An employee shall not normally be required to work on legal or administrative holidays except as necessary to provide and maintain essential services.

7. COMPENSATION

If ODG employees are directed to work on a legal or administrative holiday, compensation shall be as follows:

(a) An employee who is normally scheduled to work on a day observed as a legal holiday and does not work on that day shall receive no extra compensation.

(b) Employees required to work on a day which is normally a scheduled workday and is also a day observed as a legal holiday shall receive compensatory time off at the rate of one and one-half hours for each hour worked. This compensatory time shall be in addition to the employee's minimum regular compensation. However, hours worked on Martin Luther King Jr.'s Birthday shall be compensated by straight time compensatory time.

8. Time off for legal or administrative holidays or the day after Thanksgiving shall not be charged against sick or annual leave.

9. An employee who is off payroll due to disciplinary suspension or absent without authorization for any portion of the scheduled workdays immediately prior to, or next following, or the day of that observed as a holiday, and who does not work on such holiday shall not be eligible for holiday compensation, unless the employee actually works on the holiday.

10. GENERAL PROVISIONS

(a) Part time computations;

Part-time employees who do not work on a legal holiday will receive their hourly rate on a prorated basis based on the number of hours regularly scheduled for that payperiod. Part-time employees who do work on a legal holiday will receive compensatory time for all hours worked that day, not to exceed the limits specified in this Article. Unworked legal holidays falling on a part-time employee's scheduled day off, and floating holidays, will be compensated in direct proportion to the normal number of scheduled work hours in a pay period.

(b) If the day following the effective date of an employee's separation from State service is observed as a legal holiday, the employee will receive pay for the legal holiday, but the effective date of separation shall not be changed as a result of receiving such holiday pay.

11. If additional State Holidays are enacted in statute during the life of this Agreement, the parties agree to reopen negotiations for the limited purpose of bargaining over benefits which will apply to the observance of that holiday, if any.

**ARTICLE 22
ANNUAL LEAVE**

1. PURPOSE

To establish the policies and procedures by which ODG employees shall receive time off from work for vacation or personal convenience.

2. POLICY

(a) An employee is provided opportunity to accrue annual leave in order to have periods of rest and relaxation from his or her job for health and well being, consistent with workload requirements of the ODG.

(b) Employees are encouraged to request annual leave in blocks of time sufficient to ensure rest and relaxation. However, annual leave may also be taken in brief amounts for the personal convenience of the employee.

(c) Annual leave credits are not accumulated and may not be used during the first six months' employment.

(d) Accruals and caps are as follows:

(1) An employee shall be credited with 48 hours of annual leave upon completion of his or her first six months of service.

ACCRUAL RATE PER		ACCUMULATION
YRS	PAY PERIOD	CAP
0-5	3.69	240 hours
5-10	4.62	280
10-15	5.54	320
15-20	6.13	340
20-30	6.46	360
30+	7.38	360

Accrual rate is the number of hours the employee shall accrue per complete pay period.

Accumulation Cap is the maximum number of hours an employee may accumulate.

Years is the range of the number of years of full-time service.

(e) A part-time employee earns leave on a pro-rated basis. For example, an employee who works a half-time schedule earns one-half of the regular accrual per pay period of annual leave. If he or she worked four days a week, he or she would earn four-fifths of the regular pay period accrual, etc.

(f) Except in the instance of reduction in force, and the applicable articles regarding reemployment credit and prior temporary service, an employee rehired by the ODG shall not receive credit for prior ODG employment in establishing his or her rate of annual leave accrual. An employee rehired after layoff shall not accrue leave credits for the period not on the payroll.

(g) An employee who is granted a leave of absence from an ODG position to enter the armed forces of the United States, served honorably therein, and applied for return to his/her position in ODG employment within ninety (90) days before or after termination from active service, or within thirty (30) days after release from active duty for training, shall receive credit for such time in computing total years of full-time employment for the purposes of determining the rate of annual leave accrual. He or she shall not, however, actually accrue annual leave credits while on military leave.

(h) Time spent on leave of absence without pay shall not be counted in determining rates of annual leave accrual, except that VISTA or Peace Corps service while on leave of absence without pay, or time spent on education leave with or without pay shall be counted in determining rates of annual leave accrual.

(i) Upon satisfactory completion of the first six months of employment in ODG service, annual leave shall be earned on the basis of completed full pay periods of service. A permanent status employee shall not be penalized his or her annual leave credit for any pay period during which the employee is off payroll or on an unpaid leave of absence for fewer than 20 hours. However, an employee who is off payroll or on an unpaid leave of absence for 20 hours or more during a pay period shall not accrue annual leave for that pay period. This 20 hour test shall be prorated accordingly for part-time employees. This test shall also apply to the bank of annual leave credited to the employee's account upon completion of the first six months of employment. For example, an employee who was off payroll for two weeks during his or her second month of employment would be credited with only five days of leave at the end of the first six months. If the same employee was again off payroll for two weeks during the third month of employment, (s)he would only be credited with four days.

(j) An employee re-employed after layoff or a restored employee shall accrue annual leave upon completion of his or her first complete pay period of service.

(k) An employee on educational leave of absence without pay shall not accrue annual leave. (S)He shall, however, be entitled to normal school vacations and school holidays occurring within a school semester.

(l) Annual leave credits shall not be advanced for use prior to their being credited to the employee's account.

(m) An employee granted leave of absence without pay may use his or her accumulated annual leave before entering upon leave-of-absence status, or (s)he may request that it be retained in his or her account until return to active duty.

(n) Vacation scheduling is the exclusive prerogative of the ODG. Leave must be requested in advance by the employee and is subject to approval by the DG. Such approval shall not be unreasonably withheld. Employees who request a prompt response in order to make travel or lodging reservations, shall have their leave request responded to no later than between three days and the stated deadline for making such reservations.

(o) An employee shall not be charged annual leave for absence on a legal holiday or on an administrative holiday.

(p) Up to 160 hours of annual leave accrued by an employee separating from the State service shall be paid as a lump sum with the final payment for active service. Employees separated on account of death or for State Retirement shall have all their annual leave balances paid as a lump sum. A separating employee who has been in an on payroll status for all of his or her regularly scheduled work days of the final payroll period of employment, shall be entitled to annual leave accrual for that payroll period.

(q) An employee who fails to give two weeks' notice of resignation and this notice is not waived by the DG, shall forfeit the number of unused annual leave hours by which the notice is deficient.

3. RESPONSIBILITIES

Employees shall not take such leave unless the DG or appropriate supervisor has authorized the leave. Each employee shall notify his or her supervisor as soon as possible

if (s)he is unable to report for work due to weather conditions, impassable roads, or other emergency situations.

The ODG or supervisor shall make a reasonable effort to schedule vacations in accordance with the wishes of employees consistent with the needs of the ODG, and report the use of annual leave in accordance with the provisions of this Article and the instructions contained on the payroll time report.

ARTICLE 23 SICK LEAVE

1. PURPOSE

To establish ODG policies and practices which provide for a unit employee to be absent from duty with pay in the event of illness or injury.

2. POLICY

It is the policy of the ODG to help protect the income of a unit employee who cannot work due to illness or injury or for emergency periods when the employee must be absent from duty due to death or illness in his or her immediate family. Sick leave shall be administered in accordance with the following provisions:

(a) Accrual

(1) An employee shall receive sick leave benefits as follows:

(i) Upon appointment (original or restoration), the employee shall be credited with a bank of 48 hours of sick leave on which he or she may draw during the first six months of service.

(ii) At the end of the first full payroll period following completion of six months of service and at the end of every full payroll period thereafter, the employee shall be credited with sick leave for that payroll period, as follows:

YEARS OF SERVICE	ACCRUAL RATE
0-5	3.69 hours per pay period
5-10	4.62
10-20	5.54
20+	6.46

Accrual rate is the number of hours an employee shall accrue per payroll period of service.

(iii) There shall be no limit placed on the total accumulation of earned sick leave hours.

(2) A permanent part-time employee earns leave on a pro-rated basis. For example, an employee who works a half-time schedule earns one-half of the regular accrual per pay period of sick leave; if he or she worked four days a week, he or she would earn four-fifths of the regular pay period accrual, etc.

(3) Sick leave benefits shall accrue to an employee with a provisional appointment, limited appointment, or in an original probationary period as well as to a permanent status or limited status employee.

(4) When an employee separates from ODG service, the entire amount of unused

sick leave shall lapse. An employee rehired by the ODG shall not receive credit for prior ODG service in establishing his or her rate of sick leave accrual, except in the instance of separation due to reduction in force, or when temporary service or reemployment credit is granted under the applicable Articles. An employee re-employed after separation due to reduction in force shall receive credit for prior ODG service in establishing his or her rate of sick leave accrual and shall be credited with the amount of unused sick leave held at the time of layoff. The employee shall not, however, accrue sick leave credits for the period during which he or she was separated from ODG service.

(5) An employee who is granted a leave of absence from an ODG position to enter the Armed Forces of the United States, serves honorably therein, and applies for return to his or her position in ODG employment within ninety (90) days before or after termination from active duty for training, shall receive credit for such time in computing total years of full-time employment for the purposes of determining the rate of sick leave accrual. The employee shall not, however, actually accrue sick leave credits while on military leave.

(6) Sick leave benefits may not be used by an employee prior to being credited to his or her account.

(7) Upon satisfactory completion of the first six months of employment in the ODG service, such leave shall be granted on the basis of completed pay periods of service. An employee shall not be penalized his or her sick leave credit for any pay period during which the employee is off payroll for fewer than 20 hours. However, an employee who is off payroll for 20 hours or more during a payroll period shall not accrue sick leave for that pay period. This 20 hour test shall be prorated accordingly for part-time employees.

(b) Use of sick leave

(1) The use of earned sick leave credits shall be authorized by the DG for an employee who is absent from work and unable to perform his or her duties because of illness, injury, or quarantine for contagious disease. The use of such credits shall also be authorized for employee medical and dental appointments which cannot reasonably be made outside the employee's normal working hours.

(2) The use of sick leave credits may be authorized by the DG to permit an employee to be absent from duty due to death or illness in his or her immediate family. Such absences shall be authorized normally up to ten workdays which should be sufficient time in which to make funeral arrangements and to attend to family matters, or in instances of family illness, to arrange for continued care of the ill family member. Such authorization shall not be unreasonably withheld. In extremely unusual circumstances, the DG may authorize use of additional sick leave credits.

(3) An employee who has an accumulated sick leave balance shall be authorized its use although recovery and return to duty is impossible. However, periodically, at the request of the DG or representative, the disability or illness and inability to perform position requirements, must be certified to by a licensed physician or osteopath.

(4) If a woman is unable to work because of pregnancy, miscarriage, abortion, or illness resulting therefrom, she may use accumulated sick leave credits under the same conditions which apply to other illnesses and disabilities, and as provided for in the Parental Leave Article. If the employee wishes to extend her period of absence

beyond the time when she is physically unable to work, she may use accumulated annual leave or compensatory time off, and/or she may request a leave of absence without pay under the Parental Leave Article.

(5) Unless physically unable to do so, an employee shall notify his or her supervisor or DG no later than one hour after the beginning of the scheduled workday, of his or her inability to report to work and the nature of the illness.

(6) The DG may require, when there is sufficient reason, the submission of a certificate from a physician or other evidence to:

(1) justify the approval of sick leave; (2) furnish evidence of good health and ability to perform work without risk to self, co-workers, or the public as a condition of returning to work. Whenever a doctor's certificate is required, as a condition of approval of sick leave usage, the time period for such requirement shall not normally exceed six months (unless specifically imposed for a lesser period of time), and may be extended for up to an additional six month period of time.

The DG may require an employee to be examined by a physician designated by the employer, at ODG expense, for the purpose of determining the employee's fitness for duty.

(7) An employee who misrepresents his or her claim for sick leave may be subject to disciplinary action up to and including dismissal.

(8) An employee shall not be charged sick leave for absence on a day observed as a legal holiday or an administrative holiday.

(9) Sick leave may not be deducted in increments of less than one-half hour.

(10) If, during a scheduled vacation, an employee becomes ill to the extent that hospitalization is required, the employee's absence from date of hospitalization may be charged to sick leave rather than annual leave. An employee who during a vacation becomes ill and is confined to his or her home or temporary residence for three or more days pursuant to a doctor's order as evidenced by a doctor's certificate may be treated as if hospitalized under this section.

(11) When an employee is awarded a weekly compensation under the provisions of Workers' Compensation Act, he or she may be granted sick leave, or annual leave when sick leave credits are exhausted, to the extent of the difference between such compensation and his or her weekly rate.

3. RESPONSIBILITIES

(a) The employee shall:

(1) Give his or her supervisor advance notice of absence due to illness if the employee has advance knowledge of required treatment.

(2) In other instances, notify his or her supervisor no later than the first hour of the beginning of the scheduled workday, if possible, of his or her inability to report to work, and the nature of the illness.

(3) Notify his or her supervisor as soon as possible when time off from work is necessitated by a family emergency or illness.

(4) Obtain a doctor's certificate if requested by the supervisor.

(b) The supervisor or DG shall:

(1) Advise new employees of the sick leave provisions.

(2) In the instance of extended illness, keep informed as to the employee's physical

condition and anticipated date of return to work.

(3) Ensure that sick leave is not misused, and if necessary, require submission of evidence as to necessity for the leave.

(4) Ensure that the provisions of this Article are observed in the ODG.

(5) Report use of sick leave in accordance with the provisions of this Article and the instructions on the payroll time report.

4. SICK LEAVE BANK

1. ODG employees may donate up to fifty (50) percent of their annual leave entitlement, up to twenty-five (25) percent of their sick leave annual accrual, and up to all of their personal leave entitlement and compensatory time to the Sick Leave Bank, provided that employees retain at least ten (10) annual leave days after such donation is made. Donation of sick leave shall affect an employee's accrual of personal leave in the same manner as use of sick leave.

2. The Sick Leave Bank is for the benefit of employees who are absent from work for at least ten (10) continuous calendar days due to a non-job related illness, injury or quarantine for themselves or immediate family member and who have used all their sick leave. Upon a showing of extraordinary circumstances, the DG may grant use of leave from the Sick Leave Bank for a period of less than 10 days. Employees are eligible whether or not they have contributed to the Sick Leave Bank. Immediate family member is defined as parent, grandparent, spouse, domestic partner, party to a civil union, brother, sister, parent-in-law, grandchild, foster child, any person regularly and permanently residing with the employee, and any family member for whom an employee is primarily responsible either to arrange for health care or to provide care.

3. The Sick Leave Bank shall operate on an on-going basis. Unused donations to the Sick Leave Bank shall carry forward to the following calendar year. Employees wishing to donate leave or request leave from the Sick Leave Bank shall submit an application to the DG. Donations and use of leave from the Sick Leave Bank shall be authorized by the DG. Each request for use of leave from the Sick Leave Bank shall be reviewed by the DG on the basis of need and available days in the bank. When there is sufficient reason, the DG may require an employee to submit a physician's certificate or other evidence to justify the approval of use of leave from the Sick Leave Bank.

ARTICLE 24 MEDICAL EXPENSES

1. Employees exposed to hazardous physical, biological, or chemical agents shall be provided, at no cost to the employee, with medical examinations or evaluations required by VOSHA regulations. If there are no specific VOSHA regulations or standards for the agent in question, recommendations of the National Institute of Occupational Safety and Health (NIOSH) or other generally recognized expert organization shall be used, as determined by the Commissioner of Health.

2. Employees determined by the Health Department to be at substantial risk for exposure to contagious diseases shall be provided appropriate vaccines. Groups at risk will be defined by the Vermont Department of Health. If no guidelines have been published by the Department of Health, the guidelines published by the Center for Disease Control in Atlanta, Georgia will

apply. Vaccines and/or appropriate medical examinations will be provided at no cost to the employee according to applicable guidelines.

ARTICLE 25 INJURY ON THE JOB

1. The ODG will post at the duty station a notice informing employees that injuries must be reported within 72 hours to management. The employer is required to file a First Report of Injury with the Department of Labor and Industry within 72 hours and may require employees to assist by filling out portions of the First Report of Injury Forms which will be made available by the employer at the duty station.

2. For an injury relating to the performance of an ODG job under the special circumstances described below, an employee will be paid the difference between basic salary and Workers' Compensation (as defined in paragraph 3 of this Article) without charge to paid leave if the injury results from an assault (physical contact by a person or by an animal) If injuries result from an incident in which the participants are State employees and willing combatants, this Article shall not apply.

In any such instance, as in all other instances, the determination by the Commissioner of Labor and Industry shall be conclusive on whether an injury is job-related. Pending such determination in any "contested" case by the Commissioner, but not pending any appeal from such determination, the ODG shall not dismiss an employee for the reason that the injury prevents him or her from performing his or her duties.

If the Commissioner rules in the employee's favor, and the decision is not appealed by the ODG, the ODG will try to place the employee in any ODG job for which the employee meets the minimum qualifications and is willing and able to perform, prior to separation.

An employee who, due to a job-related or non job-related injury is separated from his or her position, but is not retired, shall be granted RIF reemployment rights under the RIF article with the 90-day probationary period. The employee must meet minimum qualifications and be able to perform the duties of the position to which he or she is being reemployed. Such employee will be eligible for health benefit coverage under Section 25 of the Reemployment Rights (Recall Rights) article. If the ODG determines that an employee is disabled as defined by the Americans with Disabilities Act and such disability prevents the employee from performing the essential functions of his or her position (s)he shall be entitled to utilize the State's Reasonable Accommodation Policy. If utilization of the Policy does not result in a reasonable accommodation, which in some cases may be employment in a vacant position in the employee's own or another department, then the employee will be separated from employment. Such employee shall be granted RIF reemployment rights under the RIF article with the 90-day probationary period. The employee must meet minimum qualifications and be able to perform the essential functions of the position to which he or she seeks to be reemployed. Such employee will be eligible for health benefit coverage under Section 25 of the Reemployment Rights (Recall Rights) article.

3. For purposes of computing benefits under Paragraph 2 of this Article, the term "Workers Compensation" shall be defined and applied as follows:

- (a) For all injuries for which a temporary total disability payment is provided, "Workers' Compensation" means that payment established as compensation for temporary total

disability. In computing benefits due under this Article, the amount of money provided as a temporary total disability payment during the period of disability (prorated as appropriate) shall be deducted from the basic salary of the employee, and employer shall compensate the employee to the extent of said difference without charge to any form of paid leave time.

(b) For all injuries for which there is no provision for temporary total disability payments (e.g., only those injuries listed in 21 VSA 648 (19) (A) (B) (C)), the term “Workers’ Compensation” shall mean the statutory compensation (excluding medical and vocational rehabilitation awards) provided. Such statutory compensation shall be prorated on an appropriate basis and deducted from the basic salary of the employee for the period of time during which the employee is unable to work. The employer shall compensate the employee, under this Article, to the extent of the difference between such prorated compensation and the basic salary.

4. An employee injured on the job may be granted unpaid leave in accordance with Off Payroll and Administrative Leaves of Absence Article, of this contract.

ARTICLE 26 OFF PAYROLL AND ADMINISTRATIVE LEAVES OF ABSENCE

1. POLICY

(a) A leave of absence may only be granted to an ODG employee who can be expected to return to work provided that, in the opinion of the DG, the leave of absence is in the overall best interests of the employee and clearly not detrimental to the ODG. This Article, unless specified, does not apply to employees in original probationary period.

(b) An administrative leave of absence may be granted:

(1) to enable the employee to stay with family for an extended period due to serious illness or injury to a member of the immediate family or other family emergency when the employee does not elect to have such absence charged to annual leave or has no annual leave; or

(2) any other justifiable reason, including career development as provided in Article 28, at the request of the employee and with the concurrence of the DG.

(c) An administrative leave of absence for personal medical reasons may be granted to an individual in original probation as outlined above, provided that such leave will automatically extend the original probationary period for at least the length of the leave, to ensure the working test period for full performance of the job has been met.

(d) An employee shall not be granted a leave of absence from an ODG position to accept a temporary position or a contractual arrangement in Vermont State government. However, nothing shall prohibit the DG from recommending a leave to accept a limited service classified position in a different agency.

(e) An employee granted a leave of absence without pay shall not receive annual and sick leave credits for the period of absence, nor shall such time be counted in determining the rate of annual and sick leave accrual and reduction in force rights.

(f) All leaves of absence must be approved in advance and must be for a definite period of time with an established date for return to duty, which, on request of the employee, may be extended or shortened at the sole discretion of the DG.

(g) No leave shall be granted for a period longer than six months, but such leave may be extended under the same conditions not to exceed an aggregate of eighteen (18) months in a five-year period of employment. However, an employee injured on the job may be granted leave for up to two years in a five-year period and shall not be denied such, extra leave solely because a claim under Workers Compensation is being contested.

(h) An employee granted leave of absence without pay for medical reasons (unless receiving Workers' Compensation) may elect to do so only after using sick leave credits in excess of 120 hours.

(i) Off Payroll

(1) An ODG employee, including those in original probationary status, may be granted time off the payroll for short periods when it is necessary to be absent from duty and the employee has no accumulated annual leave, personal leave, compensatory time off, or - in the case of a leave request for injury or illness - sick leave credits. Such off payroll time may not exceed a full pay period. Absences for less than the full pay period shall not be considered a "leave of absence". If it is anticipated that an employee will be unable to work for more than a full pay period, a leave of absence may be granted as outlined in this Article.

(2) An ODG employee who does not report for work or who is absent from duty during any portion of a workday and who does not have authorization for such absence shall be considered "absent without leave". Any such absence shall be without pay, and, in addition, may be grounds for disciplinary action.

However, an absence which is not authorized in advance may be covered by a retroactive granting of leave if the circumstances warrant.

(j) An ODG employee shall not accrue annual leave or sick leave if off payroll or on a leave of absence for 20 hours or more in any pay period.

k) An employee who fails to return from a leave of absence, paid or unpaid, for five (5) consecutive workdays after a leave is terminated, or an employee who is absent from work for 5 (five) consecutive workdays without notifying management shall be considered a voluntary quit, except when returning from military leave. This section does not prevent discipline for absenteeism.

(l) This Article neither adds to nor subtracts from the benefits of probationary employees.

(m) An employee who is unable to perform job duties because of extended illness or disability (more than a full pay period), and who has exhausted all but 120 hours of sick leave, and who chooses not to use annual leave, personal leave or comp time balances, upon request shall be granted a medical leave of absence for up to six months, which may also be extended with the approval of the DG, as specified under paragraph g.

2. PROCEDURES

(a) When a leave of absence or off payroll time can be anticipated in advance, the employee shall request such leave or time off as soon as possible.

(b) The employee's request for leave shall include the reason for the absence and the anticipated period of absence.

(c) If the employee cannot report to work due to an accident or other emergency, the supervisor shall be informed as soon as possible to avoid being considered "absent without leave" and subject to possible disciplinary action.

3. PAYMENT OF HEALTH INSURANCE PREMIUM COSTS

Any employee on off payroll status of short duration of thirty (30) days or less due to an Administrative Leave of Absence granted pursuant to this Article shall be allowed to use accrued annual or personal leave time in an amount of not less than eight (8) hours per pay period to allow the ODG to continue to pay its share of the premium cost of the health insurance plan and to enable the employee to continue to pay the remaining share from his or her earnings.

ARTICLE 27 PARENTAL LEAVE/FAMILY LEAVE

1. POLICY

It is the policy of the ODG to permit employees reasonable time off to care for dependent children in instances such as illness, birth, or adoption, and in cases of serious illness of a member of an employee's immediate family or for their own serious illness. Leave for such purposes is provided by both federal and state statutes ("statutory leave"). Vermont's Parental and Family Leave Act, 21 V.S.A. §470 et.seq., and the Family Medical Leave Act, 29 U.S.C. §2601 et. seq., establish the rights and obligations of employees and employers pertaining to such leaves.

The following provisions integrate the basic requirements of the statutes and this collective bargaining agreement ("Agreement"), but do not create a waiver by the ODG or by the employees of other rights and/or obligations under this Agreement. In the event of any conflict created by the amendment of statute or otherwise, the rights and responsibilities of the ODG and employees will be determined by statute, except to the extent that such amendments would diminish the rights to which the employee is entitled under the terms of this Agreement. No provisions of this article shall be determined to diminish the entitlement of any employee to unpaid leave under either of the above referenced statutes. Leave taken under this Agreement shall be credited against any such statutory entitlement to the full extent permitted by law.

2. DEFINITIONS

For purposes of this Article, the following definitions shall apply. If further definitions and/or clarifications are needed, the Code of Federal Regulations ("CFR") for the Family Medical Leave Act will be the authoritative reference and/or decisions of the Vermont Supreme Court with regard to the state statute.

(a) "Eligible Employee" for the purposes of the statutory leaves, means an employee who has successfully completed original probation or has worked for one year, whichever occurs first, and has worked for at least an average of 20 hours per week. All references to employees in this Article are references to eligible employees.

(b) "Family Leave" means a leave of absence from employment for one of the following reasons: (1) The serious illness of an eligible employee; or (2) the serious illness of a member of an eligible employee's immediate family. Family Leave, by itself or in combination with statutory Parental Leave (as opposed to contractual parental leave), may not exceed 12 weeks in a 12 month period beginning with the first day either type of leave is used. Leave taken under this Agreement will be credited against any such statutory entitlement to the full extent permitted by law.

(c) "Immediate family" means an eligible employee's parent, grandparent, spouse, child,

brother, sister, parent-in-law, grandchild, foster child, stepchild or ward who lives with the employee, any person residing with the employee, and any family member for whom an employee is primarily responsible either to arrange for health care or to provide care.

(d) Statutory "Parental Leave" means a leave of absence from employment for one of the following reasons: (1) During the employee's pregnancy; (2) following the birth or delivery of the employee's child; or (3) within a year following the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption. Statutory Parental Leave, by itself or in combination with Family Leave, may not exceed 12 weeks in a 12 month period beginning with the first day either type of leave is used. Leave taken under this Agreement will be credited against any such statutory entitlement to the full extent permitted by law.

(e) "Serious Illness" means an accident, injury, illness, disease, or physical or mental condition that: poses imminent danger of death; requires inpatient care in a hospital, hospice, or residential medical facility; or requires continuing in-home care under the direction of a physician or health care provider. Related current definitions are summarized in (f) below.

(f) "Continuing Treatment by a Health Care Provider" covers five situations:

(1) incapacity of more than three consecutive calendar days that involves either (a) treatment two or more times by a health care provider (or under the direction or orders of a health care provider), or (b) treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider; (2) any period of incapacity due to pregnancy, or for prenatal care; (3) any period of incapacity or treatment due to a chronic serious health condition requiring periodic visits for treatment, including episodic conditions such as asthma, diabetes, and epilepsy; (4) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, although the individual is under the continuing supervision of a health care provider. (E.g. Alzheimer's, severe stroke, or the terminal stages of a disease); and (5) any period of absence to receive multiple treatments from a health care provider (or on orders or referral from a health care provider) for restorative surgery or for a condition that would likely result in an absence of more than three consecutive calendar days without treatment (e.g., cancer (chemotherapy, radiation), severe arthritis (physical therapy), kidney disease (dialysis)). (The foregoing is the Federal Equal Employment Opportunity Commission's summary definition, refer to the Code of Federal Regulations for the full definition).

(g) "In Patient Care" means at least an overnight stay at a medical care facility, and any related period of incapacity or subsequent treatment related to the in-patient care.

(h) "Intermittent Leave" means leave taken in separate blocks of time due to a single qualifying reason.

(i) "Reduced Schedule Leave" means a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. Such schedule is a change in the employee's schedule for a period of time normally from full-time to part-time.

3. RIGHTS AND RESPONSIBILITIES

Under the state and federal leave laws both the ODG and the employee have certain rights and responsibilities

(a) ODG's Responsibilities and Eligible Employee's Rights:

An eligible employee is entitled to a total of twelve (12) weeks of unpaid statutory Family Leave and/or statutory Parental Leave within a twelve (12) month period beginning the first day either Leave is used. An eligible employee is also entitled to Short-term Leave as further described below.

During any such leave, the ODG will continue to pay the employee's benefits at the same level and rate as if the employee were not on leave. After the leave expires, the ODG will return the employee to the same position at the same level of compensation, benefits, seniority and other terms of employment as they existed on the day the leave began unless:

- (1) Prior to an employee requesting leave, the employee had given notice or received notice that employment would terminate; or
- (2) If the ODG can demonstrate by clear and convincing evidence that the employee's position would have terminated or the employee would have been laid off for reasons unrelated to the leave or the condition for which the leave was granted.

(b) ODG's Rights and Eligible Employee Responsibilities:

The employee must provide reasonable notice of intent to take a leave, the date of anticipated commencement and expected duration of the leave, or the ODG may deny the leave. The employee must provide reasonable advance notice to the ODG if the employee wishes to request an extension of the leave, to the extent available. It is the ODG's option whether to permit an employee to return to work in advance of the expiration of the leave granted. The ODG may require an employee to continue to make their regular contribution to the cost of benefits during the leave. Unless the employee is on leave due to his/her serious illness, the ODG has the right to require the refund of any compensation paid during the leave, except sick leave and annual leave, if the employee does not return to work.

The calculation of the amount of Family Leave or Parental Leave time used by eligible employees who are employed less than full time or by eligible employees using intermittent leave or reduced schedule leave will be made on a prorated basis consistent with 29 C.F. R. ¶825.05 as it may be amended from time to time.

4. PARENTAL LEAVE - ADOPTION, PREGNANCY AND CHILDBIRTH

(a) A leave of absence without pay shall be granted upon request for up to four (4) months for employees (male or female) who have requested Parental Leave. Such Leave shall be unpaid, except as provided in section (b) below. Upon request the DG can extend the leave an additional two (2) months. During approved leave extensions beyond four (4) months, this Agreement's administrative leave provisions shall be applicable, including, but not limited to, the requirement that the employee shall pay one hundred (100) percent of their insurance benefits. Notwithstanding the foregoing, if the approved leave extension results from the employee's illness, this Agreement's medical leave provisions shall be applicable, including the ODG's commitment to pay a portion of insurance benefits.

(b) During the initial four (4) months of a leave, at the employee's option, the employee may use up to six (6) weeks of any accrued paid leave, including but not limited to sick leave, annual leave and personal leave. Thereafter, employees can use only the following accrued paid leave in the following order: compensatory time, personal leave and annual leave. Notwithstanding the foregoing, sick leave for up to six (6) weeks following

childbirth/delivery will be granted, and may be extended by the DG who may request certification of the continuing disability. No combination of paid and unpaid leaves shall extend the Parental Leave beyond six (6) months.

(c) Notwithstanding the above, an employee may use accrued sick leave for the period of disability resulting from pregnancy, miscarriage, abortion, or illness resulting therefrom.

5. FAMILY LEAVE - LEAVE FOR SERIOUS ILLNESS

(a) In the case of serious illness of an employee or of a member of an employee's immediate family, Family Leave shall be granted on request and receipt of medical certification of the serious illness and the amount of leave time needed. Such Family Leave shall be unpaid, except as provided in section (b) below.

(b) During the Family Leave, at the employee's option the employee may use up to six (6) weeks of any accrued paid leave, including, but not limited to, sick leave, annual leave and personal leave. Thereafter, employees may use only the following accrued paid leaves in the following order: compensatory time, personal time and annual leave. No combination of paid and unpaid leaves shall extend the statutory Family Leave beyond twelve (12) weeks. Notwithstanding the foregoing, even if statutory Family Leave is exhausted, this Agreement's sick leave, unpaid medical leave and administrative leave provisions are still applicable and may provide for additional leave consistent with these provisions.

(c) Leave under this section is for providing care for serious illness and does not diminish the benefit available under the Sick Leave Article to use up to ten (10) sick days in other instances of family illness.

6. INTERMITTENT LEAVE/REDUCED LEAVE SCHEDULE

An employee who qualifies for Family Leave may take the leave as intermittent leave or on a reduced schedule but only if it is medically necessary. If an employee is taking Family Leave due to the serious illness of a family member, the employee may take intermittent leave or reduced schedule leave to provide care or psychological comfort to the family member. Employees must attempt to schedule the intermittent leave or reduced schedule leave so it does not disrupt the ODG's operations. The ODG may assign the employee to an alternative position within the same agency/department/work location for which the employee is qualified with equivalent pay and benefits to better accommodate the requested leave. If the ODG assigns the employee to an alternative position, once the need for the intermittent or reduced leave schedule is ended, the ODG will place the employee in a position which is the same or equivalent to the employee's position at the time the leave began. If the position is an equivalent position it will be within the same agency/department/work location as the employee's position at the time the leave began.

When an employee is granted Parental Leave after the birth or placement of a child, the ODG, in its discretion, may grant the employee's request for intermittent leave or reduced schedule leave. However, if the mother has a serious illness in relation to the birth of a newborn, then the provisions for intermittent leave/reduced schedule leave for Family Leave are applicable. If the newborn has a serious illness, then the provisions for intermittent leave/reduced schedule leave for Family Leave are applicable to either parent. Prior to the birth of a child, a pregnant employee can take intermittent leave for prenatal exams or for her own medical condition, e.g., severe morning sickness.

7. SHORT-TERM FAMILY LEAVE

(a) In addition to the Leaves provided above, an employee shall be entitled to take unpaid

leave not to exceed four (4) hours in any 30-day period and not to exceed 24 hours in a 12-month period. This leave may be taken for any of the following purposes:

(1) To participate in preschool or school activities directly related to the academic educational advancement of the employee's child, stepchild, foster child or ward who lives with the employee, such as a parent-teacher conference.

(2) To attend or to accompany the employee's child, stepchild, foster child or ward who lives with the employee or the employee's parent, spouse or parent-in-law to routine medical or dental appointments.

(3) To accompany the employee's parent, spouse or parent-in-law to other appointments for professional services related to their care and well-being.

(4) To respond to a medical emergency involving the employee's child, stepchild, foster child or ward who lives with the employee or the employee's parent, spouse or parent-in-law.

(b) The ODG may require that the leave be taken in a minimum of two (2) hour segments. An employee shall make a reasonable attempt to schedule appointments for which leave may be taken under this section outside of regular work hours. In order to take leave under this section, an employee shall provide the employer with the earliest possible notice, but in no case later than seven (7) days before leave is to be taken except in the case of an emergency. In this subsection, "emergency" means circumstances where the required seven (7) days notice could have a significant adverse impact on the family member of the employee.

ARTICLE 28 LONG TERM DISABILITY INSURANCE

ODG employees shall receive the same long term disability insurance benefits as State of Vermont employees who are eligible for LTD insurance. ODG employees shall contribute to the cost of LTD insurance by losing one leave day in the following order on July 1 of each fiscal year: one personal leave day; if no personal leave days are available, one sick leave day; if no personal or sick leave days are available, one annual leave day. It is understood that ODG employees have already lost one leave day which will pay their share of the cost for FY 2002. ODG employees will contribute a day of leave time commencing July 1, 2002.

ARTICLE 29 TRAINING AND DEVELOPMENT

Career development leave may be granted on request of the employee and with the approval of the DG.

Employees shall attend training as directed by the DG or his designee.

**ARTICLE 30
TUITION REIMBURSEMENT**

1. Eligibility for tuition reimbursement is subject to the following criteria:
 - (a) The employee's written career plan for courses (or degree requirements) not related to the employee's present position must be approved by the DG.
 - (b) The course is post-secondary and/or graduate level taken at a properly accredited educational institution.
 - (c) As determined by the DG, the course must:
 - (1) Increase the employee's expertise in his or her present position, or other career-related positions in State service; and/or,
 - (2) Fulfill the requirements of a degree program, which will also meet the above criteria.
 - (3) Have begun after the effective date of this Agreement.
 - (d) Non-credited courses, classes or seminars which are job-related may be approved by the DG, whether or not they are provided at a properly accredited educational institution.
2. The application shall be submitted to the DG before the course begins. For courses beginning between January 1st and June 30th, applications must be submitted by U.S. mail and be received by the ODG between November 24th and December 7th. For courses beginning between July 1st and December 31st, applications must be submitted by U.S. mail and be received by the ODG between May 25th and June 7th. Applications will indicate which course is the employee's first priority and which course is the second priority. If there are insufficient funds to cover all of the first priority course applications, the available funds will be split equally among all applicants. If all first priority courses are funded, the available funds will be split equally among all applicants. Beginning July 1, 2010, \$2,500 will be made available for courses beginning between July 1 and December 31, and \$2,500 will be available for courses beginning between January 1 and June 30, 2011. Applications will only be accepted for the current semester. These amounts may be increased to \$5,000 per semester in year two of the contract period contingent on the VSEA procuring additional funds to support this increase.
3. An employee may appeal the denial of tuition reimbursement by the DG, if the basis for that decision was that a course was not considered related to an employee's job or career development. At the request of VSEA or employee, an arbitrator jointly selected by the parties shall resolve any such dispute in an expedited, informal procedure, with any costs to be shared equally by the VSEA or employee and the ODG.

CRITERIA FOR REIMBURSEMENT

4. The maximum reimbursement under this Article shall not exceed 80% of the actual out-of-pocket cost for tuition, up to \$350 per credit, to the employee. Employees may not be reimbursed for costs reimbursed from other sources.
5. When combined with other government sources, reimbursement, from this fund shall not be in an amount which exceeds 90% of the total.
6. Tuition reimbursement shall not exceed twelve (12) college credits or equivalent per year, and shall not exceed 2 courses (for no more than 8 credits) within a six month period (July-December, January-June). Subject to availability of funds, reimbursement for more than 12 credits in a fiscal year may be made at the discretion of the DG.

7. The employee must complete the course with a passing grade, and must submit to the DG a copy of the final grade received.
8. Approved courses shall normally be taken during off-duty hours. Other arrangements are subject to the approval of the DG. The ODG shall not be required to reimburse any employee if the total expenditures from this program reaches \$5,000, plus an additional amount for administrative expenses for fiscal year 2011, \$5,000 (or \$10,000 if the VSEA is successful in obtaining additional funding for tuition reimbursement), plus an additional amount for administrative expenses for fiscal year 2012. Monies not spent or which are reverted in FY 2011 shall be available for tuition reimbursement in FY 2012.
9. Monies not spent or which are reverted for courses beginning July 1 - December 31 shall be available for tuition reimbursement for courses beginning January 1 - June 30 in fiscal years 2011 and 2012.
10. Nothing in this Agreement shall prevent the ODG from paying for courses related to job duties and departmental career development.
11. Reimbursement from this Fund shall not be used for courses where attendance is required by the ODG.
12. In unusual circumstances where the ODG is not able to enter into agreements with the institution for direct payments, the ODG may grant an advance to the employee subject to administrative guidelines to be developed jointly with the VSEA, which may also include repayment or exclusion from the program if the employee fails to complete or pass the course. Written proof of reimbursable payments (a bill) must be submitted to the ODG.
13. Employees approved for tuition reimbursement prior to being officially notified of their reduction in force, shall be eligible only for that tuition already approved.

ARTICLE 31 MILITARY LEAVE

1. POLICY

- (a) An ODG employee inducted into the Armed Forces of the United States either by draft or voluntary enlistment for active service shall be granted a leave of absence without pay for the duration of his or her active duty, and shall be reinstated to his or her position after being relieved of military duties provided that the employee:
 - (1) Satisfactorily fulfilled his or her military assignment.
 - (2) Left the service with four years or less of active service, unless involuntarily extended.
 - (3) Applied for return to his or her position within ninety days before or after termination from active service, and,
 - (4) The position or a position of like class still exists in the ODG. In the event his or her position is abolished, the provisions of the reduction in force article shall apply.
- (b) An ODG employee entering the Armed Forces for active duty for training shall be granted a leave of absence without pay for the period of basic training, and additionally, for the period of time required to undergo training for his or her chosen military occupational specialty and for all subsequent involuntary training. Additionally, a leave of absence without pay of up to eighteen (18) months career aggregate, which includes not more than six (6) months prior to July 1, 1981, shall be granted, and additional such leave

may be granted, to an employee who volunteers for additional military training in furtherance of his or her personal military career objectives. Such employee shall be reinstated to his or her position or position of like class provided that the employee:

- (1) Satisfactorily fulfilled his or her military assignment.
- (2) Applied for return to his or her position within thirty (30) days after release from active duty for training, and,
- (3) The position or a position or like class still exists in the ODG.
- (4) In the event the position is abolished, the provisions of the reduction in force article shall apply.

The provisions of this paragraph shall not be construed as limiting in any way the benefits described elsewhere in this Article.

(c) An ODG employee returning to work following leave of absence for active service or active duty for training shall be compensated at an amount in the pay grade of his or her assigned class at least equivalent to the point above the minimum of the pay grade the employee was receiving at the time of departure. A returning employee shall be granted all general pay increases, such as legislative, cost of living adjustments, or adjusted recruitment rates, but shall not, however, be entitled to merit increases, except as the guidelines relating thereto shall provide.

(d) An ODG employee on leave of absence for active service or active duty for training who returns to ODG employment in accordance with the conditions outlined above shall have such time counted in computing the total years of service for purposes of determining the rate of annual and sick leave accrual and reduction in force rights. However, he or she shall not accrue such leave rights during the period of leave of absence.

(e) An ODG employee on leave of absence for active service or active duty for training may receive service credits in the retirement system by special action of the Retirement Board.

(f) An ODG employee on leave of absence for active service or active duty for training for a period in excess of one year may, at his or her option, receive cash payment for accrued annual leave upon entering military leave status, or may retain his or her leave credits for use upon return to active employment. Sick leave credits shall be retained in the employee's account upon return to active employment.

(g) **MILITARY TRAINING.**

An ODG permanent-status or limited-status employee who is a member of the Organized Reserve or National Guard shall be allowed military leave with pay, at the rate of his or her normal base salary prorated as appropriate, for any authorized training or service up to a maximum of eleven (11) workdays scheduled by military authority in any Federal Training Year - October 1 to September 30. A permanent-status or limited-status employee who has more than eleven (11) days of authorized military duty scheduled in one Federal Training Year shall not be entitled to leave with pay for those days in excess of eleven (11), and shall be placed in an off payroll status, unless he or she elects to use accumulated annual, personal leave, or compensatory time leave credits for the period of absence. An ODG permanent-status, part-time employee shall be granted military leave with pay for such military duty on a prorated basis.

(h) **MISCELLANEOUS MILITARY OBLIGATIONS**

- (1) An ODG employee ordered to take a service pre-induction physical examination

shall be granted leave with full pay.

(2) A member of the National Guard ordered to duty by the Governor for emergency or other reasons shall receive military pay differential in lieu of his or her normal base salary prorated for each workday involved.

(i) **INACTIVE DUTY TRAINING**

An employee shall not be granted leave with pay for any scheduled weekly or monthly training activities nor for “equivalent training” scheduled for the convenience of the employee. However, an employee whose work schedule conflicts with scheduled drills (for example, an employee whose regular work includes Sunday) shall be granted time off either without pay or by use of his or her annual leave credits, accrued personal leave or compensatory time off, to satisfy his or her military obligations.

Subject to the operating needs of the ODG, and only with the approval of the DG, with 30 days advance request, employees may be permitted the option of switching days off in order to attend inactive duty training without charge to annual leave or being placed in an off-payroll status. Any decision to grant or not grant such a request shall not be subject to grievance by the requesting employee or any employee which might be rescheduled to accommodate such a request.

(j) Members of the American Legion or Veteran’s of Foreign Wars attending a veteran’s funeral in the capacity of an official color guard may, subject to the operating needs of their ODG, be granted up to twenty-four (24) hours off per fiscal year without loss of pay to serve in such capacity.

2. RESPONSIBILITIES

Each employee shall notify his or her supervisor or the DG as soon as possible of scheduled military obligations and obtain a copy of the military orders for his or her supervisor.

3. NO LOSS OF OTHER BENEFITS

Any employee on off payroll status of short duration of thirty (30) days or less due to Active Service, Active Duty for Training, or other obligatory military service or training shall not be denied personal leave accrual or holiday pay, annual leave accrual, sick leave accrual, or health insurance in which the ODG continues to pay its share of the premium cost of each plan and the employee continues to pay the remaining share.

**ARTICLE 32
LEAVE OF ABSENCE FOR POLITICAL ACTIVITY**

1. Subject to the operating needs of the ODG, and subject to any conflict of interest or any other legal barrier as may be determined by the Attorney General, and subject to the Hatch Act or any other applicable federal law, leave of absence without pay may be granted to run for any public office at the State or national or local level or to act in any such capacity if elected. Leave under this situation must be specifically approved in advance by the ODG. No employee shall be discriminated against under this Section based on his or her lawful political activity.

2. LEGISLATIVE LEAVE

To the extent authorized by 21 VSA 496, and subject to any conflict of interest or legal barrier as may be determined by the Attorney General, the Hatch Act or any other applicable federal law, state employees shall be entitled to leave of absence in order to serve in the

General Assembly. Leave under this situation must be specifically approved in advance by the DG.

3. POLITICAL ACTIVITY

An employee shall not use his or her official authority for the purpose of interfering with or affecting the nomination or election of any candidate for public office. An employee shall not command or solicit in a coercive fashion from any other employee direct or indirect participation in any political activity or enforce or solicit in a coercive fashion contribution for any political party, organization, or candidate. An employee shall retain his or her right to vote and freely express opinions on all political subjects. An employee shall not be prohibited from participation in local community activities or from holding public office in the community in which the employee resides, provided that such activity does not conflict with the Federal Hatch Act to the extent that employees of agencies receiving federal funds are subject thereto.

ARTICLE 33 FIRE AND RESCUE DUTY

Subject to the operating needs of the ODG, an employee who is a member of a municipal fire and/or rescue team reachable within a 30-minute drive from his or her work location shall, in the absence of conflicting ODG emergency or other urgent ODG business, be granted leave without loss of pay or benefits to answer emergency alarms or calls, not drills, within his or her municipality or outside the municipality as part of a mutual aid call; or multiple alarm calls; or conflagration for which the employee is reasonably available and is called and has so notified the DG to the extent practical.

An employee covered by this Article shall be entitled to carry a pager while on duty.

ARTICLE 34 CIVIC DUTY LEAVE

Employees who serve as Selectperson, Village Trustee, Alderperson, Board of Civil Authority, or School Director, or the functional equivalent of any of the above regardless of actual title so long as it is an elected position, in their communities may, subject to the operating needs of their ODG, be granted up to three (3) days off per fiscal year without loss of pay for the purpose of conducting official business, pertaining to their elected office, which cannot be accomplished outside of normal working hours.

ARTICLE 35 COURT AND JURY DUTY

1. It shall be the policy of the ODG to encourage employees to recognize and perform their civic responsibilities.

2. An ODG employee summoned for court or jury duty shall be excused from work for the time necessary to perform such duty when he or she furnishes timely notice of subpoena or summons to his or her supervisor. Attendance at court in connection with an employee's official duties shall not be considered absence from work.
3. The ODG expects its employees to serve when summoned for jury duty and will not request that an employee be excused from serving except in unusual circumstances which jeopardize service to the public.
4. An ODG employee who is unable to perform his or her job because of court or jury duty shall be entitled to receive total wages not to exceed his or her normal base salary prorated for the day, days, or part of a day involved by combining jury duty pay or witness fee and state wage.
5. An employee who requests accrued annual leave or compensatory time off to appear as defendant or party-plaintiff in civil or criminal actions shall be granted such time off, including an employee who has been suspended without pay, except in the instance where the court appearance is related to the matter for which he or she was suspended.
6. An employee may use annual leave, personal leave or compensatory time off for his or her absence due to court or jury duty, in which case he or she shall then be entitled to keep the court or jury duty pay received. Notwithstanding the above, employees are advised that State law prohibits the payment of witness fees or other compensation to ODG employees when the State is a party to the case (plaintiff or defendant).
7. It is the obligation of the employee to notify his or her supervisor as soon as he or she is called for court or jury duty.
8. An employee shall not be obligated to pay back mileage reimbursement received as part of court or jury duty pay.

ARTICLE 36
PERSONAL LEAVE AS SICK LEAVE INCENTIVE

1. An employee who in any fiscal three-month period (beginning with the first full payroll period in July, October, January, and April):
 - (a). Does not use sick leave, beyond eight (8) hours;
 - (b). is not off payroll, or on any type of leave of absence without pay (except Workers' Compensation leave after July 1, 1995,) or, suspension without pay shall be entitled to 10 hours of personal leave. Such leave hours shall not be compensable in cash, convertible to other forms of leave, or accumulated from fiscal year to fiscal year, except that any personal hours earned during the last three-month period of a fiscal year may be used in the succeeding three-month period, but not thereafter.
2. No employee shall be entitled to earn more than 40 hours of personal leave per fiscal year under the terms of Section 1, above.
3. Personal leave earned under this Article shall not be eliminated when an employee changes bargaining units. The employee may use it after such change during the same fiscal year or, if the leave was earned during the last quarter of such fiscal year, may use it in the succeeding three-month period, but not thereafter.
4. An employee shall be entitled to eight (8) hours of personal leave on his/her birthday and eight (8) hours of additional personal leave during the fiscal year. The birthday leave shall

be used on the employee's birthday or within that pay period. The additional leave shall be used within the fiscal year. Such leave hours shall not be compensable in cash, convertible to other forms of leave, or accumulated from fiscal year to fiscal year.

5. Personal leave accrual and eligibility criteria shall be pro-rated, as appropriate, for permanent part-time employees.

6. This provision does not apply to employees in an original probationary period. However, upon completion of original probation an employee shall be eligible for any personal leave credits earned during the probationary period.

ARTICLE 37 EMERGENCY CLOSING

1. Management shall decide when, if and to what extent ODG facilities shall remain open or closed during emergencies, such as adverse weather conditions, acts of God, equipment breakdown, inoperable bathroom facilities, extreme office temperatures, etc.

2. An employee who is unable to report to work due to weather or other emergency conditions shall have the absence charged against accumulated compensatory time or annual leave, in that order.

3. If management authorizes the complete closing of an ODG office or facility for emergency reasons, employees who leave the workplace shall receive their regular pay for time they are out of the closed office.

4. Employees required by management to work during complete emergency closings under (3) above, shall receive hourly pay at straight time rates for the hours so worked. This payment will be in addition to the employee's regular pay.

ARTICLE 38 SALARIES AND WAGES

1. The compensation plan for ODG employees covered by this Agreement shall be as follows:

Effective Date

Appendix I July 1, 2010 (current chart)

Appendix II Start of first full pay period in July 2010 (July 4, 2010)

2. Salary is computed as an hourly rate rounded to the nearest whole cent.

3. (a) Effective with the start of the first full pay period in July 2010 and continuing through June 29, 2012, all employees covered by this Agreement shall receive a three percent (3.0%) decrease based on rates in force on the prior day. Such adjustments shall be applied to the salary grid, as set forth in Appendix II. Effective June 30, 2012, the salary grid shall be returned to the July 1, 2010 rates, as set forth in Appendix I. The resulting adjustment in pay for employees covered by this Agreement shall be implemented at the beginning of the next full pay period, subject to any adjustments established through negotiations for the successor agreement.

(b) This section does not apply to the contract in effect during the 2011 and 2012 contract years. Employees equal to or more than the negotiated increase, if any, in section 3(a), above

the maximum for their pay grade on the effective date of the increase shall instead receive a lump sum payment equivalent to the negotiated increase, if any, of their base hourly rate, annualized and prorated for part-time employment. Lump sum payments will be made in the paycheck for the first full pay period of each fiscal year.

(c) This section does not apply to the contract in effect during the 2011 and 2012 contract years. Employees who are less than the negotiated increase, if any, in section 3a above the maximum for their pay grade on the effective date of the increase shall receive that proportion of the increase that will result in their placement on Step 15 of their pay grade, and shall receive the difference between this base salary increase and the negotiated increase, if any, in section 3(a), annualized and prorated for part-time employment, as a lump sum payment as specified above.

4. The required time on each step in the Step Pay Plan shall be as follows:

Step 1 (probation) - normally, 6 months	Step 9 - two years
Step 2 (EOP) - one year	Step 10 - two years
Step 3 - one year	Step 11 - two years
Step 4 - one year	Step 12 - two years
Step 5 - one year	Step 13 - three years
Step 6 - two years	Step 14 - three years
Step 7 - two years	Step 15 - final step
Step 8 - two years	

5. Computation of Step Dates, and requirements for step movements for the pay plan in effect on June 30, 1990, shall remain unchanged except as modified by this paragraph. Notwithstanding all other provisions of their Agreement, all employees are frozen in their current steps once they have completed original probation, and no employee shall receive a step increase in salary during the term of this Agreement, but they shall return to normal step movement following the end of this 2011 – 2012 Agreement. The Department of Human Resources shall administer this “Step Freeze” and the other provisions of this article in accordance with the attached “Step Freeze Guidelines.”

At the beginning of the first full payroll period following the employee’s new Step Date, the employee shall advance to the next higher step in the pay grade upon completion of the required time on step.

6. Except as specified in Paragraph 7 in the “Performance Article”, movement to a higher step hereunder is predicated on satisfactory performance, based on the annual performance evaluation. In all cases, failure to achieve a satisfactory annual evaluation (i.e., a “3” under the current system) will result in loss of credit for that year’s service in computing time on step.

7. An employee who has been demoted from a position:

- (a) without loss of pay; or
- (b) with a percentage loss of pay pursuant to Section 6.072 of the Rules and Regulations for Personnel Administration; or
- (c) with a loss of pay due solely to the fact that the employee’s salary could not exceed the maximum for the lower pay grade; and who later returns within two (2) years to a position in a higher pay grade shall be considered, for purposes of salary adjustment, to be a restored employee under Section 6.077 of the Rules and Regulations for Personnel Administration.

8. Implementation of the compensation plans specified herein shall be in accordance with procedures developed by the Secretary of Administration subject to this collective bargaining agreement and shall not be subject to the provisions of Chapter 25 of Title 3. VSEA shall be granted a copy of the procedures thirty (30) days prior to implementation and shall retain the right to grieve any violation of this Agreement resulting from implementation of such procedures.

9. RATE AFTER PROMOTION, UPWARD REALLOCATION OR REASSIGNMENT

Upon promotion, upward reallocation or reassignment of a position to a higher pay grade, an employee covered by this Agreement shall receive a salary increase by being slotted onto that step of the new pay grade which would reflect an increase of at least five percent (5%) over the salary rate prior to promotion (i.e., five percent (5%) is the lowest amount an employee will receive, and the maximum amount would be governed according to placement on a step which might be higher than, but nearest to, the five percent (5%) minimum specified). The rate of five percent (5%) as outlined above shall be eight percent (8%) if the employee is moving upwards three or more pay grades. Notwithstanding the above, any promotion or reclassification to a higher class as a result of an employee automatically "promoting" upon completion of the requirements of the lower level class as outlined in the position class description, the rate on promotion shall be eight percent (8%). In no case will such an employee receive less than the Step 2 (end of probation) rate of the new pay grade, unless the employee has not completed original probation, or more than the Step 15 (maximum) rate. If the employee's salary at the time of promotion, upward reallocation, or upward reassignment is already over the maximum of the new grade, no salary adjustment shall occur.

After placement on step in the new pay grade, the employee may advance to the next step after meeting the waiting period requirements applicable to that step (as set forth in Section 4 herein), based on the effective date of the promotion or upward reallocation.

10. The salary upon which any increase resulting from promotion, upward reallocation, or upward reassignment is computed for a given employee, is that employee's most recent salary in the last position in which any required probationary period was completed, plus any subsequent general salary adjustment, except that no employee will be reduced in salary as a result of this provision.

(a) An employee except an employee on original probation who is promoted, upwardly reallocated or upwardly reassigned shall be placed on the step in the new pay grade that is: the result of the normal promotional increase.

(b) If a Request for Classification Review is submitted on or after January 13, 2002; and the incumbent is subsequently entitled to a retroactive pay adjustment due to corrective classification action (resulting from either classification review or classification grievance); and the incumbent has received a step increase after the date the request for review was filed but before the classification decision was processed; then the employee's salary shall be based on his/her rate of pay as of the date the adjustment is processed.

11. Employees who are laterally transferred to a different position in their same class, or into a different class but in the same pay grade, will not establish a new Step Date as a result of such move. This provision does not apply to employees on original probation.

12. When an employee demotes to a position in a lower pay grade, that employee shall be placed on a specific step in the new (lower) pay grade that is within the range for salary upon demotion specified in Section 6.072, et seq., of the Rules and Regulations for Personnel Administration which represents at least a 1.5% decrease in salary and then slotted down, but

shall not be paid less than the minimum, nor more than the maximum for such lower pay grade. All such employees will establish a new Step Date.

13. When an employee is: promoted; demoted; restored; rehired in accordance with RIF rights; reallocated; or reassigned, a new Step Date shall be established, based upon the effective date of such action.

14. The ODG retains the following rights:

(a) Hiring Within Range

To hire employees above the end of probation rate for their class, consistent with 6.042 et. seq. of the Rules and Regulations for Personnel Administration for the State of Vermont. In any such instance, the ODG may raise the rate of current employees in that department in the same class and/or associated class to the rate of the newly hired employee. Employees so raised shall retain their old step date and time already accrued toward his/her next step movement. Any such hire or subsequent raising of the rate for previous hires shall not be deemed inconsistent with the provisions of paragraph 14 or 15 so long as the hiring rate specified for the class remains unchanged.

(b) Changing Hiring Rate

(1) To raise the hiring rate for one or more classes. In such event the next higher numbered step shall be the new end of probation (EOP) rate. Original probationers shall be placed at the new minimum, (unless previously hired into range at a step greater than the new EOP) without affecting their step dates. Non-probationary employees below this new EOP rate in the affected class shall be placed on the new EOP rate. Non-Probationary employees in the class who are on steps at or above the new EOP rate shall receive a one-step increase. Step dates will be adjusted according to salary plan rules.

(2) Employees at or above the maximum will have their hourly rates increased by an amount equivalent to the same percentage as from Step 14 to 15 of the relevant pay grade for the class(es), subject to the approval of the Secretary of Administration as required by Title 3, V.S.A. 310 (h).

(3) Any raising of the hiring rate for a class under this provision shall not be deemed inconsistent with the provisions of paragraph 15.

15. Other Adjustments

(a) This section shall be considered to be in compliance with Title 3, Section 310, (h).

(b) Nothing in Sections 14 or 15 shall prevent the DG from subsequently lowering the hiring rate for one or more classes; provided no employee shall be reduced in salary or step as a result.

(c) If the DG wishes to grant more than a one (1) step increase for those persons at or above the new EOP, or increase the maximum of the grade for that class, the impact of such decision shall be negotiated for up to forty-five (45) calendar days with the VSEA. At the end of the forty-five (45) calendar day period, commencing with notice by the DG, subject to the provisions of e, below, the DG may implement any proposed adjustment without further negotiations or recourse to the statutory impasse procedures, by either party.

(d) If a subsequent review of the DG's recommendation for a market factor adjustment by the Commissioner of Finance and Management and/or the Secretary of Administration results in a change to the proposed adjustment, the DG shall negotiate the impact of the proposed adjustment with the VSEA for up to fifteen (15) calendar days. At the end of

the fifteen (15) calendar day period commencing with notice by the DG, the DG may implement the adjustment without further negotiations or recourse to the statutory impasse procedures.

(e) Notwithstanding the recommendations of the DG or the Commissioner of Finance and Management, the Secretary of Administration shall have the final authority to approve, deny or modify the recommendations (rates, timetables or classes affected) for adjustments, both initially and/or in any subsequent review subject only to any limitations provided in this agreement. The decision of the Secretary shall be final and not subject to negotiation or review in any forum, except to the extent that it is alleged that the Secretary has exceeded the parameters established by this agreement.

STEP FREEZE GUIDELINES

These Step Freeze Guidelines expire after June 30, 2012.

Everyone, except Original Probationary employees (regardless of what step, or how much time already on that step) would be “frozen” for a specified period of time (two years).

1. With the exception of original probationers, add two years to every employee’s step date as of the effective date.
2. Original probationers, once moved to Step 2, would have two years added to the otherwise applicable Step Date.
3. Restorations back into State service, RIF rehires after separation and Hire into Range employees, would have two years added to the otherwise applicable Step Date upon date of hire.
4. Any other personnel action that would result in a Step Date change (promotion, demotion, reclassification up or down, merit step increase, etc.) would have two years, less time already “frozen”, added to the otherwise applicable step date. [“Freeze” time calculated on a per pay period basis].

ARTICLE 39 PAY CHECKS

Employees shall continue to be paid on the second Thursday following the end of the pay period.

ARTICLE 40 HIGHER ASSIGNMENT PAY

1. An employee who, in the absence of an incumbent, is assigned by the ODG;
 - (a) To perform a majority of those duties of the higher level job which are substantially different from his or her own duties; or,
 - (b) To assume the responsibilities of a higher level supervisory or managerial job without any substantial change in duties; shall, commencing with the fifth consecutive

- workday in which the employee actually worked a full shift, be eligible for higher assignment pay, retroactive to the first day worked.
2. Effective July 1, 2007, the amount paid shall be a differential rate equal to the same rate as the "rate on promotion" in the Salary article. In no case shall it exceed the maximum or be less than the minimum of the pay grade of the higher level position.
 3. An employee's overtime category shall not change when working in this status.
 4. The position must be at least one (1) pay grade higher than the employee's own pay grade.

**ARTICLE 41
STATE HEALTH INSURANCE AND DENTAL PLANS**

ODG employees shall be covered by the provisions of the State of Vermont Health Insurance plans (to include medical, dental and vision care) afforded to employees covered by the State/VSEA Non-Management Agreement.

**ARTICLE 42
SHORT AND LONG TERM DISABILITY AND SICK LEAVE STUDY**

It is acknowledged by the parties that the State/VSEA labor management committee will establish a study committee to study a long-term disability benefit, appropriate trade-offs and related issues. It is acknowledged by the parties that the State will establish a joint study committee to assess whether changes to the classification system should be recommended to the Secretary of Administration for his or her consideration. It is also acknowledged by the parties that the State/VSEA labor management committee will establish a joint study committee for the purpose of reviewing all issues related to health care and prescription drugs, and recommending changes to the bargaining committees.

**ARTICLE 43
LIFE INSURANCE**

ODG employees shall be covered by the State of Vermont Life Insurance plan afforded to employees covered by the State/VSEA Non-Management Agreement.

ARTICLE 44
EXPENSES REIMBURSEMENT

1. All ODG employees, when away from home and office on official duties, shall be reimbursed for actual expenses incurred for travel accommodations, postage, parking, tolls, telephones, telegraph, express, other incidentals, and reasonable subsistence as detailed below.

2. The maximum allowable reimbursement for subsistence is as follows:

IN-STATE:		OUT-OF-STATE	
Breakfast	\$ 5.00	Breakfast	\$ 6.25
Lunch	6.00	Lunch	7.25
Dinner	12.85	Dinner	18.50

In state mid-tour meals are not reimbursable expenses, except for lunches after an overnight stay when away from home and official duty station.

3. Employees shall be expected to make a reasonable effort to procure lodging and meals with as little expense as possible while not unreasonably sacrificing personal convenience and comfort. The maximum allowable reimbursement for lodging shall be the government rate offered by the facility providing overnight accommodations to employees.

4. Reimbursement for other work-related expenses not covered above arising from emergency or other unusual circumstances will be made at the discretion of the DG only after application for reimbursement is made by the employee in writing. Such application will include the nature and amount of the expense, the date on which it occurred and full written justification for the reimbursement.

5. General Principles of Reimbursement:

(a) Employees shall not be paid for travel between home and duty station, or subsistence thereat.

(b) Meals taken during travel not requiring an overnight away from home shall not be reimbursed, unless the supervisor has approved that in attending a required meeting or otherwise in performing his/her work assignment the employee could not have reasonably avoided taking his/her meal away from his/her home or regular duty station. Normally, an employee will not receive more than one meal during any eight hour period unless (s)he is required to work overtime at least four hours, away from home or regular duty station.

(c) Employees should make every effort to submit their claims for expense reimbursement within sixty (60) days of the date on which the expenses were incurred.

6. The DG may revoke midday meal reimbursement privileges where there is continuing indication of abuse.

7. The DG may require the submission of receipts for any of the above expenses.

ARTICLE 45
MILEAGE REIMBURSEMENT

1. For authorized automobile mileage actually and necessarily traveled in the performance of official duties, an ODG employee shall be reimbursed at the rate established by the GSA, unless the employee is traveling in an ODG-owned or leased vehicle.

**ARTICLE 46
CREDIT FOR TEMPORARY SERVICE**

A non-probationary status employee who worked as a temporary employee during the two-year period immediately prior to his or her most recent date of hire as an ODG employee, upon written request following completion of original probation, together with verification satisfactory to the DG, for the purpose of subsequent leave accrual shall be credited for actual, temporary service not exceeding two years, provided that the employee has at least 1000 hours of temporary service in the first year immediately preceding such date of hire. If (s)he meets this threshold (s)he will be eligible for temporary service credit in the second year immediately preceding such date of hire if (s)he has worked at least 1000 hours of temporary service in such second year.

**ARTICLE 47
REEMPLOYMENT**

An employee who:

1. after termination or transfer of employment as a permanent status employee (i.e., having successfully completed an original probationary period) or exempt employee with a satisfactory rating; and,
2. who has not been dismissed for cause; and,
3. is reemployed by the ODG within two years after such termination; and,
4. upon successful completion of any required original probationary period; shall have the length of continuous previous and/or exempt service re-credited for the purpose of subsequent leave accrual and RIF rights. An employee with multiple service breaks shall be eligible after each such service break for re-credited length of all prior classified or exempt service, so long as such service break(s) was less than two years and otherwise complies with the provisions of this Article.

Upon written request, together with any required documentation prior classified and/or exempt service credit shall be effective as of the date the request is received by the ODG, but in no event earlier than the date of successful completion of any original probationary period.

**ARTICLE 48
REDUCTION IN FORCE**

1. PURPOSE

The purpose of this Article is to provide a system to ensure equitable and consistent treatment of ODG employees when a reduction in force occurs.

2. COVERED EMPLOYEES

Employees with rights under this Article include permanent status employees and exclude provisional employees, employees in their original probationary periods and other employees who do not have permanent status.

In the computation of seniority, permanent status employees shall receive credit for time spent in limited service position(s).

3. METHOD OF SELECTION FOR RIF

The right to determine that a reduction in force is necessary and the time when it shall occur is the employer's prerogative, pursuant to the provisions of Management Rights Article. Nothing in this Agreement shall be construed to imply otherwise.

Once management has determined the class from which a position is to be eliminated, the selection for layoff shall normally follow the order of separation listed below in this Article unless the operating needs of the ODG, as determined by management, result in a different position being selected.

4. NOTICE TO VSEA AND TO EMPLOYEES

(a) to VSEA

At least thirty-five (35) days before the effective date of any reduction in force and five days before any employee is officially notified of a layoff, the VSEA will be given a list of affected classes and of employees selected for layoff, and given the opportunity to discuss alternatives.

(b) to Employees

Employees selected for layoff will be so notified in writing by the ODG at least thirty (30) calendar days prior to the effective date. If mutually agreed to, an employee may be given two weeks pay in lieu of notice.

The DG may elect to notify all potentially affected employees within the group subject to displacement by affected employees, coincidental to notice to the initially selected employee(s).

The official notice of layoff will advise the employee:

- (1) to file an updated application with the ODG;
- (2) to define reemployment parameters;
- (3) if desired, to schedule a personal interview as soon as practical to discuss alternative employment opportunities;
- (4) inform the employee of the effective day of the layoff and that mandatory reemployment rights begin thirty (30) days before that effective date and continue for two years thereafter, unless terminated under this section; and,
- (5) inform the employee of displacement rights, if applicable.

5. DETERMINING SEPARATION

(a) ORDER OF SEPARATION

The order of separation of employees with permanent status shall be in the following manner.

- (1) Employees with less than three years of continuous ODG service and whose current, annual performance evaluation is less than Satisfactory shall be separated first.
- (2) Then, employees who have not received their first annual performance evaluation will be separated. These employees will be separated on the basis of their original probationary period evaluations and separated in order of their performance ratings, those rated above "Satisfactory" being separated last.
- (3) Thereafter, employees shall be separated in order of seniority; employees with the least seniority being laid off first.
- (4) If employees are of equal seniority, the employee with the lesser performance ratings will be laid off first.

(b) SPECIAL CIRCUMSTANCES

If any employee with permanent status identified for layoff is eligible for Veteran's preference under 20 VSA, Section 1543, and has identical length of service and ratings with a non-veteran employee with permanent status who is identified for layoff, the latter shall be laid off before the former.

(c) DISPLACEMENT (BUMPING)

(1) Displacement rights will be extended to full time ODG employees with permanent status in accordance with the provisions of this subsection.

(2) Displacement rights shall be offered subject to the following conditions:

(i) Employees may exercise displacement rights only over bargaining unit employees within the ODG;

(ii) An employee eligible to exercise displacement, may displace a less senior employee who is the most junior employee in a position in a lower grade within the ODG provided that the displacing employee meets the minimum qualifications for the lower grade position

(iii) In order to be eligible to exercise displacement rights, an employee must have had satisfactory performance ratings for the previous five (5) year period.

(3) For compensation purposes, employees who exercise displacement rights shall be treated as voluntary demotions.

(4) A confidential employee with permanent status who is identified for layoff shall be allowed to exercise displacement rights provided it is to a position in which the employee previously worked.

(5) An employee notified of layoff shall have no more than five calendar days to exercise displacement rights under this Article. In the absence of such timely exercise, this five-day notice period will continue to count against the thirty (30) day notice of layoff, so that the effective date of layoff shall remain unchanged. However, the thirty (30) day period to establish recall parameters under the Reemployment Article shall not begin until the expiration of this five day period, or notice by the employee to elect reemployment rights, if sooner.

(6) If two or more persons holding the same position are selected for layoff, the most senior employee shall first have displacement rights.

(d) Permanent part-time employees shall not be included with permanent full-time employees for the purpose of layoff selection. They will be treated as a separate group for purposes of this section.

(e) Nothing shall prevent or require the DG from seeking from among permanent status employees volunteers in lieu of those designated for layoff, who may wish to accept reemployment rights under this Article. Selection among volunteers, approved by the DG, shall be by seniority and those employees shall not have displacement rights.

6. The parties recognize that the Americans with Disabilities Act and the Vermont Fair Employment Practices Act require the State to provide reasonable accommodation to qualified disabled employees. (See Section 29, CFR 1630.2(o), EEOC ADA Regulations.)

The parties acknowledge that as part of an ADA accommodation, the qualified disabled employee may be granted priority reemployment rights, notwithstanding the reemployment rights of other employees.

ARTICLE 49
REEMPLOYMENT RIGHTS (RECALL RIGHTS)

1. MANDATORY REEMPLOYMENT RIGHTS

An employee with permanent status who has received an official notice of layoff, and who is about to be laid off under the Reduction in Force Article, shall have the following mandatory reemployment rights:

(a) Beginning thirty (30) days immediately prior to the effective date of the layoff and continuing for two (2) years beyond such effective date, such employee will have mandatory reemployment rights to any vacant ODG bargaining unit position when management intends to fill it, provided:

(1) Such position is at the same or lower pay grade as the position from which the employee was laid off, or up to the highest position in ODG service from which such employee was laid off or from which such employee exercised displacement rights within the two-year period prior to the next scheduled effective date of layoff; and

(2) The employee meets the minimum qualifications for the position; and

(b) Notwithstanding subsection 1, above, management shall have the right to first fill vacant bargaining unit positions by promotion, demotion, or lateral transfer of employees from within the ODG, so long as such actions produce a different vacant bargaining unit position which management intends to fill.

(c) An employee who exercises mandatory reemployment rights to a higher pay grade under this subsection shall not be considered to have been promoted thereto for pay purposes.

2. WORKING TEST PERIOD

An employee who accepts an offer of reemployment under this Section shall be placed in a ninety (90) day probationary period, without recourse to the grievance procedure. Such period may be successfully completed after sixty (60) days, and may also be extended for an additional 90 day period, at the discretion of the DG.

3. SEPARATION DURING THE WORKING TEST PERIOD

An employee who is separated during the probationary period referred to in subsection 2 above shall have reemployment rights reinstated to include the number of mandatory offers and amount of time left immediately before accepting the "probationary" position, plus any extension thereof, and shall not have recourse to the grievance and arbitration process as a result of such separation.

4. TERMINATION OF MANDATORY REEMPLOYMENT RIGHTS

Mandatory reemployment rights terminate when:

(a) The employee declines three "mandatory offers" of reemployment; or
(Failure to accept an offer of reemployment within five work days from the date (s)he actually receives written notice of the reemployment opportunity constitutes a decline of the offer).

(b) The employee:

(1) Advises the DG that he or she is unavailable for work; or

(2) Fails to notify the DG of a current address; or

(3) Does not continue to be available for work; or

(c) The employee fails to file an updated application with the ODG; or

(d) The employee accepts an offer of reemployment with the ODG. The employee must

report for duty within two calendar weeks of the acceptance unless the DG waives this two week requirement.

5. RESTORATION RIGHTS

An employee who has complied with Section 1,a,3 of this Article but whose mandatory reemployment rights have expired at the end of the two (2) year period following the effective date of layoff shall be eligible for restoration rights. Employees whose mandatory reemployment rights terminate under Section 4 shall not be eligible for restoration rights. Restoration shall mean the hiring within two years of a former permanent status or limited status employee who was laid off and whose performance at the time of separation was at least satisfactory. Restoration rights apply only to the same position previously held by the employee or a lower grade position for which the employee meets the minimum education and experience requirements.

6. ORDER OF REEMPLOYMENT OFFERS

The order in which mandatory reemployment offers will be made under Section 1 above shall be as follows:

(a) The name of all people in the ODG who are in a reduction in force status (1) whose latest performance evaluation was Satisfactory, or better; or, (2) who have 3 or more years of continuous ODG service, shall be placed on a single list in the order of their date of hire (adjusted according to the respective Articles governing credit for prior ODG service and leave of absence). The most senior qualified person on this list shall be the first to be offered reemployment into a vacant position. If declined, the position will be offered to the next such person on the list until the list is exhausted.

7. Managerial and Confidential employees who are laid off and who previously worked in bargaining unit position(s), may, at the discretion of the DG, exercise mandatory reemployment rights to vacant bargaining unit positions in the same manner and on the same basis as laid off bargaining unit employees. Placement on the recall list is based on total continuous ODG service for confidential employees and bargaining unit time for managerial employees.

8. A permanent status employee who, after notice of layoff, accepts a position as a temporary employee or a position outside State government retains his or her reduction in force rights under this Article but does not acquire any new reduction in force rights upon the expiration or termination of such employment.

9. An employee who is reemployed, under this Article into a limited service position and who by reason of a combination of time spent in a permanent status position or a limited service position, or any combination thereof, has not acquired permanent status shall retain reemployment rights until acquisition of permanent status, at which time reemployment rights shall terminate.

10. A former permanent status employee, reemployed in accordance with this Article shall be paid the rate of pay being received at the time of the layoff, plus any general wage increases which would have been received, had the layoff not occurred, because of an adjustment to the pay grade or compensation plan, provided, however, this salary shall not exceed the maximum of the pay grade for the class to which the employee is reemployed, and shall not include any step increments. Employees reemployed to a position in a lower pay grade shall be treated in the same manner as a reallocation downward for pay adjustment purposes, subject to the maximum of the new grade.

A former permanent status employee who is reemployed shall be treated as a restoration for purposes of pay.

An employee who accepts the displacement offer to a lower pay grade position under Section 8 of this Article shall be paid as if voluntarily demoted to such position.

11. An employee who is actually separated because of a reduction in force shall elect to:
 - (a) Be paid for all earned annual leave in a lump sum up to a maximum of 20 days(160 hours)with final payment for services; or,
 - (b) Keep up to one-half of annual leave credits up to a maximum of 10 days (80 hours) for up to four months from the effective date of separation.
 - (c) If the employee retains annual leave credits and is reemployed by the ODG within 4 months, that retained annual leave will be reinstated.
 - (d) If the employee retains annual leave credits and is not reemployed by the ODG within the four months, or requests payment before an offer of mandatory employment is accepted, that annual leave will be paid in a lump sum at the hourly rate in effect when the employee was laid off.
 - (e) Notwithstanding the above, in no instance shall more than 160 hours of annual leave credit, in the aggregate, be paid off in cash. Any unpaid annual leave balance shall be re-credited only upon an employee's return to a permanent or limited service position while she/he has mandatory rehire rights. Employees separated in accordance with the provisions of the ninety day working test period, or who resigns during that period, shall not receive additional payout resulting from the subsequent separation, once 160 hours in the aggregate are paid out.
12. An employee who is laid off shall lose all accrued sick leave credits except:
 - (a) An employee who is rehired under this Article shall have the sick leave credits accumulated up to the time of layoff, restored.
 - (b) An employee on sick leave at the time (s)he is laid off, who is totally and permanently unable to work due to a non-job related disability and is ineligible for disability retirement shall:
 - (1) Be entitled to retain one-half of accumulated sick leave credits up to a maximum of 960 hours.
 - (2) Be kept on the payroll at the same rate of pay as if (s)he had not been laid off, until his/her retained accumulated leave credits have been used.
 - (3) The effective date of the reduction in force is not altered by payment of this leave time.
 - (4) The ODG at its option may request a physician or physicians to confirm the nature and extent of the illness, at the ODG's expense.
 - (c) An employee who is totally and permanently unable to work as a result of a job-related injury or illness and is ineligible for disability retirement shall:
 - (1) Be entitled to retain all accumulated sick leave credits.
 - (2) Be kept on the payroll at the same rate of pay as if he or she had not been laid off, until his or her retained accumulated leave credits have been used.
 - (3) The effective date of the reduction in force is not altered by payment of this leave time.
 - (4) The ODG at its option may request a physician to confirm the nature and extent of the illness at the ODG's expense.
 - (d) Notwithstanding 2 and 3 above, if an employee is laid off because the ODG lacks

funds, the employee will not be entitled to sick leave credits. In this event, the ODG shall petition the proper authority for the necessary money to provide the laid off employee with sick leave pay in accordance with subsection 2 and 3 of this Section.

13. A former permanent status employee who is actually laid off and then reemployed, in accordance with this Article, shall be considered to have continuous ODG service, but shall not accrue seniority for the period of separation from ODG service.

14. An employee reemployed in accordance with his/her mandatory reemployment rights under this Article who later agrees with the DG that (s)he is unable to perform the duties of his/her new position may resign and retain his/her rights provided in this Article. The employee will be entitled to only those rights resulting from the original layoff, including time limits and mandatory offers.

15. The DG is not required to pay any moving expenses incurred by any employee who accepts a promotion, transfer, or demotion as a result of a reduction in force.

16. HEALTH INSURANCE COVERAGE

(a) An employee who is laid off or separated from employment under circumstances which entitle such employee to reemployment rights under this Article, other than pursuant to Section 23, may elect to continue membership in their health benefit plan, upon advance payment of the regular percentage contribution to the cost of the plan, during the first six (6) full pay periods next following the effective date of separation, so long as such employee retains reemployment rights. An employee whose reemployment rights are reinstated following separation during a working test period and who did not receive health benefit coverage for six (6) full pay periods of layoff status prior to placement in such working test period may elect to continue membership in his or her health benefit plan upon advance payment of the regular percentage contribution to the cost of the plan for the number of pay periods which, when added to the number of pay periods in which such person received health benefit coverage prior to such placement, equals six (6) full pay periods of health benefit coverage during layoff status with reemployment rights.

(b) An employee who accepts the offer to displace and become a temporary employee shall retain reemployment rights and shall be eligible for benefits under paragraph 1, above. Such reemployment rights shall terminate when such employee declines thereafter a single mandatory offer of reemployment.

ARTICLE 50 WHISTLE BLOWER

1. A "WHISTLE BLOWER" is defined as a person covered by this Agreement who makes public allegations of inefficiency or impropriety in government. No provision of this Agreement shall be deemed to interfere with such an employee in the exercise of his or her constitutional rights of free speech, and such person shall not be discriminated against in his/her employment with regard thereto.

2. The protections provided by this Article do not apply to an employee whose statements are made with malicious disregard of the truth.

3. Employees who possess information about inefficiency or impropriety in the ODG are urged to bring that information to the attention of appropriate officials prior to making public allegations.

ARTICLE 51 WORKPLACE ANTAGONISM

The ODG of the State of Vermont endeavors to provide the highest quality public service to its citizens. The ODG and Union agree that this can best be achieved by a work environment in which all employees are treated with respect and dignity by each other. Employees are expected to act in a manner which does not unreasonably interfere with another employee's ability to perform their work.

If an employee believes that he or she can not perform his/her work because of unreasonable interference caused by another employee's antagonistic, belligerent, and/or malicious acts, the impacted employee is encouraged to communicate directly, either verbally or in writing, with the other employee in an effort to resolve the situation. If the impacted employee is unwilling to communicate directly with the other employee, or if such efforts have failed to resolve the situation, the impacted employee may attempt to resolve the situation in the following manner:

(a) The impacted employee can request the assistance of a supervisor, a personnel officer, a manager, a VSEA representative, or a VSEA steward to facilitate informal resolution of the situation;

(b) Either employee can request the assistance of Employee Assistance Program (EAP) personnel to facilitate an informal resolution of the situation.

The parties agree that no aspect of the situation; the informal resolution process, including but not limited to the assistance of supervisors, personnel officers, managers, VSEA representative, stewards, and/or Employee Assistance Program (EAP) representatives; and/or any of their outcomes, shall be grievable.

This article is not applicable to and does not limit those rights set forth elsewhere in this Contract pertaining to employees who believe they are being harassed on the basis of a legally protected characteristic identified in this Contract, or in State or Federal law, including, but not necessarily limited to, race, religion, color, sex, national origin, disability, sexual orientation, or age.

ARTICLE 52 CONTRACT PRINTING

The ODG and VSEA shall share equally the cost of contract reproduction regardless of the number of copies each party requires. Either party may require that some or all of the contracts be printed in a larger size and/or with larger type.

ARTICLE 53
INSUFFICIENT APPROPRIATION

1. If any General Assembly appropriates insufficient funds to implement this or any successor Agreement, renegotiations will be held in May or June of the year in which insufficient funds are appropriated on the items in this or any successor Agreement affected by that appropriation, in order to reach agreement on such items, based on the amount of funds actually appropriated by the General Assembly.
2. If, despite the best efforts of both parties, negotiations on a new Agreement are not completed by the July 1 following expiration of its predecessor Agreement, the terms of that Agreement will remain in force until the new Agreement is ratified.
3. The new Agreement, with negotiated changes, becomes effective July 1 following the expiration date of its predecessor.

ARTICLE 54
PRECEDENCE OF AGREEMENT

This Agreement represents the final resolution of all matters between the parties. It is further agreed that this agreement supercedes and cancels all prior agreements and practices, whether written or oral, unless expressly stated to the contrary in the terms of this Agreement, which predate the signing of the parties' initial Collective Bargaining Agreement, dated September 13, 2001.

The Agreement shall not be changed or altered unless the change or alteration is mutually agreed to in writing by the parties. Notwithstanding this article, unit members retain the ability to request alterations in their terms and conditions of employment which would not be in conflict with the specific terms of this contract. The DG shall exercise discretion in responding to any such requests. However, the DG's exercise of discretion may not be discriminatory. Any claims of discriminatory use of discretion may be subject to the grievance procedure as referenced in Article 14.

ARTICLE 55
SEPARABILITY

If any provisions of this contract, or the application of any provision thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this contract, or the application of that provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

ARTICLE 56
AGENCY FEE

1. Pursuant to 3 VSA Sections 902(19) and 962(10), the VSEA can implement an agency fee, for non-members, subject to the following conditions:
 - (a) An agency fee shall apply to all employees;
 - (b) The VSEA shall give the ODG sixty (60) days prior notice of the effective date of the agency fee implementation, but in no event shall it be effective earlier than the first full payroll period in September 2001;
 - (c) The amount of the agency fee shall not exceed 85% of the amount payable as dues by VSEA members;
 - (d) Prior to the implementation of an agency fee, the VSEA must establish and maintain a procedure to provide non-members with the following:
 - (1) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and non-chargeable expenses;
 - (2) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute will be placed in escrow; and
 - (3) prompt arbitration by the VLRB to resolve any objection over the amount of the agency fee.
2. The Agency Fee shall be deducted from the pay of non-members in the same manner as regular VSEA dues.
3. The VSEA agrees to indemnify and hold the ODG harmless from any and all claims stemming from the implementation or administration of an agency fee.


TERMINATION OF AGREEMENT

1. This Agreement will be effective July 1, 2010, and shall remain in effect until June 30, 2012.
2. This Agreement shall be renewed automatically for a 12-month period following its expiration unless either party notifies the other, in writing, during the month of July 2011 that it wishes to modify the Agreement.

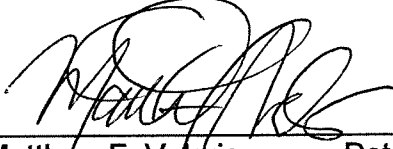
In the event such written notice is given by either party, the proposals which either party wishes to negotiate may be submitted to the other party, in contract language, no later than September 15, unless the ODG and the VSEA agree to establish a different bargaining schedule. Negotiations will begin no later than September 15, 2011, unless the ODG and the VSEA agree to establish a different bargaining schedule. The parties agree to meet prior to the onset of negotiations to address issues relating to information needs required for contract negotiations.

FOR THE VERMONT STATE
EMPLOYEES' ASSOCIATION, INC.


FOR THE OFFICE OF THE
DEFENDER GENERAL OF THE
STATE OF VERMONT




Robert Hooper 6/10/10
VSEA President Date



Matthew F. Valerio 6/10/10
Defender General Date



Marty Raymond 6-10-10
VSEA/ODG Unit Chief Negotiator Date



J. Christopher Frappier 6-10-10
Chairperson ODG Unit Date

Defender General Unit Team:
J. Christopher Frappier, Chairperson
Bonnie Kynoch, Vice Chairperson
Christopher Robinson, Bargaining Team Member

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