

**VERMONT STATE EMPLOYEES' ASSOCIATION, INC.**  
**GRIEVANCE**  
**STEP II**

To: Nicholas Deml, Commissioner  
Vermont Department of Corrections  
280 State Drive  
NOB 2 North  
Waterbury, VT 05671-2010

From: Vermont State Employees' Association, Inc.  
155 State Street,  
Montpelier, VT 05601

**NOTICE** is hereby given that the Vermont State Employees' Association ("VSEA"), on behalf of itself, and all impacted bargaining unit employees of the Vermont Department of Corrections (DOC), hereinafter referred to as "Grievants" does grieve the following violations: 1) the failure or refusal of the DOC to meet and negotiate over mandatory subjects of bargaining when requested by VSEA, 2) the repeated failure or refusal of the DOC to respond to communications from VSEA, and 3) creating a climate of coercion that interferes with the free exercise of employee rights and the rights of the exclusive bargaining representative.

**STATEMENT OF FACTS:**

1. At all times relevant to this grievance, VSEA was the exclusive bargaining representative for all impacted DOC employees in the Corrections Unit and Supervisory Unit.
2. The State of Vermont ("State"), Department of Corrections and the Vermont State Employees' Association reached a Side Letter Agreement dated July 19, 2022, specifying certain temporary schedule changes, recruitment and retention bonus and other monetary enhancements for DOC employees in the Corrections Bargaining Unit and Supervisory Bargaining Unit. Signing this Agreement on behalf of the State were DOC Commissioner Nicholas Deml and John Berard, Director of Labor Relations, Department of Human Resources (DHR).
3. The above referenced Side Letter Agreement includes in part that,  
  
"11. DOC may implement temporary, not established, schedules consisting of five, twelve hour ("5/12") shifts at all correctional facilities, excluding Chittenden Regional Correctional Facility ("CRCF"). The following provisions apply to employees working these schedules.
  - a. The use of scheduled 12-hour shifts shall cease on or before March 25, 2023, as determined by DOC operational needs.
  - b. Overtime shall continue to be paid after eight (8) hours of work in a day or eighty (80) hours in a payroll period in accordance with the applicable provisions of the CBA.
  - c. Notwithstanding any contrary provisions in the CBA, Employees working the "first" or "Day" shift shall be eligible for 2nd shift differential; employees working the "second" or "Night" shift shall be eligible for 3rd shift differential.
  - d. Base Holiday Pay shall increase from eight (8) hours to twelve (12) hours.

- e. Leave may be used in increments of up to twelve (12) hours.
- f. The threshold for sick leave usage to earn Personal Leave shall increase from eight (8) hours per quarter to twelve (12) hours per quarter.
- g. Employees are eligible to earn twelve (12) hours of Personal Leave with a cash payout option of sixteen (16) hours.
- h. Facility Staff shall determine the start and finishing time of schedules on a facility-by-facility basis, consistent with operational needs.
- i. A shift bid shall be conducted prior to implementing the twelve (12) hour schedules.
- j. DOC shall conduct employee surveys at least quarterly regarding the twelve (12) hour schedules.
- k. The State and VSEA shall meet to review and evaluate the use of the twelve (12) hour schedules in September 2022 and December 2022 or similar intervals based upon implementation of the twelve (12) hour shifts.”

4. The above referenced Side Letter Agreement also includes in part that,

“12. When DOC Leadership determines that it has reached minimal staffing levels at a facility to allow for the implementation a temporary two-two-three twelve hour (“50/50”) shifts at a Correctional Facility (including CRCF) they shall:

a. Conduct a survey of impacted employees at the said Facility to determine if the employees wish to transition to a 50/50 schedule. The decision to transition to the 50/50 schedule will based upon the results of the survey.

b. If a Facility declines to transition to the 50/50 schedule in accordance with subsection a, above, they shall transition to the 50/50 schedule upon reaching the applicable following staffing levels.

- CRCF - 48
- NECC - 66
- NSCF - 85
- NWSCF - 84
- MVRCF - 46
- SSCF - 84

c. Sections 11a - j of this Agreement are applicable to employees working the 50/50 schedules.

13. The terms of this Agreement shall automatically terminate at the close of business on the date specified herein unless amended and/or extended by written mutual agreement of the Parties. “

5. On January 6, 2023, Gary Hoadley, VSEA Director of Labor Relations, sent a letter by email on behalf of VSEA to DOC Commissioner Deml and Mr. Berard stating in part that,

“This letter shall also serve as written notice that the VSEA demands to meet with the Department of Corrections and the Department of Human Resources, no later than January 27, 2023, to begin review and discussion on the temporary 12-hour shifts and monetary enhancements that are scheduled to cease on or before March 25, 2023.

Please provide dates and times when the DOC and DHR would be available to meet with the VSEA bargaining teams on these matters.

If the State believes it is not obligated to provide the information sought by VSEA or is not interested in meeting with VSEA to negotiate over the temporary 12-hour shifts or both, please provide the basis for the State's position on these issues so that VSEA can seek to protect the rights and interests of its members."

6. Over three weeks after the January 6<sup>th</sup> letter, VSEA did not receive any response to this matter from the Department of Corrections or the Department of Human Resources, whatsoever.

7. According to Article 1, "VSEA RECOGNITION", of the Corrections Unit and Supervisory Unit collective bargaining agreements, the State of Vermont has committed to recognize the Vermont State Employees' Association as the exclusive representative of Vermont State employees in the those units.

8. Article 6, Exchange of Information, of the respective Corrections Unit and Supervisory Unit collective bargaining agreements states in pertinent part,

"4. (a) The State 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; 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 State asserts in good faith is a privileged matter of labor relations policy as, for example, a strike contingency plan."

9. The Vermont State Employees' Labor Relations Act, section 904 "Subjects for bargaining" states in pertinent part, "(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters that are prescribed or controlled by statute."

10. The Vermont State Employees' Labor Relations Act, section 903 "Employees' rights and duties; prohibited acts" states in pertinent part, "(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of application of those agreements or growing out of any dispute between the employer and the employee thereof."

**Grievants, including their exclusive bargaining representative, contend the following:**

a) The Department of Corrections sought an agreement with VSEA to implement 12-hour shifts and schedules to assist with the staffing crisis at correctional facilities. In good faith, the VSEA Corrections Unit and Supervisory Unit bargaining teams agreed to the terms and conditions of the July 19, 2022 Side Letter Agreement.

b) The DOC quickly implemented temporary 12-hour shifts in correctional facilities statewide with some facilities working 5-2 schedules and others on 2-2-3 schedules.

c) According to the terms of the Side Letter Agreement, the use of scheduled 12-hour shifts shall cease on or before March 25, 2023.

d) According to the terms of the Side Letter Agreement, “The State and VSEA shall meet to review and evaluate the use of the twelve (12) hour schedules in September 2022 and December 2022 or similar intervals based upon implementation of the twelve (12) hour shifts.” DOC did not meet with VSEA in December or provide any information necessary to evaluate the use of 12-hour shifts and schedules.

e) More than six months after the implementation of the side letter and just days before facility shift bidding is set to begin for the next assignment period, bargaining unit employees have a right to know what shifts and schedules will be in place for the next six months; and that requires the DOC and DHR meet with VSEA now, as the union requested.

f) Commissioner Deml, the Department of Corrections and the Department of Human Resources have demonstrated continuing flagrant disregard for the Side Letter Agreement, the collective bargaining agreements, the State Employees Labor Relations Act, bargaining unit employees and their union.

g) The repeated failure or refusal of Commissioner Deml, the Department of Corrections and the Department of Human Resources to communicate with VSEA appears that the State believes it is not obligated to respond and meet with VSEA over a request to discuss a mandatory bargaining subject or disclose the basis of the State’s position to ignore VSEA.

h) The repeated failure or refusal of Commissioner Deml, the Department of Corrections and the Department of Human Resources to engage with VSEA is inherently destructive to positive labor relations and creates a climate of coercion that interferes with the free exercise of employee rights and the rights of the exclusive bargaining representative.

i) Commissioner Deml, the Department of Corrections and the Department of Human Resources have failed to exert every reasonable effort to maintain the collective bargaining agreements and the above referenced Side Letter Agreement.

#### **APPLICABLE CONTRACT SECTIONS, AGREEMENTS, RULES, POLICIES, AND LAW:**

Articles 1 and 6 of the Corrections Unit Collective Bargaining Agreement.

Articles 1 and 6 of the Supervisory Unit Collective Bargaining Agreement.

State Employees' Labor Relations Act (“SELRA”).

DOC Temporary Shifts Side Letter Agreement dated July 19, 2022.

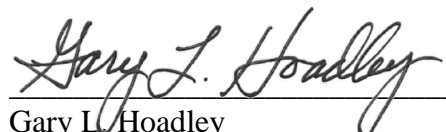
Any other relevant contract articles, provisions of Personnel Rules and Regulation, Vermont Statutes and other applicable law.

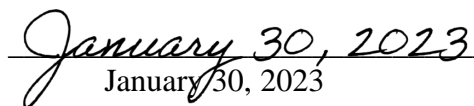
## REMEDIAL ACTION SOUGHT:

VSEA, on behalf of itself and all impacted bargaining unit employees of the Vermont Department of Corrections, requests that the following remedial action be granted:

1. That the Department of Corrections immediately respond, in writing, with dates and times when the DOC and DHR would be available to meet with the VSEA bargaining teams, within five workdays of the Step II decision, on these matters of temporary 12-hour shifts and monetary enhancements that are scheduled to cease on or before March 25, 2023.
2. That Commissioner Deml and the Department of Corrections comply with requests for reasonable information necessary to serve the needs of the VSEA as the collective bargaining representative.
3. That Commission Deml and the Department of Corrections cease and desist ignoring VSEA communication, inquiries, and requests that require a response.
4. That Commission Deml and the Department of Corrections cease and desist from actions that create a climate of coercion that interferes with the free exercise of employee rights and the rights of the exclusive bargaining representative.
5. That Commissioner Deml and the Department of Corrections cease and desist from actions that are inherently destructive to positive labor relations.
6. That Grievants be made whole for any and all losses incurred as a result of the aforementioned violations.
7. That the DOC immediately acknowledge its recognition of the VSEA as the exclusive representative of Vermont State employees in the Corrections and Supervisory Units.
8. That notice of remedial action granted be provided to all Grievants and to VSEA in writing within the timeframes outlined in the contract.

VSEA does not request a Step II meeting and agrees to waive the informal discussion at Step II. Grievants and the VSEA request that, if the Department of Corrections declines to grant the remedial action sought, the DOC issue a decision in writing within five (5) workdays after receipt of this Step II grievance. The decision, in writing, should be received by VSEA no later than the close of business on February 7, 2023. If the decision is not received in a timely manner, VSEA shall advance the grievance to Step III.

  
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Gary L. Hoadley  
VSEA Director of Labor Relations

  
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January 30, 2023

cc: Jenny Samuelson, Secretary AHS  
VSEA President and Executive Director  
VSEA Field and Legal Staff  
VSEA Corrections Unit Chair and Bargaining Team  
VSEA Supervisory Unit Chair and Bargaining Team  
Grievants – All DOC employees in the Corrections Unit and Supervisory Unit