

# 1991 – 1995

**THE STATE  
OF  
NEW YORK**



**THE PUBLIC  
EMPLOYEES  
FEDERATION  
AFL-CIO**



**Professional, Scientific  
and Technical Services Unit  
Agreement**

**MEMORANDUM OF AGREEMENT**

between

**THE EXECUTIVE BRANCH OF  
THE STATE OF NEW YORK**

and

**THE PUBLIC EMPLOYEES  
FEDERATION, AFL-CIO**

for the

**PROFESSIONAL, SCIENTIFIC  
AND TECHNICAL SERVICES UNIT**

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## ***Dedication***

***The professional dedication and personal warmth of the late Rita V. Pete, Associate Director of Research for the Governor's Office of Employee Relations, served as an example throughout negotiations to all of us at the bargaining table. She is missed, and will be fondly remembered by her colleagues and friends.***

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# **PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES UNIT AGREEMENT**

Agreement made by and between the Executive Branch of the State of New York ("State") and the Public Employees Federation, AFL-CIO ("PEF").

## **Bill of Rights**

To insure that individual rights of employees in the PS&T Unit are maintained, the following shall represent the employees' Bill of Rights.

1. In all disciplinary hearing proceedings under Article 33, the burden of proof that discipline is for just cause shall rest with the employer.

2. An employee shall be entitled to a union representative or an attorney at each step of a disciplinary proceeding instituted pursuant to Article 33 of this Agreement.

3. An employee shall be entitled to a union representative or an attorney at an interrogation if it is determined by the questioner or reviewer at that time that such employee is a likely subject for disciplinary action, pursuant to Article 33 of the Agreement.

4. No recording device shall be used nor shall any stenographic record be taken during an interrogation unless the employee is so advised in advance.

5. Except as provided in section 7 below, no statement(s) or admission(s) made by an employee during an interrogation held without that employee having the opportunity of a union representative or an attorney, will be subsequently used in a disciplinary proceeding against such employee.

6. No employee against whom disciplinary action has been initiated shall be requested to sign any statement or admission of guilt, to be used in a disciplinary proceeding under Article 33 without the opportunity to have a union representative or an attorney.

7. An employee shall be entitled to a union representative at each step of the grievance procedure pursuant to Article 34 of this Agreement.

8. An employee shall not be coerced or suffer any reprisal either directly or indirectly that may adversely affect that individual's hours, wages or working conditions as the result of the exercise of the rights provided by Article 33 of this Agreement.

9. Disagreements arising as to the interpretation or application of this Bill of Rights shall not be specifically addressed under this Bill of Rights but must be grieved under the appropriate Article contained in the Agreement.

10. This Bill of Rights is not intended to be a complete list of all of the rights contained in the Agreement, nor is it intended to limit, restrict, or modify in any way those provisions of the Agreement which contain the rights of employees.

**ARTICLE 1**

**RECOGNITION**

The State, pursuant to the certification of the Public Employment Relations Board, recognizes PEF as the exclusive representative for collective negotiations with respect to salaries, wages, hours and other terms and conditions of employment of employees serving in positions in the Professional, Scientific and Technical Services Unit and similar positions hereafter created. The terms "employee" or "employees" as used in this Agreement shall mean only employees serving in positions in such unit and shall include seasonal employees where so specified.

**ARTICLE 2**

**STATEMENT OF POLICY AND PURPOSE**

2.1 It is the policy of the State to continue harmonious and cooperative relationships with its employees and to insure the orderly and uninterrupted operations of government. This policy is effectuated by the provisions of the Public Employees' Fair Employment Act granting public employees the rights of organization and collective representation concerning the determination of the terms and conditions of their employment.

2.2 The State and PEF now desire to enter into an agreement

reached through collective negotiations which will have for its purposes, among others, the following:

(a) To recognize the legitimate interests of the employees of the State to participate through collective negotiations in the determination of the terms and conditions of their employment.

(b) To promote fair, safe and reasonable working conditions.

(c) To promote individual efficiency and service to the citizens of the State.

(d) To avoid interruption or interference with the efficient operation of the State's business.

(e) To provide a basis for the adjustment of matters of mutual interest by means of amicable discussion.

### **ARTICLE 3**

#### **UNCHALLENGED REPRESENTATION**

The State and PEF agree, pursuant to Section 208 of the Civil Service Law, that PEF shall have unchallenged representation status for the maximum period permitted by law on the date of execution of this Agreement.

### **ARTICLE 4**

#### **EMPLOYEE ORGANIZATION RIGHTS**

##### **4.1 Exclusive Negotiations with PEF**

The State will not negotiate or meet with any other employee organization with reference to terms and conditions of employment of employees. When such organizations, whether organized by the employer or employees, request meetings, they will be advised by the State to transmit their requests concerning terms and conditions of employment to PEF and arrangements will be made by PEF to fulfill its obligation as a collective negotiating agent to represent these employees and groups of employees.

##### **4.2 Payroll Deductions**

PEF shall have exclusive payroll deduction of membership dues and premiums for group insurance and mass-merchandised automobile and homeowners' and other insurance policies sponsored by PEF for employees and no other employee organization shall be accorded any

uch payroll deduction privilege. The State shall provide for payroll deduction of employees' voluntary contributions to the New York State Public Employees Federation Committee on Political Education (PEF/COPE) in accordance with the conditions established in the parties' October 17, 1986 agreement.

#### 4.3 Bulletin Boards

(a) The State shall provide a reasonable amount of exclusive bulletin board space in an accessible place in each area occupied by a substantial number of employees for the purpose of posting bulletins, notices and material issued by PEF, which shall be signed by the designated official of PEF or its appropriate division. No such material shall be posted which is profane or obscene, or defamatory of the State or its representatives, or which constitutes election campaign material for or against any person, organization or faction thereof. No other employee organization except employee organizations which have been certified or recognized as the representative for collective negotiations of other State employees employed at such locations shall have the right to post material upon State bulletin boards.

(b) The number and location of bulletin boards as well as arrangements with reference to placing material thereon and removing material therefrom shall be subject to mutual understandings at the departmental or agency level, provided, however, that any understanding reached with respect thereto shall provide for the removal of any bulletin board material objected to by the State which removal may be contested pursuant to the contract grievance procedure provided for herein.

#### 4.4 Meeting Space

(a) Where there is appropriate available meeting space in buildings owned or leased by the State, it shall be offered to PEF from time to time for specific meetings provided that (1) PEF agrees to reimburse the State for any additional expense incurred in the furnishing of such space, and (2) request for the use of such space is made in advance, pursuant to rules of the department or agency concerned.

(b) No other employee organization, except employee organizations which have been certified or recognized as the representative for collective negotiations of other State employees, shall have the right to meeting space in State facilities.

(c) Where appropriate space is available the State shall provide such space at State facilities for the conduct of PEF division elections, provided that the conduct of such elections will not interfere with normal State operations. Arrangements for such space shall be subject to mutual understandings at the departmental or agency level.

#### 4.5 Access to Employees

(a) PEF representatives shall, on an exclusive basis, have access to employees during working hours to explain PEF membership, services and programs under mutually developed arrangements with department or agency heads. Any such arrangements shall insure that such access shall not interfere with work duties or work performance. Such consultations shall be no more than 15 minutes per employee per month, and shall not exceed an average of 10 percent per month of the employee in the operating unit (e.g., institution, hospital, college, main office or appropriate facility) where access is sought.

(b) Department and agency heads may make reasonable and appropriate arrangements with PEF whereby it may advise employees of the additional availability of PEF representatives for consultations during non-working hours concerning PEF membership, services and programs.

#### 4.6 Lists of Employees

The State, at its expense, shall furnish the President of PEF, on at least a quarterly basis, information showing the name, address, unit designation, social security number and payroll agency of all new employees and any current employee whose payroll agency or address has changed during the period covered by the report.

#### 4.7 Employee Organization Leave

(a) The State shall grant a total of 415 days of Employee Organization Leave during each year of this Agreement for the use of employees for attendance at PEF Executive Board meetings or PEF Committee meetings. The use of such leave shall be granted to individual employees designated in advance by PEF, on the dates specified by PEF, contingent on the State's advance receipt of requests for such leave and designation of individual employees, and to the extent that the resulting absences of any individual employee will not unreasonably interfere with an agency's operations. Procedures for the advance request for the use of such leave and advance designation of employees, and for the recording

of the use of leave and maintaining of the remaining balance, shall be by means mutually agreed to by the Director of Employee Relations and the President of PEF.

(b) The State shall grant Employee Organization Leave for one PEF delegate meeting in each year of this agreement. Such Employee Organization Leave shall be limited to three (3) days each for up to one-thousand (1000) persons. The granting of such leave to individual employees shall be subject to the same procedures and limitations as specified in subsection (a) above.

(c) Reasonable numbers of PEF designees will be granted reasonable amounts of Employee Organization Leave to participate in meetings of joint labor/management committees, the conduct of negotiations for a successor agreement, and the representation of employees in the grievance procedure, with no charge to the Employee Organization Leave allowance provided in (a) above or to the employees' leave credits. The use of such leave will be contingent on the submission of requests in advance, and shall be granted to the extent the resulting absences will not unreasonably interfere with an agency's operations. Reasonable and actual travel time in connection with such leave shall also be granted, subject to the same limitations and subject to a maximum of five hours each way for any meeting. Leave for contract negotiations or for labor/management committees pursuant to this provision shall be granted only to employees in this unit designated in advance by PEF and approved by the Director of Employee Relations; leave for grievance representation pursuant to this provision shall be granted only to persons designated for this purpose by PEF in a listing of authorized grievance representatives furnished quarterly by PEF to the Director of the Governor's Office of Employee Relations.

(d) Under special circumstances, and upon advance request, additional Employee Organization Leave may be granted by the Director of Employee Relations.

#### 4.8 Union Leave

Upon the request of the President of PEF and the employee(s), and the approval of the Director of the Governor's Office of Employee Relations, an employee or employees may be granted leave of absence with full pay to engage in PEF activities in accordance with the

provisions of Section 46 of Chapter 283 of the Laws of 1972.

#### **4.9 Leave of Absence Information**

The State shall provide an employee who is going on an authorized leave of absence with information regarding continuation of coverage under the State's Health and Dental Insurance Programs during such leave. The State shall also provide to such employee a memorandum prepared by PEF regarding necessary payments for PEF dues and insurance premiums during such leave.

### **ARTICLE 5**

#### **MANAGEMENT RIGHTS**

Except as expressly limited by other provisions of this Agreement, all of the authority, rights and responsibilities possessed by the State are retained by it, including, but not limited to, the right to determine the mission, purposes, objectives and policies of the State; to determine the facilities, methods, means and number of personnel required for conduct of State programs; to administer the Merit System, including the examination, selection, recruitment, hiring, appraisal, training, retention, promotion, assignment or transfer of employees pursuant to law; to direct, deploy and utilize the work force, to establish specifications for each class of positions and to classify or reclassify and to allocate or reallocate new or existing positions in accordance with law; and to discipline or discharge employees in accordance with law and the provisions of this Agreement.

### **ARTICLE 6**

#### **NO STRIKES**

6.1 PEF shall not engage in a strike, nor cause, instigate, encourage or condone a strike.

6.2 PEF shall exert its best efforts to prevent and terminate any strike.

6.3 Nothing contained in this Agreement shall be construed to limit the rights, remedies or duties of the State or the rights, remedies or duties of PEF or employees under State law.

## ARTICLE 7

### COMPENSATION

The State and PEF shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to provide the benefits below:

#### 7.1 1993-94 Salary Increase

Effective April 1, 1993\* the basic annual salary of employees in full-time employment status on March 31, 1993 shall be increased by four (4) percent.

#### 7.2 1993-94 Salary Schedule

Effective April 1, 1993\* a new salary schedule shall be established which shall consist of a hiring rate and a job rate for grades 1 through 37 and a hiring rate for grade 38. The hiring rates shall be the hiring rates of the salary schedule in effect on March 31, 1993 increased by four (4) percent. The job rates for grades 1 through 37 shall be the job rates of the salary schedule in effect on March 31, 1993, increased by four (4) percent.

#### 7.3 1993-94 Lump Sum Payment

Each employee who was in full-time employment status on January 28, 1993 (for employees on the Administrative payroll) or February 4, 1993 (for employees on the Institutional payroll), and on April 1, 1993 shall, in December, 1993, receive a lump sum payment equal to the amount he or she would have received had the April 1, 1993 general salary increase been effective four bi-weekly payroll periods earlier. Employees who are otherwise eligible for such payment but who were not on the payroll for the entire period between January 28 or February 4 and April 1 shall receive a pro rata payment based on the percentage of such time they were on the payroll.

#### 7.4 1994-95 Salary Increase

(a) Effective April 1, 1994\* the basic annual salary of employees in full-time employment status on March 31, 1994 shall be increased by four (4) percent.

(b) Effective October 1, 1994\* the basic annual salary of employees in full-time employment status on March 31, 1994 shall be increased by one and one-fourth (1.25) percent of their March 31, 1994 salary.



## 7.5 1994-95 Salary Schedules

(a) Effective April 1, 1994\* a new salary schedule shall be established which shall consist of a hiring rate and a job rate for grades 1 through 37 and a hiring rate for grade 38. The hiring rates shall be the hiring rates of the salary schedule in effect on March 31, 1994 increased by four (4) percent. The job rates for grades 1 through 37 shall be the job rates of the salary schedule in effect on March 31, 1994, increased by four (4) percent.

(b) Effective October 1, 1994\* a new salary schedule shall be established which shall consist of a hiring rate and a job rate for grades 1 through 37 and a hiring rate for grade 38. The hiring rates shall be the hiring rates of the salary schedule in effect on March 31, 1994 increased by five and one-quarter (5.25) percent. The job rates for grades 1 through 37 shall be the job rates of the salary schedule in effect on March 31, 1994, increased by five and one-quarter (5.25) percent. Employees hired between April 1, 1994 and October 1, 1994, whose salaries would fall below the hiring rate of their grade after the October 1, 1994 increase in the salary schedule shall have their salaries increased to the new hiring rate. Employees promoted between March 31, 1994 and October 1, 1994, who are otherwise eligible for a salary increase on October 1, 1994, shall receive such increase paid at the rate such increase would have been paid had the promotion occurred prior to April 1, 1994, except that such employee's salary shall not exceed the October 1, 1994 job rate as a result of such computation.

## 7.6 1994-95 Lump Sum Payment

Each employee who was in full-time employment status on February 3, 1994 (for employees on the Institutional payroll), or February 10, 1994 (for employees on the Administrative payroll) and on April 1, 1994 shall, in September, 1994, receive a lump sum payment equal to the amount he or she would have received had the April 1, 1994 general salary increase been effective four bi-weekly payroll periods earlier. Employees who are otherwise eligible for such payment but who were not on the payroll for the entire period between February 3 or February 10 and April 1 shall receive a pro rata payment based on the percentage of such time they were on the payroll.

## 7.7 Promotions

(a) Employees promoted or otherwise advanced to a higher salary grade shall be paid at the hiring rate of the higher grade or will receive a percentage increase in base pay determined as indicated below, whichever results in a higher salary.

For a Promotion of	An Increase of
1 grade	3.0%
2 grades	4.5%
3 grades	6.0%
4 grades	7.5%
5 grades	9.0%

## (b) Reallocations and Reclassifications

Employees in positions which are reallocated or reclassified to a higher salary grade shall receive an increase in pay determined in the same manner as described for promotions.

## 7.8 Applicability to Hourly, Part-time and Per Diem Employees

All of the above provisions shall apply on a pro rata basis to employees paid on an hourly or per diem basis or on any basis other than at an annual rate, or to employees paid on a part-time basis. The above provisions shall not apply to employees paid on a fee schedule.

## 7.9 Performance Advances

(a.) Subject to the provisions of sub-sections 7.9(b) through 7.9(e) below, salary adjustments between the hiring rates and job rates of the salary grades shall be paid in each year of this agreement to eligible employees in accordance with eligibility standards, procedures, and other provisions of the PS&T Unit Performance Evaluation System.

(b.) Performance advances will be payable to eligible employees on April 1 of the fiscal year immediately following completion of each year of service in grade. Performance advances shall be an amount equal to one-seventh of the dollar value of the difference between the hiring rate and the job rate of the grade to which the employee's position is allocated or equated as contained on the appropriate salary schedule.

(c.) An employee's salary may not exceed the job rate as a result of a performance advance.

(d.) Employees who would have been eligible to receive a performance advance during the 1991-92 fiscal year shall have such advance added to their basic annual salary effective April 1, 1992. In addition, each such employee shall receive a lump sum payment equal to the dollar value that would have resulted for the period from the employee's anniversary date in 1991-92 through March 31, 1992, if such performance advance had been added to the employee's basic annual salary on the date such advance would have been payable under the performance advance system in effect as of March 31, 1991, in the amount of one-fifth of the range between the hiring rate and the job rate.

(e.) The State/PEF Memorandum of Understanding Concerning Performance Evaluation and Performance Advances shall be amended to incorporate the necessary revisions to comply with the provisions of this article.

#### 7.10 Performance Awards

##### (a.) 1991-92

(1) Each employee who as of March 31, 1992, has completed five years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1991 was higher than "Below Minimum" or the equivalent, shall receive a five year Performance Award.

(2) Each employee who as of March 31, 1992, has completed ten years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1991 was higher than "Below Minimum" or the equivalent, shall receive both a five year Performance Award and a ten year Performance Award.

##### (b.) 1992-93

(1) Each employee who as of March 31, 1993, has completed five years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1992 was higher than "Below

Minimum" or the equivalent, shall receive a five year Performance Award.

(2) Each employee who as of March 31, 1993, has completed ten years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1992 was higher than "Below Minimum" or the equivalent, shall receive both a five year Performance Award and a ten year Performance Award.

(c.) 1993-94

(1) Each employee who as of March 31, 1994, has completed five years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1993 was higher than "Below Minimum" or the equivalent, shall receive a five year Performance Award.

(2) Each employee who as of March 31, 1994, has completed ten years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1993 was higher than "Below Minimum" or the equivalent, shall receive both a five year Performance Award and a ten year Performance Award.

(d.) 1994-95

(1) Each employee who as of March 31, 1995, has completed five years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance evaluation received during calendar year 1994 was higher than "Below Minimum" or the equivalent, shall receive a five year Performance Award.

(2) Each employee who as of March 31, 1995, has completed ten years or more of continuous service as defined by Section 130.3(c) of the Civil Service Law at a basic annual salary rate equal to or higher than the job rate of the employee's salary grade, and whose summary performance

evaluation received during calendar year 1994 was higher than "Below Minimum" or the equivalent, shall receive both a five year Performance Award and a ten year Performance Award.

(e.) 1991-92 Performance Awards shall be lump-sum, non recurring payments in the amount of \$1,250 each for employees in full-time status as of March 31, 1992 or a pro rata share of that amount for employees in part-time employment status on that date, and shall be paid in April, 1992.

1992-93 Performance Awards shall be lump-sum, non recurring payments in the amount of \$1,250 each for employees in full-time status as of March 31, 1993 or a pro rata share of that amount for employees in part-time status on that date, and shall be paid in April, 1993.

1993-94 Performance Awards shall be lump-sum, non recurring payments in the amount of \$1,250 each for employees in full-time status as of March 31, 1994 or a pro rata share of that amount for employees in part-time employment status on that date, and shall be paid in April, 1994.

1994-95 Performance Awards shall be lump-sum, non recurring payments in the amount of \$1,250 each for employees in full-time status as of March 31, 1995 or a pro rata share of that amount for employees in part-time employment status on that date, and shall be paid in April, 1995.

(f.) Employees otherwise eligible to receive payment of Performance Awards who, on the March 31st eligibility date, are on authorized leave of absence without pay (preferred list, military leave, workers' compensation leave, or approved leave of absence) shall, if they return to active payroll status within one year of the March 31 eligibility date, be eligible for such payment in full if in full-time status immediately prior to such leave or shall be eligible for a pro rata share of such payment if in part-time employment status immediately prior to such leave.

#### 7.11 Recall and Inconvenience Pay and Locational Compensation

(a.) Except as otherwise hereinafter specifically provided, the present recall pay and inconvenience pay and locational compensation programs will be continued.

(b.) Those employees in Monroe County who were receiving \$200

location pay on March 31, 1988 will continue to receive such location pay throughout this Agreement as long as they remain otherwise eligible. Employees in New York City, Nassau, Rockland, Suffolk and Westchester Counties who would have been eligible to receive location pay if it had continued will receive a downstate adjustment in lieu of location pay.

(c.) Effective April 1, 1991\*, the downstate adjustment will be \$701 per year.

(d.) Effective April 1, 1992\*, the downstate adjustment will be \$701 per year.

(e.) Effective April 1, 1993\*, the downstate adjustment will be \$729 per year.

(f.) Effective April 1, 1994\*, the downstate adjustment will be \$759 per year.

(g.) Effective October 1, 1994\*, the downstate adjustment will be \$768 per year.

#### 7.12 Holiday Pay

(a) Any employee who is entitled to time off with pay on days observed as holidays by the State as an employer will receive at the employee's option additional compensation for time worked on such days or compensatory time off. Such additional compensation, except as noted in 7.12(c) below, for each such full day worked will be at the rate of 1/10 of the employee's biweekly rate of compensation. Such additional compensation for less than a full day of such work will be prorated. Such rate of compensation will include geographic, locational, inconvenience, shift pay and the downstate adjustment as may be appropriate to the place or hours worked. In no event will an employee be entitled to such additional compensation or compensatory time off unless the employee has been scheduled or directed to work.

(b) An employee electing to take compensatory time off in lieu of holiday pay shall notify the appropriate payroll agency in writing between April 1 and June 15, 1993 of the employee's intention to do so with the understanding that such notice constitutes a waiver for the term of this Agreement of the employee's right to receive additional compensation for holidays worked; provided, however, that an employee shall have the opportunity to revoke such waiver or file a waiver, if the

employee has not already done so, by notifying the appropriate payroll agency in writing between April 1 and May 15 in the fourth year of this Agreement of the employee's revocation or waiver, in which event such revocation or waiver shall remain in effect for the remainder of the term of this Agreement.

(c) Any employee who is entitled to time off with pay on days observed as the Thanksgiving Day or Christmas Day holidays by the State as an employer, will receive at the employee's option additional compensation for time worked on such days or compensatory time off. Such additional compensation for each such full day worked will be at the rate of 3/20 of the employee's biweekly rate of compensation. Such additional compensation for less than a full day of such work will be prorated. Such rate of compensation will include geographic, locational, inconvenience, shift pay and the downstate adjustment as may be appropriate to the place or hours worked. In no event will an employee be entitled to such additional compensation or compensatory time off unless he or she has been scheduled or directed to work. Pursuant to Article 12, Section 12.1(c) of this Agreement, such compensation for the Christmas holiday in calendar year 1994 shall only be paid for work on December 25, 1994.

#### 7.13 Lag Payroll

(a) The "lag payroll" instituted in the 1982-85 Agreement shall remain in effect. When employees leave State service, their final salary check shall be issued at the end of the payroll period next following the payroll period in which their service is discontinued. This final salary check shall be paid at the employee's then current salary rate.

(b) The salary deferral program instituted by legislative action in 1990, and implemented in 1991, shall remain in effect for all employees. Employees hired since July 16, 1992 will have five (5) days of salary deferred as promptly as possible after the date of execution of this agreement by having their paychecks reduced by one (1) day's pay each payroll period for five (5) consecutive biweekly pay periods. Employees newly added to the payroll shall have five days of salary deferred pursuant to the provision of Chapter 947 of the Laws of 1990, as amended by Chapter 702 of the Laws of 1991.

Employees shall recover monies deferred under this program at the

time they leave State service, pursuant to the provisions of Chapter 947 of the Laws of 1990, as amended by Chapter 702 of the Laws of 1991.

#### **7.14 Overtime Compensation**

Compensation for overtime work will continue to be subject to all applicable statutes, rules and regulations, except that on and after October 1, 1990, all positions in the PS&T unit allocated or equated to Grades 22 and below shall be deemed to be eligible to receive overtime compensation.

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\*Such increases as specified in this Article shall become effective on the first day of the payroll period nearest to the stated date, in the manner provided in Section 44(8) of the New York State Finance Law.

## **ARTICLE 8**

### **TRAVEL**

#### **Travel/Relocation Expense Reimbursement**

##### **8.1 Per Diem Meal and Lodging Expenses**

The State agrees to reimburse, on a per diem basis as established by rules and regulations of the Comptroller, employees who are eligible for travel expenses, for their expenses incurred while in travel status in the performance of their official duties for a full day at either of the following schedules and the rates set out therein at their option:

##### **(a) Unreceipted Expenses**

(1) In the City of New York and the counties of Nassau, Suffolk, Rockland and Westchester, not to exceed \$50, except as specified by the Comptroller in accordance with law.

(2) In the cities of Albany, Rochester, Buffalo, Syracuse and Binghamton and their respective surrounding metropolitan areas, not to exceed \$40, except as specified by the Comptroller in accordance with law.

(3) In places elsewhere within the State of New York not to exceed \$35, except as specified by the Comptroller in accordance with law.

(4) In places outside the State of New York, at least \$50 per day except as specified by the Comptroller in accordance with law.

##### **(b) Receipted Expenses**

(1) Receipted lodging and meal expenses for authorized overnight



travel in locations within and outside of New York State shall be reimbursed to a maximum of published per diem rates as specified by the Comptroller. Said rates shall be equal to the combined per diem lodging and meal reimbursement rate provided by the Federal government to its employees in such locations, except that in Rockland County receipted lodging and meal expenses shall be reimbursed according to the Comptroller's rates in effect on March 31, 1988 until the combined per diem lodging and meal reimbursement rate provided by the Federal government to its employees equals or exceeds that rate. At that time, the Federal rate will apply.

(2) In locations for which no specific rate is published, receipted lodging and meal expenses for authorized overnight travel in locations within and outside of New York State shall be reimbursed to a maximum of the combined per diem lodging and meal reimbursement rate provided by the Federal government to its employees for such locations.

(3) The rates in (1) and (2) above shall be revised prospectively in accordance with any revision made in the per diem rates provided by the Federal government to its employees.

(4) In recognition of the fact that meals and lodging which are fully accessible to employees with disabilities may not be reasonably available within the specified rates, reimbursement for reasonable and necessary expenses will be allowed as specified by the Comptroller.

(c) When the employee is in travel status for less than a full day, and incurs no lodging charges, reasonable and necessary receipted expenses will be allowed for breakfast and dinner as determined by the Comptroller in accordance with law.

## 8.2 Mileage Allowance

Effective on the date of execution of this Agreement, the State agrees to provide, subject to rules and regulations of the Comptroller, a maximum mileage allowance rate equal to the mileage reimbursement rate provided by the Federal Government to its employees for the use of personal vehicles for those persons eligible for such allowance in connection with official travel. Effective April 1, 1994, the personal vehicle mileage rate for employees in this unit will be consistent with the maximum mileage allowance permitted by the Internal Revenue Service. Such payments shall be made in accordance with the rules and

regulations of the Comptroller.

### 8.3 Triborough Bridge Tolls

The State agrees, contingent upon continuation of Legislative approval of recommended funds, to continue payment for car tolls over the Triborough Bridge for employees employed at and not residing at facilities on Ward's Island, New York, operated by the New York State Department of Mental Hygiene for the reason that:

(a) heretofore, free ferry service was provided to the Island, which service has been discontinued, and,

(b) there is no way for such employees to reach their work by car except over a toll bridge. PEF agrees that the correction of the situation at this work location will not and cannot be used as a precedent to seek payment of fares or tolls at other work locations.

### 8.4 Extended Travel

(a) The State agrees to provide \$20.00 additional travel expense reimbursement for each weekend to employees who are in overnight travel status provided they are in such status at the direction of their agency and are at least 300 miles from their home and their official station.

(b) Effective April 1, 1994, the State agrees to increase the additional travel expense reimbursement to \$30.00 for each weekend to employees who are in overnight travel status provided they are in such status at the direction of their agency and are at least 300 miles from their home and their official station.

### 8.5 Relocation Expenses

During the term of this Agreement, employees in this unit who qualify for reimbursement for travel and moving expenses upon transfer, reassignment or promotion, (under Section 202 of the State Finance Law and the regulations thereunder) or for reimbursement for travel and moving expenses upon initial appointment to State service, (under Section 204 of the State Finance Law and the regulations thereunder) shall be entitled to payment at the rates provided in the rules of the Director of the Budget. (9 New York Code Rules and Regulations, part 155.)

## ARTICLE 9

### HEALTH INSURANCE

9.1(a) The State shall continue to provide all the forms and extent of coverage as defined by the contracts in force on March 31, 1991, with the State's health insurance carriers unless specifically modified by this Agreement.

9.2(a) Effective July 1, 1993, a new Benefits Management Program, Health Call, will replace the current Empire Plan Precertification and Second Surgical Consultation Programs. Precertification will be required for all inpatient confinements and prior to certain specified surgical or medical procedures, regardless of proposed inpatient or outpatient setting.

- To provide an opportunity for a review of surgical and diagnostic procedures for appropriateness of setting and effectiveness of treatment alternative, precertification will be required for all inpatient elective admissions.

- Precertification will be required prior to maternity admissions in order to highlight appropriate pre-natal services and reduce costly and traumatic birthing complications.

- A call to the Benefits Management Program will be required within 48 hours of admission for all emergency or urgent admissions to permit early identification of potential "case management" situations.

- The hospital deductible amount imposed for noncompliance with Program requirements will be reduced from \$250 to \$200. Also, this deductible will be fully waived in instances where the medical record indicates that the patient was unable to make the call. In instances of noncompliance, a retroactive review of the necessity of services received shall be performed. For each day deemed inappropriate for an inpatient setting, a \$100 deductible shall be incurred by the enrollee.

- The current Empire Plan Second Surgical Consultation Program will be replaced with a program of Prospective Procedure Review. This Program will screen for the medical necessity of certain specified surgical or diagnostic medical procedures which, based on Empire Plan experience, have been identified as potentially unnecessary or overutilized. The list of procedures will undergo annual evaluation by the Benefits Management Program vendor. As revised and approved by the Joint Committee on Health Benefits, the list will be published and

distributed to enrollees prior to implementation.

- In order to assure the timely and accurate notification of PS&T unit employees of these changes, the State and PEF, in conjunction with the vendor, will develop educational materials relating to the Benefits Management Program and oversee the distribution of said materials.

- Enrollees will be required to call the Benefits Management Program for precertification when a listed procedure subject to prospective review is recommended, regardless of setting. Enrollees will be requested to call two weeks before the date of the procedure.

- Current second surgical consultation co-insurance levels will apply for failure to comply with the requirements of the Prospective Procedure Review Program.

(b) Charges for outpatient hospital services, covered by the hospital contract, including emergency room services, will be subject to a \$15 copayment, per outpatient visit, regardless of the number and type of services rendered in the hospital outpatient setting, for such services received on or after July 1, 1993. Enrollees have the right of appeal of copayments not charged in accordance with this provision. Appeals should be directed to Empire Blue Cross/Blue Shield or to the Health Benefits Administrator. In addition, there will be an \$8 copayment for covered services for the treatment of alcohol or substance abuse. The \$15 outpatient hospital copayment will be waived for persons admitted to the hospital as an inpatient directly from the outpatient setting or for the following covered chronic care outpatient services; chemotherapy, radiation therapy, physical therapy, or hemodialysis.

(c) The Empire Plan shall include medical/surgical coverage through use of participating providers who will accept the Plan's schedule of allowances as payment in full for covered services. Except as noted below, benefits will be paid directly to the provider at 100% of the Plan's schedule not subject to deductible, co-insurance, or annual/lifetime maximums.

(c)(1) Office visit charges by participating providers will be subject to an \$8.00 copayment by the enrollee, with the balance of covered scheduled allowances paid directly to the provider by the Plan.

(c)(2) All covered surgical procedures performed by participating providers during a visit will be subject to an \$8.00 copayment by the

enrollee.

(c)(3) All covered radiology services performed by participating providers during a visit will be subject to an \$8.00 copayment by the enrollee.

(c)(4) All covered diagnostic/laboratory services performed by participating providers during a visit will be subject to an \$8.00 copayment by the enrollee.

(c)(5) The office visit, surgery, radiology and diagnostic/laboratory copayment amounts may be applied against the major medical copayment maximum, however they will not be considered covered expenses for major medical.

(d) The Empire Plan shall also include major medical coverage to provide benefits when non-participating providers are used. These benefits will be paid directly to enrollees according to reasonable and customary charges and will be subject to deductible, co-insurance, and calendar year and lifetime maximums.

(d)(1) Empire Plan coverage for ambulance services, other than when supplied by the admitting hospital, will be provided by major medical. Up to \$50.00 of covered charges for professional ambulance service will be provided by major medical without deductible or co-insurance. Other coverage for ambulance services under major medical, in effect on March 31, 1988, will also continue.

(d)(2) Effective July 1, 1993, charges for Private Duty Nursing services provided as part of an inpatient stay in a hospital will continue to be covered by Blue Cross when billed by the hospital. However, these charges will not be reimbursable under the Major Medical component of the Empire Plan.

(e) The Empire Plan participating provider schedule of allowances and the major medical reasonable and customary levels will be at least equal to those levels in effect on March 31, 1991.

(e)(1) Periodic evaluation and adjustment of major medical Reasonable and Customary charges will be performed according to guidelines established by the Major Medical plan insurer.

(f) Effective July 1, 1993, the State agrees to pay 90 percent of the cost of the individual coverage and 75 percent of the cost of dependent coverage, including prescription drug coverage, provided under the

## Empire Plan.

(g) The State agrees to continue to provide alternative Health Maintenance Organization (HMO) coverage and, effective July 1, 1993, agrees to pay 90 percent of the cost of individual coverage and 75 percent of dependent coverage, including prescription drug coverage, under each participating HMO.

### 9.3 PEF Empire Plan Enhancements

In addition to the basic Empire Plan benefits, the Empire Plan for PS&T unit enrollees shall include:

(a) Effective January 1, 1994, the Major Medical component deductible shall be \$175 per enrollee; \$175 per enrolled spouse; and \$175 per all dependent children. Covered expenses for mental health and/or substance abuse treatment services are excluded in determining the major medical component deductible.

(b) Effective January 1, 1994, the maximum annual co-insurance out-of-pocket expense under the major medical component shall be \$776 per individual or family. Covered expenses for mental health and/or substance abuse treatment services are excluded in determining the maximum annual co-insurance limit.

(c) Employees 50 years of age or older shall be allowed reimbursement up to \$125 once every two years towards the cost of a routine physical examination. Covered spouses 50 years of age or older shall be allowed reimbursement up to \$75 once every two years towards the cost of a routine physical examination. These benefits shall not be subject to deductible or co-insurance.

(d) The newborn routine child care allowance under the major medical component shall be \$100, not subject to deductible or co-insurance.

(e) The annual and lifetime maximum for each covered member under the major medical component shall be unlimited.

(f) Services for examinations and/or purchase of hearing aids shall be a covered major medical benefit and shall be reimbursed up to a maximum of \$150 in any 36-month period, not subject to deductible or co-insurance.

(g) Office visit charges by participating providers for well child care will be excluded from the office visit copay.

(h) Charges by participating providers for professional services for allergen immunotherapy in the prescribing physician's office or institution will be excluded from the office visit copayment.

(i) Chronic care services for chemotherapy, radiation therapy, or hemodialysis, will be excluded from the office visit copayment.

(j) In the event that there is both an office visit charge and an office surgery charge by a participating provider in any single visit, the covered individual will be subject to a single copayment.

(k) Outpatient radiology services and diagnostic/laboratory services rendered during a single visit by the same participating provider will be subject to a single copayment.

(l) The cost of oral and injectable substances for routine preventive pediatric immunizations shall be a covered benefit under the Empire Plan.

(m) Mastectomy bras prescribed by a physician, including replacements when it is functionally necessary to do so, shall be a covered benefit under the Empire Plan.

(n) The Pre-Tax Contribution Program will continue unless modified or exempted by the Federal Tax Code.

(o) The Participating Provider Panel shall continue to include selected Durable Medical Equipment Providers who shall offer durable medical equipment at discounted prices.

9.4 The State will work to develop a program for managed medical care through the establishment of a panel of preferred hospital and medical care providers. The Joint Committee on Health Benefits will work with the State in the development and implementation of this initiative, including an opportunity to review and comment on the Request for Proposals to be supplied to the vendors, as well as the opportunity to review and comment on the proposals submitted by potential vendors. This initiative shall establish:

(a) Contract language for the carriers involved in the PPO that contains quality standards for providers, including credentialing, continuing medical education, analysis of practice patterns, and patient satisfaction measures, with feedback to the providers;

(b) Service guarantees with defined customer service standards for carriers and vendors, to be included in all contracts and subcontracts. Quarterly performance reports shall be provided to PEF and the State

within six months of negotiated benefit changes and thereafter;

(c) Improved health benefits communications from the State and carriers to keep enrollees informed about their benefits and the impact of cost containment measures on program costs. Revised benefit booklets shall be provided within six months of negotiated benefit changes.

(d) A routine of regular meetings between the State and PEF to review results of plan performance as measured against quality standards implemented according to (a), (b) and (c) above, and to take whatever steps necessary to ensure compliance with these standards.

9.5 The State shall incorporate the Voluntary Catastrophic Medical Case Management Program within the Empire Plan's new Benefits Management Program as modified July 1, 1993. This voluntary program will review cases of catastrophic illness or injury, provide patients an opportunity for flexibility in Plan benefits, maximize rate of recovery, and maintain quality of care.

9.6 Effective July 1, 1988, there shall be a waiting period of fifty-six (56) days after employment before a new employee shall be eligible for enrollment under the State's health insurance program.

9.7(a) The State health insurance plan's regulations shall continue to stipulate that the term employee means any person in the service of the State as employer whose regular work schedule is at least half-time per biweekly payroll period.

(b) Employees eligible to enroll in the State Health Insurance Program may select individual or individual and dependent coverage (family). Those eligible and enrolling for family coverage must provide the names of all eligible dependents to the Plan administrator in order for family coverage to become effective. Employees enrolling without eligible dependents, or those who choose not to enroll their eligible dependents, will be provided individual coverage.

(c) When more than one family member is eligible to enroll for coverage under the State's health insurance program, there shall be no more than one individual and dependent enrollment permitted in any family unit.

9.8(a) Seasonal employees who are anticipated to be or who are continuously employed on at least a half-time basis for six months, shall be eligible for health insurance coverage subject to the provisions of this



Agreement.

(b) Where the State establishes a seasonal position for six months or more, the appointee to that position shall not have his/her service intentionally broken solely for the purpose of rendering that employee ineligible for health insurance coverage.

(c) Should a seasonal employee who attained health insurance coverage eligibility leave the payroll and then be subsequently rehired, the employee shall retain eligibility for health insurance coverage upon rehire, provided the employee was not off the payroll more than three months. The employee may continue his/her health insurance on a full pay basis for the period of time he/she is off the payroll.

9.9 Eligible employees in the State Health Insurance Plan may elect to participate in a federally qualified or State certified Health Maintenance Organization which has been approved to participate in the State Health Insurance Program by the Joint Committee on Health Benefits.

If more than one HMO services the same area, the Joint Committee on Health Benefits reserves the right to approve a contract with only one such organization.

9.10(a) Enrollees may change their health insurance option each year throughout the month of November, unless another period is mutually agreed upon by the State and the Joint Committee on Health Benefits. Changes between options will be permitted without regard to the enrollee's age or the number of previous transfers. If rate renewals are not available by the time of the option transfer period, then the option transfer period shall be extended to assure ample time for enrollees to transfer.

(b) The State shall provide health insurance comparison information to employees, through State agencies, prior to the beginning of an option transfer period. If the comparison information is delayed for any reason, the transfer period shall be extended for a minimum of 30 calendar days beyond the date the information is distributed to the agencies. Employees transferring plans during a scheduled period but prior to the provision of the comparison data, may elect to further alter or rescind his or her health plan transfer during the remainder of the option transfer period.

9.11(a) Continued health insurance coverage will be provided for the unremarried spouse and other eligible dependents of employees who die in State service under circumstances for which they are eligible for the accidental death benefit or for weekly cash workers' compensation benefits under the conditions prescribed in Section 165 of the Civil Service Law.

(b) If an employee is granted a service-connected disability retirement by a retirement or pension plan or system administered and operated by the State of New York, the State will continue the health insurance of that employee on the same basis as any other retiring employee, regardless of the duration of the employee's service with the State.

9.12 A permanent full-time employee who loses employment as a result of the abolition of a position on or after April 1, 1977, shall continue to be covered under the State health insurance plan at the same contribution rate as an active employee for one year following such layoff or until re-employment by the State or employment by another employer, whichever first occurs.

9.13(a) The unremarried spouse and otherwise eligible dependent children of an employee, who retires after April 1, 1979, with ten or more years of active State service and subsequently dies, shall be permitted to continue coverage in the health insurance program with payment at the same contribution rates as required of active employees for the same coverage.

(b) The unremarried spouse and otherwise eligible dependent children of an active employee, who dies after April 1, 1979, and who, at the date of death, was vested in the Employees' Retirement System and who was at least 45 years of age and was within ten years of the minimum retirement age shall be permitted to continue coverage in the health insurance program with payment at the same contribution rates as required of active employees for the same coverage.

9.14(a) Employees on the payroll and covered by the State Health Insurance Program have the right to retain health insurance coverage after retirement, upon the completion of ten years of State service.

(b) Prior to the expiration of this contract, PEF and the State, through the Joint Committee process, shall develop a proposal to modify

the manner in which employer contributions to retiree premiums are calculated in order to recognize and underscore the value of the services rendered to the State by its long-term employees.

(c) Effective July 1, 1993, an employee who is eligible to continue health insurance coverage upon retirement and who is entitled to a sick leave credit to be used to defray any employee contribution toward the cost of the premium, may elect an alternative method of applying the basic monthly value of the sick leave credit. The basic monthly value of the sick leave credit shall be calculated according to the procedures in use on March 31, 1991.

Employees selecting the basic sick leave credit may elect to apply up to 100 percent of the calculated basic monthly value of the credit toward defraying the required contribution to the monthly premium during their own lifetime. If employees who elect that method predecease their eligible covered dependents, the dependents may, if eligible, continue to be covered, but must pay the applicable dependent survivor share of the premium.

Employees selecting the alternative method may elect to apply only up to 70 percent of the calculated basic monthly value of the credit toward the monthly premium during their own lifetime. Upon the death of the employee, however, any eligible surviving dependents may also apply up to 70 percent of the basic monthly value of the sick leave credit toward the dependent survivor share of the monthly premium for the duration of the dependents' eligibility. The State has the right to make prospective changes to the percentage of credit to be available under this alternative method for future retirees as required to maintain the cost neutrality of this feature of the Plan.

The selection of the method of sick leave credit application must be made at the time of retirement, and is irrevocable. In the absence of a selection by the employee, the basic method shall be applied.

(d) Effective July 1, 1993, an employee retiring from State service may delay commencement or suspend his/her retiree health coverage and the use of the employee's sick leave conversion credits for up to five years, provided that the employee applies for the delay or suspension, and furnishes proof of continued coverage under the health care plan of the employee's spouse, or from post retirement employment.

#### **9.15 Joint Committee on Health Benefits**

**(a) The State and PEF agree to continue the Joint Committee on Health Benefits.**

**(b) The Joint Committee on Health Benefits shall meet within 14 days after a request to meet has been made by either side.**

**(c) The Joint Committee shall work with appropriate State agencies to review and oversee the various health plans available to employees represented by PEF.**

**(d) The Joint Committee on Health Benefits shall work with appropriate State agencies to monitor future employer and employee health plan cost adjustments.**

**(e) The Joint Committee shall be provided with each carrier rate renewal request upon submission and be briefed in detail periodically on the status of the development of each rate renewal.**

**(f) The State shall require that the insurance carriers for the State Health Insurance Plan submit claims and experience data reports directly to the Joint Committee on Health Benefits in the format and with such frequency as the Committee shall determine.**

**(g) The State shall provide to the PEF designees to the Joint Committee, a quarterly summary of: Blue Cross paid claims (number of charges, amount of covered expenses and amount of benefits) by type of service for PS&T unit enrollees and NYS Actives; Metropolitan NYS Empire Plan paid claims (number of charges, amount of covered expenses and amount of benefits) by type of service for PS&T unit enrollees and NYS Actives; number of enrollees, spouses and dependents for PS&T unit enrollees and NYS Actives.**

**(h) The Joint Committee on Health Benefits shall work with appropriate State agencies to make mutually agreed upon changes in the Plan benefit structure through such initiatives as:**

**(h)(1) The annual HMO Review Process;**

**(h)(2) The development and implementation of the Managed Mental Health and Substance Abuse Care Program;**

**(h)(3) The development and implementation of a Program for Managed Medical Care through a panel of preferred hospital and/or medical care providers;**

**(h)(4) The implementation of the new Benefits Management**

Program, Health Call, and an annual review of the list of procedures requiring Prospective Procedure Review.

(h)(5) A review of out-of-State private duty nursing coverage under the hospital contract.

(i) The State shall seek appropriations of funds by the Legislature in the amount of \$325,000 for fiscal year 1993-94 and \$325,000 for fiscal year 1994-95 to support Committee initiatives and to carry out the administrative responsibilities of the Joint Committee during the term of this Agreement.

9.16 Effective January 1, 1992, or as soon as practical thereafter, the State will establish a revised program for managed care of mental health services and alcohol and other substance abuse treatment. The Joint Committee on Health Benefits will work with the State on the implementation of this initiative, including an opportunity to review and comment on the Request for Proposals to be supplied to the vendors, as well as the opportunity to review and comment on the proposals submitted by potential vendors.

The Empire Plan shall provide comprehensive coverage for medically necessary mental health and substance abuse treatment services through a managed care network of preferred mental health and substance abuse care providers. In addition to the in-network care, limited non-network care will be available.

Benefits shall be as follows:

#### **IN-NETWORK BENEFIT**

##### **Mental Health Coverage**

- Paid-in-full medically necessary hospitalization services and inpatient physician charges when provided by or arranged through the network;
- Outpatient care provided by or arranged through the network will be covered subject to a \$15 per visit copay;
- Up to three visits for crisis intervention provided by, or arranged through, the network will be covered without copay.

##### **Alcohol and Other Substance Abuse Coverage**

- Paid in full medically necessary care for hospitalization or alcohol/substance abuse facilities when provided by or arranged through the network;

- Outpatient care provided by or arranged through the network will be subject to a \$8 per visit copay.

#### **Benefit Maximums**

- Annual and lifetime dollar maximums for covered expenses will be at the same level as the major medical annual and lifetime dollar maximums;

- Medically necessary inpatient alcohol and substance abuse treatment will be limited to three stays per lifetime. However, the managed care vendor will review on an individual, case-by-case, basis the appropriateness of additional treatment and may approve coverage for such treatment if it can be demonstrated that significant improvement will occur.

#### **NON-NETWORK BENEFIT**

Medically necessary care rendered outside of the network will be subject to the following provisions:

- 30 inpatient days and 30 outpatient visits maximum per year for mental health treatment;

- Inpatient and outpatient reimbursement will be no greater than 50 percent of the in-network discounted fees;

- Inpatient deductible will be \$2000 per year and the outpatient deductible will be \$500 per year;

- No out-of-pocket maximum;

- Maximum dollar limit for medically necessary care provided by non-network providers for covered expenses will be \$50,000 per calendar year and \$250,000 lifetime;

- Medically necessary inpatient alcohol and substance abuse treatment will be limited to one stay per year and three stays per lifetime. There will be a maximum of 30 outpatient visits approved per calendar year.

Expenses applied against the deductible and copay levels indicated above will not apply against any deductible or copay levels or maximums under the major medical portion of the Plan.

Prior to the implementation of the program PEF and the State shall develop and implement a process to:

- (a) Assure that in those cases where the number of providers or facilities available to the enrollee is not sufficient to allow treatment by a

network provider, the services provided to the enrollee shall be deemed to have been provided by a network provider, provided the services are arranged by the managed care vendor; and

(b) Assure that in such cases, the vendor and/or carrier process and pay such claims as in-network claims; and

(c) Provide for a transition period for persons undergoing treatment under the predecessor plan.

9.17 Appropriate descriptive material relating to any changes in benefits as a result of this Agreement shall be distributed to each State agency for internal distribution to enrollees prior to the effective date of the change in benefit. The State shall also take all steps necessary to provide revised health insurance booklets to every enrollee as soon as practically possible.

9.18 The State shall provide toll-free telephone service at the Department of Civil Service Health Insurance Section for information and assistance to employees and dependents on health insurance matters.

9.19(a) A permanent full-time employee who is removed from the payroll due to an accepted work related injury or occupational condition shall remain covered under the State health insurance plan and shall be treated the same as an employee on a preferred list.

(b) A permanent full-time employee who is removed from the payroll due to a controverted work related injury or occupational condition will have the right to apply for a health insurance premium waiver. The appropriate agency will be responsible to inform the employee of his or her right to apply for the waiver prior to the employee meeting the eligibility requirements for the waiver of premium.

9.20 The confidentiality of individual subscriber claims shall not be violated. Except as required to conduct financial and claims processing audits of carriers and coordination of benefit provisions, specific individual claims data, reports or summaries shall not be released by the carrier to any party without the written consent of the individual, insured employee or covered dependent.

9.21 Until the managed mental health and substance abuse care program becomes effective, inpatient and outpatient mental health/substance abuse treatment benefits shall remain as defined by the contract in force on March 31, 1991.

9.22(a) The dual coverage benefit for certain disabled dependent children will be discontinued January 1, 1994.

(b) Effective July 1, 1993, the State will discontinue the Dual Eligibility Family Benefit option.

9.23(a) Effective July 1, 1993, eligible PEF employees enrolled in the Empire Plan will be provided with prescription drug coverage through the Empire Plan Prescription Drug Program. The benefits provided will be the same benefits as those provided to managerial/confidential employees enrolled in the Empire Plan Prescription Drug Program and shall consist of the following:

The Prescription Drug Program will cover medically necessary drugs requiring a physician's prescription and dispensed by a licensed pharmacist.

Mandatory Generic Substitution will be required for all brand-name multi-source prescription drugs (a brand-name drug with a generic equivalent) covered by the Prescription Drug Program.

When a brand-name multi-source drug is dispensed, the Program will reimburse the pharmacy (or enrollee) for the cost of the drug's generic equivalent. The enrollee is responsible for the cost difference between the brand-name drug and its generic equivalent, plus the copayment.

All prescriptions written for supplies of drugs covered under the Prescription Drug Program of greater than 21 days and 1 refill must be filled either at a community pharmacy, designated by the Program as a participating Maintenance Drug Program (MDP) pharmacy, or at the Program's designated mail service pharmacy.

The copayment for brand-name and generic drugs dispensed at either a community pharmacy or the mail service pharmacy will be \$5.00.

9.23(b) Any and all Empire Plan Prescription Drug Program benefit and/or administrative modifications implemented for managerial/confidential employees covered by the Program shall be implemented for PS&T unit employees covered by the Program for the term of the Agreement without further collective bargaining.

9.24 Effective July 1, 1993, eligible PS&T unit employees enrolled in a Health Maintenance Organization participating in the State Health Insurance Plan will be provided with prescription drug coverage through



the HMO in which they are enrolled.

9.25 Effective July 1, 1993, eligible PS&T unit employees will be provided with Dental coverage at the same level of benefits in effect on October 1, 1992, for managerial/confidential employees.

9.26 Effective July 1, 1993, eligible PS&T unit employees will be provided with Optical coverage at the same level of benefits (excluding Occupational Vision coverage) in effect on October 1, 1992, for managerial/confidential employees.

## **ARTICLE 10**

### **EMPLOYEE BENEFIT FUND**

10.1(a) The State shall deposit in the Public Employees Benefit Fund (PEBF), as soon as practicable after April 1, 1993, an amount equal to \$161.25 per employee for the period beginning April 1, 1993, and ending June 30, 1993, per the employee count made on or about March 15, 1993, by the Office of the State Comptroller, pursuant to Section 207.2 of the State Finance Law.

10.1(b) Effective July 1, 1993, all funding for the benefit fund established under this Article shall be discontinued.

10.2(a) The State assumes no liability if the PEBF reserves are insufficient to liquidate any and all liabilities incurred prior to the dissolution of the Fund on July 1, 1993.

10.2(b) All PEBF reserves and other assets which remain following the payment of incurred liabilities shall revert to the State.

10.3 Effective July 1, 1993, the State shall provide Prescription Drug, Dental and Optical benefits to eligible employees of the Professional, Scientific and Technical Services Unit according to the terms and conditions outlined in Article 9.2(f)-(g) and 9.23 - 9.26 respectively.

10.4 For purposes of this Article, the term "employee" shall mean any person holding a position in this negotiating unit who is eligible for enrollment in the State Health Insurance Plan in accordance with the provisions contained in Part 73 of the Rules and Regulations of the Department of Civil Service (4 NYCRR Part 73), except that it shall not mean seasonal employees whose employment is expected to last less than six months, employees in temporary positions of less than six months

duration, or employees holding appointments otherwise expected to last less than six months.

## **ARTICLE 11**

### **ACCIDENTAL DEATH BENEFIT**

11.1 In the event an employee dies subsequent to the effective date of this Agreement as the result of an accidental on-the-job injury and a death benefit is paid pursuant to the Workers' Compensation Law, the State shall pay a death benefit in the amount of \$50,000 to the employee's surviving spouse and children to whom the Workers' Compensation Accidental Death Benefit is paid and in the same proportion as the Workers' Compensation Accidental Death Benefit is paid. However, in the event that the Workers' Compensation Accidental Death Benefit is paid to the deceased employee's estate, the State shall pay this death benefit to the employee's estate.

11.2 Children of an employee who received an Accidental Death Benefit paid by the State under the terms of Section 11.1 above, and who thereafter enroll in and attend any college or other unit of the State University of New York, shall receive from the State a payment equal to the amount of the tuition cost for each semester they are enrolled and in attendance at such college or other unit.

## **ARTICLE 12**

### **ATTENDANCE AND LEAVE**

#### **12.1 Holiday Observance**

(a) An employee who is entitled to time off with pay on days observed as holidays by the State as an employer shall be granted compensatory time off when any such holiday falls on a Saturday, provided, however, that employees scheduled or directed to work on any such Saturday may receive additional compensation in lieu of such compensatory time off in accordance with Section 7.12 of this Agreement. The State may designate a day to be observed as a holiday in lieu of such holiday which falls on Saturday.

(b) The following holidays will be observed by all employees within this unit eligible to observe holidays unless otherwise specified by mutual agreement between the parties:

1. New Year's Day
2. Lincoln's Birthday
3. Washington's Birthday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veterans Day
9. Thanksgiving Day
10. Christmas Day
11. Election Day
12. Martin Luther King Day

(c) In view of the fact that Monday, December 26, 1994 will be observed as the official State Christmas Day holiday, and Monday, January 2, 1995 as the official State New Year's Day holiday, employees whose work schedule includes December 25, 1994 and/or January 1, 1995 shall observe the holiday on those dates, or if required to work may receive additional compensation or compensatory time off in accordance with Section 7.12 of this Agreement. In such event, for these employees, December 26, 1994 and January 2, 1995 will not be considered a holiday.

(d) The State, at its option, may designate up to two floating holidays in each contract year (April-March) in lieu of two of the holidays set forth in Article 12.1(b), such that employees shall have the opportunity to select, on an individual basis, the dates upon which such floating holidays will be observed by them, consistent with the reasonable operating needs of the State. The State's designation of the holidays to be floated shall be announced in April of the contract year.

#### 12.2 Determination of Holiday Shifts

For purposes of determining the holiday shift when the work shift spans 2 calendar days, the holiday shift shall be that shift which begins 11:00 p.m. or later on the day before the holiday. A shift which begins 11:00 p.m. or later on the holiday itself shall not be considered to be the holiday for purposes of this Article.

#### 12.3 Holiday Accrual

Compensatory time off in lieu of holidays earned after the effective date of this Agreement shall be recorded in a leave category to be known

as Holiday Leave.

#### 12.4. Vacation Credit Accumulation

(a) Annual Leave shall be credited in accordance with the New York State Attendance Rules, except that employees first hired on or after April 1, 1988 shall not earn the "additional vacation credits" that would otherwise be earned upon the completion of their first and second full years of continuous service under the terms of Section 21.2(c) of the Attendance Rules.

(b) Vacation credits may be accumulated up to 40 days; provided, however, that in the event of death, retirement or separation from service, an employee compensated in cash for the accrued and unused accumulation may only be so compensated for a maximum of 30 days.

(c) An employee's vacation credit accumulation may exceed the maximum, provided, however, that the employee's balance of vacation credits may not exceed 40 days on April 1 of any year.

#### 12.5 Additional Vacation Credit

(a) The State agrees to grant employees having 20 or more years of continuous State service and who are entitled to earn and accumulate vacation credits additional vacation credit as follows:

Completed Years of Continuous Service	Additional Vacation Credit
20 to 24	1 day
25 to 29	2 days
30 to 34	3 days
35 or more	4 days

(b) Eligible employees shall receive additional vacation credit on the date on which they would normally be credited with additional vacation in accordance with the above schedule and shall thereafter be eligible for additional vacation credit upon the completion of each additional 12 months of continuous State service. Continuous State service for the purpose of this section shall mean uninterrupted State service, in pay status, as an employee. A leave of absence without pay, or a resignation followed by reinstatement or reemployment in State service within one year following such resignation, shall not constitute an interruption of continuous State service for the purposes of this section;

provided, however, that leave without pay for more than six months or a period of more than six months between resignation and reinstatement or reappointment, during which the employee is not in State service, shall not be counted in determining eligibility for additional vacation credits under this provision.

(c) Nothing contained herein shall be construed to provide for the granting of additional vacation retroactively for periods of service prior to the effective date of this Agreement.

#### 12.6 Vacation Scheduling

(a) Assignment of vacation time off shall be made at the times desired by an employee to the extent practicable in light of needs of the department or institution involved to provide the service it is charged to provide. In the event that more employees request the same vacation time off than can be reasonably spared for operating reasons, vacation time off will be granted in accordance with Article 25.

(b) In lieu of scheduling vacation in order of seniority as provided above, departments, agencies, or institutions may by mutual agreement with PEF, provide that in the event some employees have accumulated vacation credits in excess of 35 days, these employees shall be given preference on requested assignment of vacation time off.

(c) To assist in the scheduling of such vacation time off, departments, agencies, institutions or other local operating units may establish an annual date or dates or period or periods by which or within which employees must request a block of time in order to have their seniority considered.

(d) Establishment of such dates or periods shall be worked out in understandings between such departments, agencies, institutions or other local operating units and the appropriate designee of PEF unless they mutually agree that such dates or periods are unnecessary or undesirable.

#### 12.7 Vacation Use

(a) Vacation credits may be used in such units of time as the appointing authority may approve, but the appointing authority shall not require that vacation credits be used in units greater than one-quarter hour. This provision shall not supersede any local arrangements which provide for liquidation in smaller units of time.

(b) An employee's properly submitted written request for use of

accrued vacation credits shall be answered within a reasonable period of time. If an employee's properly submitted request for use of accrued vacation credits is denied or cancelled, the employee shall receive, upon written request, a written statement of the reasons for such denial or cancellation. Such written statement of the reasons for such denial or cancellation shall be provided within three days of receipt of the written request for it.

#### **12.8 Sick Leave Accumulation**

(a) Sick leave shall be credited in accordance with the New York State Attendance Rules except that employees hired on or after April 1, 1982 will earn and accumulate sick leave credits at the rate of 10 days per year.

(b) Employees who are entitled to earn and accumulate sick leave credits may accumulate such credits up to a total of 200 days, provided, however, no more than 165 days of such credits may be used for retirement service credit or to pay for health insurance in retirement.

#### **12.9 Use of Sick Leave**

(a) Sick Leave credits may be used for scheduled medical or dental appointments with the advance approval of the appointing authority or the authority's designee.

(b) Sick Leave credits may be used in such units of time as the appointing authority may approve, but the appointing authority shall not require that sick leave credits be used in units greater than one-quarter hour.

#### **12.10 Personal Leave Accumulation**

Personal leave shall be credited in accordance with the NYS Attendance Rules, except that employees hired on or after April 1, 1982 shall be credited with Personal Leave at the rate of three days per year for the first five years of employment, 3.5 days for the sixth year, 4 days for the seventh year, 4.5 days for the eighth year, and 5 days per year for the ninth and subsequent years.

#### **12.11 Use of Personal Leave**

(a) The State shall not require an employee to give a reason as a condition for approving the use of personal leave credits, provided, however, that prior approval for the requested leave must be obtained, that the resulting absence will not interfere with the proper conduct of

governmental functions, and that an employee who has exhausted personal leave credits shall charge approved absences from work necessitated by personal business or religious observance to accumulated vacation or overtime credits.

(b) Personal leave credits may be used in such units of time as the appointing authority may approve, but the appointing authority shall not require that personal leave credits be used in units greater than one-quarter hour. This provision shall not supersede any local arrangements which provide for liquidation in smaller units of time.

#### 12.12 Accounting of Time Accruals

The State shall prepare and distribute to employees forms for maintaining leave records on a self-accounting basis. Employees shall be advised of the leave accruals to their credit on official records at least once each year.

#### 12.13 Absence--Extraordinary Circumstances

(a) Employees who have reported for duty and, because of extraordinary circumstances beyond their control, are directed to leave work, shall not be required to charge such directed absence during such day to leave credits.

(b) In those instances in which the Governor declares a state of emergency in a specified geographic area, based on circumstances which affect travel, and directs that employees whose official stations are within the specified geographic area not report to work, such absences shall be excused with no charge to leave credits.

#### 12.14 Tardiness for Members of Volunteer Fire Departments, Volunteer Ambulance Services and Enrolled Civil Defense and Civil Air Patrol Volunteers

An appointing authority shall excuse a reasonable amount of tardiness caused by direct emergency duties of duly authorized volunteer firefighters, members of volunteer ambulance services and enrolled civil defense and civil air patrol volunteers. In such cases, the appointing authority may require the employee to submit satisfactory evidence that the lateness was due to such emergency duties.

#### 12.15 Leave for Professional Meetings

Subject to prior approval by the appointing authority, each employee will be allowed a maximum of three days per year without charge to

leave credits to attend conferences or seminars of recognized professional organizations, such conferences or seminars to be directly related to the employee's profession or professional duties. Absences under this provision may be restricted to 5 percent of the profession in the operating unit (e.g., institution, hospital, college, main office or other appropriate facility). Approval of such leave shall be at the discretion of the appointing authority. Such approval will be based on a determination by the appointing authority that (1) the activity to be undertaken will directly benefit the agency, and (2) the absence will not interfere with the proper conduct of governmental functions. Such leave shall not be cumulative and if not used shall be cancelled at the end of each year of this Agreement. Unused leave shall not be liquidated in cash at the time of separation, retirement or death.

#### **12.16 Leave for Professional Examinations**

(a) Upon proper advance notice, employees may absent themselves from duty without charge to leave credits for the purpose of participating in one professional examination each year in their discipline. In the event such examination is administered in several parts, the several parts shall be considered a single examination. Absence required for travel shall be charged to appropriate leave credits.

(b) If an employee is scheduled to work on a shift which ends within eight hours of commencement of such professional examination, reasonable efforts will be made to adjust the employee's work schedule or, to the extent practicable in light of the agency's or institution's need to provide services, to approve the absence charged to appropriate leave credits.

#### **12.17 Maintenance of Time Records**

No employee in this unit shall be required to punch a time clock or record attendance with a timekeeper. An employee eligible to earn overtime shall be required to keep daily time records showing actual hours worked on forms to be provided by the State and such records shall be subject to review and approval by the supervisor. Employees not eligible to earn overtime shall maintain a daily record of absences and leave credits earned and used in accordance with the Attendance Rules on forms to be provided by the State.



## **12.18 Leave for Bereavement or Family Illness**

(a) Employees shall be allowed to charge absences from work in the event of death or illness in the employee's immediate family against accrued sick leave credits up to a maximum of 15 days in any one calendar year.

(b) Requests for leave for family illness shall be subject to approval of the appointing authority; such approval shall not be unreasonably withheld.

## **12.19 Part-Time, Per Diem and Hourly Employees**

(a) Part-time employees covered by the New York State Attendance Rules who are compensated on an annual salary basis shall be eligible to earn and accumulate, or be credited with vacation, sick or personal leave credits on a prorated basis if they are employed on a fixed schedule of at least half time.

For the purpose of crediting vacation and personal leave for such employees in State service on the effective date of this section, their anniversary dates shall be determined in a manner consistent with their total State service.

To determine if a part-time employee meets the requirement of at least half-time, fixed schedule employment with up to a maximum of two appointing authorities may be counted. Employees who qualify as half-time by counting part-time employment with two appointing authorities shall be subject to such special attendance reporting requirements as the State may establish, and shall be limited to use earned leave credits from each appointing authority in the same proportion as the leave credits are earned from each appointing authority.

(b) Employees covered by the New York State Attendance Rules who are compensated on a per diem or hourly basis shall be eligible for vacation, sick and personal leave benefits on a prorated basis if they are employed on a fixed schedule of at least half time and are so employed continuously for nine (9) months without a break in service exceeding one full payroll period.

(c) Nothing contained herein shall be construed to provide for the granting of paid leave benefits retroactively for periods of service prior to the effective date of this Agreement.

## **12.20 Sick Leave at Half-Pay**

(a) Employees who earn sick leave at the rate of ten days per year under the provisions of Section 12.8(a) above shall be granted sick leave at half-pay subject to the following conditions:

1. Such sick leave at half-pay shall be available only to permanent employees who have completed at least one full year of service.

2. Such sick leave at half-pay shall be available only for absences caused by the personal incapacity of the employee as verified by medical documentation furnished by the employee and acceptable to the appointing authority; it shall not be available for bereavement leave, leave for family illness, or scheduled medical, dental or related appointments.

3. Such sick leave at half-pay shall only be available after all of the employee's other leave credits, including annual leave, personal leave, sick leave and holiday compensatory time, have been exhausted.

4. Such sick leave at half-pay shall only be available for use after at least ten consecutive days of absence, at least five of which have been charged to sick leave; except that the requirement that at least five days of such absence must have been charged to sick leave may be waived at the discretion of the appointing authority when, in the opinion of the appointing authority, based on a review of the specific circumstances of the specific case, the imposition of that requirement would impose an undue hardship.

5. Except as otherwise provided in this Section 12.20, the use of such sick leave at half-pay shall be subject to all existing procedural requirements established in the Attendance Rules or at the agency and/or facility level governing the use of sick leave at half-pay.

6. The cumulative total of such sick leave at half-pay any employee shall receive shall be 1.5 days for each six months of service the employee has completed after April 1, 1985.

(b) Employees who receive sick leave at half-pay under the provisions of sub-section (a) above shall have that number of days of such sick leave at half-pay deducted from the number of days of sick leave at half-pay they are otherwise eligible to receive at the discretion of their appointing authority under the provisions of Section 21.5 of the Attendance Rules.

## 12.21 Maternity and Child-Rearing Leave

(a) Maternity and child-rearing leave shall be granted as provided in the Attendance Rules.

(b) In cases of legal adoption under Article 7 of the Domestic Relations Law, leave for child-rearing purposes shall be granted as provided in the Attendance Rules.

## 12.22 Voluntary Reduction in Work Schedule Program

The Voluntary Reduction in Work Schedule program, as described in the Program Guidelines reproduced in Appendix IV, shall be continued for the term of this Agreement. Disputes arising from the denial of VRWS requests shall be reviewed only in accordance with the procedures established in Paragraph 12 of the Guidelines, and not under Article 34. Other disputes arising in connection with this provision shall be subject to review through the procedure established in Article 34, Section 34.1(b) of this Agreement.

# ARTICLE 13

## Workers' Compensation Benefit

13.1(a) Effective on the date of execution of this Agreement, employees with Attendance Rules coverage who are necessarily absent from duty because of an occupational injury, disease or condition as defined in the Workers' Compensation Law shall be eligible for a Workers' Compensation Benefit as modified in this Article. This article does not diminish employees' rights under the Workers' Compensation Law. Determinations of the Workers' Compensation Board regarding compensability of claims shall be binding upon the parties.

(b) A workers' compensation injury shall mean any occupational injury, disease or condition found compensable as defined in the Workers' Compensation Law.

13.2 An employee who suffers a compensable occupational injury shall be placed on leave of absence without pay for all absences necessitated by such injury and shall receive the benefit provided by the Workers' Compensation Law.

### 13.3(a) Medical Evaluation Network

Effective on the date of execution of this Agreement, a statewide network of evaluating physicians will be selected by the State Insurance

Fund, which will act as the third party administrator for the PS&T Medical Evaluation Network until such time as a permanent third party administrator is selected pursuant to Section 13.3(m). Employees who elect to participate in the medical evaluation network program shall attend all scheduled medical exams. Medical evaluation network physicians make determinations on an employee's degree of disability and prognosis for full recovery. Eligible employees who elect to participate in the medical evaluation program shall be placed on leave without pay and will receive the benefits provided by the Workers' Compensation Law and the added benefits provided by this Article. Such employees shall also be eligible for a mandatory alternate duty assignment pursuant to section 13.5. Employees who elect not to participate in the medical evaluation network program will receive only the benefits provided by Section 13.2.

(b) Employees electing to participate in the medical evaluation network program may be eligible for payments, for a period not to exceed nine months per injury, in addition to the statutory wage benefit provided pursuant to the Workers' Compensation Law. Supplemental payments will be paid to employees whose disability is classified by the evaluating physicians as "total" or "marked", and where a Workers' Compensation Law wage payment is less than 60% of pre-disability wages, so that the total of the statutory payment and the supplemental payment provided by this article equals 60% of their pre-disability gross wages. The pre-disability wages are gross wages, defined as the sum of base annual salary, location pay, geographic differential, shift differential and inconvenience pay, received as of the date of the disability.

(c) The appointing authority will assume that all eligible employees have elected to participate in the medical evaluation network program unless the employee submits in writing a statement which clearly states his or her election to not participate in the program, as soon after the accident as possible.

(d) An employee necessarily absent for less than a full day in connection with a workers' compensation injury as defined in 13.3(a) due to therapy, a doctor's appointment, or other required continuing treatment, may charge accrued leave for said absences.

(e) The State will make previously authorized payroll deductions

for periods the employee is receiving salary sufficient to permit such deductions. The employee is responsible for making payment for any such deductions whenever salary is insufficient to permit these deductions, for example, during periods of leave without pay, such as those provided in 13.2 and 13.3(a) above.

(f) An employee required to serve a waiting period pursuant to the Workers' Compensation Law shall have the option of using accrued leave credits or being placed on leave without pay. Where an employee charged credits and it is subsequently determined that no waiting period is required, the employee shall be entitled to restoration of credits charged proportional to the combined amount of net monetary award credited to New York State by the Workers' Compensation Board and supplemental payments made pursuant to this article.

(g) When vacation credits are restored pursuant to this Article and such restoration causes the total vacation credits to exceed 40 days, a period of one year from the date of the return of the credits or the date of return to work, whichever is later, is allowed to reduce the total accumulation to 40 days.

(h) An employee receiving Workers' Compensation payments for a period of disability found compensable by the Workers' Compensation Board shall be treated as though on the payroll for the length of the disability, not to exceed nine months per injury, for the sole purposes of accruing seniority, continuous service, vacation, sick leave, and personal leave. Additionally, such employee shall be treated as though on payroll for the period of disability, not to exceed nine months per injury, for the purposes of health insurance, retirement service credit and retirement contributions.

(i) An employee whose disability exceeds the nine month entitlement afforded by this article shall not be allowed to use accumulated leave credits.

(j) If an employee's Workers' Compensation claim is controverted by the State Insurance Fund upon the ground that the disability did not arise out of or in the course of employment, the employee may utilize leave credits (including sick leave at half-pay) pending a determination by the Workers' Compensation Board.

(k) If the employee's controverted or contested claim is decided in

the employee's favor, any leave credits charged (and sick leave at half pay eligibility) shall be restored proportional to the combined amount of net monetary award credited to New York State by the Workers' Compensation Board and supplemental payments made pursuant to this Section.

(l) If the employee was in leave without pay status pending determination of a controverted or contested claim, and the claim is decided in the employee's favor, the employee shall receive the benefits pursuant to this Section for the period covered by the award, not to exceed nine months per injury.

(m) As soon as practicable, the State shall seek proposals from various third party vendors to provide a network of evaluating physicians. The third party will select the network of physicians based on criteria developed by the State after conferring with PEF.

13.4(a) If the date of the disabling incident is prior to April 1, 1986, the benefits available shall be as provided in the 1982-85 State/PEF Agreement.

(b) If the date of the disabling incident is on or after April 1, 1986 and prior to the date of execution of this Agreement, the benefits available shall be as provided in the 1988-91 State/PEF Agreement.

(c) If the date of the disabling incident is on or after the date of execution of this Agreement, the benefits available shall be as provided herein.

#### 13.5(a) Mandatory Alternate Duty

A mandatory alternate duty policy shall be established that allows management to recall an employee to duty and allows an eligible employee to request a return to duty subject to meeting the eligibility criteria. During the period of the alternate duty, the employee will receive regular full salary.

(b) Only employers who have elected to participate in the medical evaluation network are eligible for Mandatory Alternative Duty. In addition, an employee is eligible when his/her disability is classified at 50% or less by the SIF and he/she has a prognosis of full recovery within 45 calendar days.

(c) Mandatory alternate duty assignments shall be based upon medical documentation satisfactory to management. The issue of

medical documentation is not reviewable under Article 34 of this Agreement.

(d) Mandatory alternate duty assignments shall be for up to 45 calendar days per injury and may be extended at management's discretion.

(e) If no such alternate duty assignment is available, the employee will receive the wage benefit he or she would have received pursuant to Section 13.3(b) if the disability was classified as "total" for the period the employee qualified for alternate duty not to exceed 45 calendar days.

(f) An employee who refuses an alternate duty assignment will continue on leave and receive the wage benefit deemed appropriate pursuant to the Workers' Compensation Law.

(g) Mandatory alternate duty assignments shall reflect the employee's physical limitations. Such assignments may include tasks that can be performed by the employee but that are outside of the employee's salary grade, title series or normal job duties. Such assignments shall not be considered to constitute out-of-title work and may result in changes in the employee's workday, workweek, work schedule and/or work location.

(h) When the employee's mandatory alternate duty assignment expires, the employee who has fully recovered will return to his or her regular position. If the disability continues beyond the 45 days, the employee may request an extension of the assignment. If the extension is not granted by management, the employee shall receive only the statutory wage benefit appropriate to their level of disability.

(i) The mandatory alternate duty assignment may be terminated prior to its expiration date if it is determined that the employee is able to return to his or her regular assignment.

13.6(a) The State and PEF shall establish a committee whose purpose shall include, but not be limited to, reviewing and making recommendations on the following: (1) the effects of the implementation and administration of the Workers' Compensation statutory benefit; (2) the implementation of the Mandatory Alternate Duty Program; (3) the accident and injury data focusing on incidence of injuries or accidents in order to develop prevention strategies and means to reduce and/or eliminate the risk of on-the-job injury.

## **ARTICLE 14**

### **PROFESSIONAL DEVELOPMENT AND QUALITY OF WORKING LIFE COORDINATING COMMITTEE**

14.1 A Professional Development and Quality of Working Life Coordinating Committee shall be established to coordinate and oversee the activities of the issue-specific joint committees established pursuant to Articles 15, 18, 21, and 44 of this Agreement and to undertake professional development and/or quality of working life initiatives that are not within the sphere of any of the issue-specific joint committees.

14.2 The Professional Development and Quality of Working Life Coordinating Committee shall consist of the Director of the Governor's Office of Employee Relations (or the Director's designee) and the President of PEF (or the President's designee).

14.3 The Professional Development and Quality of Working Life Coordinating Committee shall meet at least quarterly. The Committee shall establish by agreement such other operating procedures as it shall deem necessary to perform its functions.

14.4 The State shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain an appropriation of \$600,000 for each of fiscal years 93-94 and 94-95 to fund the operation and activities of the Committee. The Committee shall, by agreement, allocate this funding for its own purposes and among the issue-specific joint committees listed in 14.1 above.

14.5 The Professional Development and Quality of Working Life Coordinating Committee shall undertake the design, development and implementation of a comprehensive analysis of occupational stress factors in the PS&T Unit. The first phase of such study shall be a review and evaluation of research on this subject that has already been completed to determine the applicability of such research and its results to employees in the PS&T unit.

## **ARTICLE 15**

### **PROFESSIONAL DEVELOPMENT COMMITTEE**

15.1 In recognition of the value of professional development to both the State and the State's professional, scientific and technical employees,



a Professional Development Committee shall be established to review the needs for professional development and training programs to improve job performance and to assist employees in developing their full professional potential.

15.2 The Professional Development Committee shall consist of two designees of the Director of the Governor's Office of Employee Relations and two designees of the President of PEF. The Committee shall meet at least monthly. The Committee shall establish by agreement such operating procedures as it deems necessary to conduct its activities. In the case of a failure of the Committee to reach agreement on any matter, such matter will be referred to the Professional Development and Quality of Working Life Coordinating Committee for resolution.

15.3 The State shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain an appropriation of \$3,875,000 for each of State fiscal years 1993-94, and 1994-95 to continue to fund the Public Service Training Program. The State shall meet and confer with PEF, within the Professional Development Committee, with regard to the expenditure of monies appropriated for the Public Service Training Program.

15.4 The State shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain an appropriation of \$750,000 for each of State fiscal years 1993-94, and 1994-95 to fund a Tuition Reimbursement Program. The Professional Development Committee shall develop and administer a Tuition Support program within this funding.

15.5 The State shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain an appropriation of \$825,000 each year for State fiscal years 1993-94 and 1994-95 to support supplemental training programs. The State shall meet and confer with PEF, within the Professional Development Committee, with regard to the expenditure of monies appropriated for the supplemental training program. This would include programs designed to address the professional development needs of supervisors and individual contributors.

15.6 The funds allocated in 15.3 and 15.4 and 15.5 above include the costs of administration of the respective programs.

## **ARTICLE 16**

### **STAFFING**

#### **16.1 Eligible Lists**

In the event the use of an eligible list is stayed pursuant to court order, upon the removal of such stay such eligible list shall continue in existence for a period not less than 60 days and for such additional period as may be determined by the Department of Civil Service, except that in no event shall such 60 day period extend the life of any eligible list beyond the statutory limit of four years.

#### **16.2 Alternate Examination Dates**

In the event an employee in this unit is unable to participate in an examination because of the death, within seven days immediately preceding the scheduled date of an examination of a grandparent, parent, spouse, sibling, child or a relative living in the employee's household, such employee shall be given an opportunity to take such examination at a later date, but in no event shall such examination be rescheduled sooner than seven days following the date of death. The Department of Civil Service shall prescribe appropriate procedures for reporting the death and applying for the examination.

#### **16.3 Leave - Probationary Employees**

Permanent employees holding positions in the competitive or non-competitive class who accept appointment to a State position from an open-competitive eligible list, upon written notice of acceptance of such an appointment, shall be granted a leave of absence from their former positions for a period not to exceed 52 weeks or the period of the actual probation, whichever is less.

## **ARTICLE 17**

### **OUT-OF-TITLE WORK**

17.1 No employee shall be employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless he or she has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of the Civil Service Law, Rules and Regulations.

17.2 The term "temporary emergency" as used in this Article shall mean an unscheduled situation or circumstance which is expected to be of limited duration and either (a) presents a clear and imminent danger to person or property, or (b) is likely to interfere with the conduct of the agency's or institution's statutory mandates or programs.

17.3 (a) A grievance alleging violations of this Article shall be filed directly at Step 2 by the employee, in writing on forms to be provided by the State, to the Agency Head or a designee of that Agency Head, and a copy of the grievance shall be simultaneously filed with the facility or institution head or a designee. A determination shall be issued at Step 2 as promptly as possible, but no later than 10 working days after receipt of the grievance unless PEF or the employee agrees to an extension of such time limit.

(b) An appeal from an unsatisfactory decision at Step 2 may be filed by PEF through its President or the President's designee with the Director of the Governor's Office of Employee Relations or the Director's designee within 10 working days of receipt of the Step 2 decision. Such appeal shall include a copy of the original grievance and the Step 2 reply.

(c) After receipt of such grievance, the Director of the Governor's Office of Employee Relations or the Director's designee will promptly forward it to the Director of Classification and Compensation for a review and determination as to whether the duties at issue are out-of-title.

(d) The Director of Classification and Compensation will make every reasonable effort to complete such review promptly, and will send to the Director of the Governor's Office of Employee Relations the findings as to whether the duties at issue are out-of-title.

(e) The Director of the Governor's Office of Employee Relations, or the Director's designee, shall issue a Step 3 determination forthwith upon receipt of the determination of the Director of Classification and Compensation based on the following:

1. The findings of the Director of Classification and Compensation as to whether the duties at issue are out-of-title.

2. If the Director of Classification and Compensation has determined the duties at issue to be out-of-title, a review by the Director of the Governor's Office of Employee Relations, or the Director's

designee, of whether temporary emergency circumstances exist which make the assignment of such out-of-title duties appropriate.

(f) If the Director of Classification and Compensation finds the duties at issue to be out-of-title, and the Director of the Governor's Office of Employee Relations, or the Director's designee, finds that no temporary emergency circumstances exist, the Step 3 determination shall direct that out-of-title assignment be discontinued.

17.4 (a) If such out-of-title duties are found to be appropriate to a lower salary grade or to the same salary grade as that held by the affected employees, no monetary award may be issued.

(b) If, however, such out-of-title duties are found to be appropriate to a higher salary grade than that held by the affected employee, the Director of the Governor's Office of Employee Relations, or the Director's designee, shall issue an award of monetary relief, provided that (a) the assignment to perform such duties was made on or after April 1, 1982, and (b) the affected employee has performed work in the out-of-title assignment for a period of one or more days. And, in such event, the amount of such monetary relief shall be the difference between what the affected employee was earning at the time he or she performed such work and what he or she would have earned at that time in the higher salary grade title, but in no event shall such monetary award be retroactive to a date earlier than fifteen calendar days prior to the date the grievance was filed in accordance with this Article.

(c) If such out-of-title duties were assigned by proper authority during the continuance of a temporary emergency situation, the Director of the Governor's Office of Employee Relations, or the Director's designee, shall dismiss the grievance.

(d) After receipt of the Step 3 decision, PEF may, where it alleges additional facts or existence of a dispute of fact, within thirty (30) calendar days of the date of the decision, file an appeal with the Director of the Governor's Office of Employee Relations. Such appeal shall include documentation to support the factual allegations. The appeal shall then be forwarded by the Director of Governor's Office of Employee Relations to the Director of Classification and Compensation for reconsideration. The Director of Classification and Compensation shall reconsider the matter and shall, within thirty (30) calendar days,

forward an opinion to the Director of the Governor's Office of Employee Relations. The latter shall act upon such opinion in accordance with the provisions of Article 17.3(e) and (f), 17.4(a), (b) and (c) above.

17.5 Grievances hereunder may be processed only in accordance with this Article and shall not be arbitrable.

## **ARTICLE 18**

### **HEALTH AND SAFETY**

18.1 The State remains committed to providing and maintaining healthy and safe working conditions, and to initiating and maintaining operating practices that will safeguard employee health and safety in an effort to eliminate the potential of on-the-job injury/illness and resulting workers' compensation claims.

18.2 The State and PEF shall establish a Joint Health and Safety Committee. The Joint Health and Safety Committee shall study and review matters of mutual concern in the areas of health and safety; shall serve as a forum in which PEF can advise the State of potential health or safety problems; shall serve as a forum in which PEF can advise on the development and implementation of State policy in all matters related to health and safety; and shall serve as a means by which pro-active measures to improve health and safety at the worksite can be developed and implemented.

18.3 The Joint Health and Safety Committee shall consist of three designees of the Director of the Governor's Office of Employee Relations and three designees of the President of PEF.

The committee shall meet at least quarterly. The committee shall establish by agreement such operating procedures, tasks and goals as it deems necessary to conduct its activities. In the case of a failure of the committee to reach agreement on any matter, such matter shall be referred to the Professional Development and Quality of Working Life Coordinating Committee for resolution.

18.4 The Joint Health and Safety Committee shall use such funds as are made available to it by the Professional Development and Quality of Working Life Coordinating Committee to undertake initiatives in the general areas of education, support of agency-level and local-level health and safety committees, and study and research. Subject to the agreement

of the committee and the availability of funding from the Professional Development and Quality of Working Life Coordinating Committee, specific activities of the Committee may include, but are not limited to, the following:

- Development and implementation of programs to enhance the knowledge and skills of employees, management officials and union representatives in the identification and correction of health and safety problems.
- Development and implementation of a health and safety grants program to provide financial support to the activities of agency-level and local-level health and safety committees.
- Participation in continuing to move toward a smoke-free environment in all worksites by providing assistance to agency-level and local-level health and safety committees in the joint development of worksite smoking policies consistent with the general guidelines adopted by the Statewide committee.
- Development and implementation of programs to provide agency-level and local-level health and safety committees with current information about health and safety issues including, but not limited to, the operation of a Health and Safety Resource Center, indoor air quality, video display terminals, violence and assaults on employees, infectious disease control, ergonomics, and right-to-know education.

18.5 The committee shall identify issues of mutual concern in the area of asbestos, and shall develop and implement activities to address such mutual concerns.

#### 18.6 Agency-Level and Local-Level Health and Safety Committees

(a) The State and PEF shall establish joint health and safety committees at the agency and local levels.

Such committees shall have at the agency and local levels the same functions as those of the State-level committee.

(b) Agency and local health and safety committees shall meet at least quarterly. Agendas shall be exchanged in writing by the parties at least seven days before each meeting, and additional matters may be placed on the agenda only by the agreement of both parties.

(c) A local-level health and safety committee that has reviewed a local health and safety issue but has been unable to agree on the

disposition of that issue shall refer that issue to the appropriate agency-level health and safety committee for review and resolution.

(d) An agency-level health and safety committee that has reviewed an agency-level or local-level health and safety issue but has been unable to agree on the disposition of that issue shall refer that issue to the Statewide Health and Safety Committee for review and resolution.

#### **18.7 Coordination of Health and Safety Activities**

In recognition that health and safety are worksite matters that affect all employees at a worksite, regardless of negotiating unit, the Joint Health and Safety Committee and the agency-level and local-level health and safety committees shall make appropriate efforts to integrate their activities with the health and safety activities of State departments and agencies and joint health and safety committees established by the State and other State employee unions. Such efforts shall not preclude State/PEF health and safety committees from acting independently.

#### **18.8 Toxic Exposure**

(a) Employees who are directly exposed to toxic substances as a result of an accident, an incident or a discovery previously undetected by the State or the employees, will have the opportunity to be medically screened as appropriate at State expense. Such medical screening will be offered provided commonly accepted scientific evidence exists to indicate that the exposure presents a clear and present danger to the health of the affected employee.

(b) It is incumbent on the State to identify substances used by employees or to which they are exposed within the work place. Where a substance is identified as being toxic, prior to any clean up or removal of the substance, the State will determine the nature of the substance, the toxic properties of the substance, and the safe and recommended method of working with the substance including the appropriate personal protective equipment necessary when working with the identified substance.

#### **18.9 Safety Equipment**

Safety equipment such as safety shoes, safety goggles, hardhats, vests, etc., which are officially required by departments and agencies for use by employees shall be supplied by the State.

#### **18.10 Those departments or agencies in which there is a potential**

for occupational exposure to HIV, HBV, and TB, as determined by the New York State Department of Labor, shall establish and promulgate policies consistent with generally accepted medical practices, NYS Department of Health Guidelines, and NYS Department of Labor Occupational Safety and Health Standards and Enforcement Guidelines.

#### **18.11 Health and Safety Grievance Procedure**

Grievances alleging a violation of this article, or alleging the existence of any safety violation, or otherwise arising from a health and safety condition or dispute shall be subject to review through the procedure established in Article 34, Section 34.1(b) of the Agreement and shall not be arbitrable.

## **ARTICLE 19**

### **PARKING**

19.1 The State shall continue to have the right to determine the purposes for which its physical facilities shall be used, including the right to allocate more or less space for parking by employees in this unit.

19.2 The State shall meet and confer with PEF concerning the adequacy or continuation of parking facilities provided by the State for employees in this unit, the need for additional parking facilities, and the method of distributing parking privileges among employees in the unit when the parking made available by the State is not adequate to provide parking privileges for all employees. Such meetings shall be held at the local level or such other level as is mutually deemed by the Director of Employee Relations and the President of PEF to be appropriate.

19.3 The State and PEF shall, upon the demand of either party negotiate concerning the imposition of fees for parking by employees in this unit or the modification of current employee parking fees in any parking facility. Such negotiations shall occur no more frequently than once in regard to any particular parking facility during the term of this Agreement. Should such negotiations fail to result in agreement, the issue(s) shall be submitted to last offer binding arbitration under procedures that have been agreed to by the parties.

19.4 The following shall apply to parking facilities operated by the Office of General Services, Bureau of Parking Services in Albany:

- (a) A Parking Committee shall be established to meet and confer on



allocation of employee parking spaces made available within parking facilities as managed by the Bureau of Parking Services. The Committee shall assess present allocation, develop a method for allocation of existing spaces which will include consideration of employee negotiating unit designation and proportionate space allotment, needs of the handicapped, parking area utilization, and other factors which will contribute to the development of a rational, workable plan for such allocation. Such plan shall be developed and implemented during the term of this Agreement.

Additionally, the Committee shall make recommendations to the State on the adequacy of employee parking and suggest alternatives to meet identified needs.

Recognizing that the downtown Albany parking issue is a work place issue, the Committee shall include representatives of all employee groups affected. PEF may designate up to three representatives to serve on the Committee.

(b) The Memorandum of Understanding dated October 6, 1988, concerning the parking fee structure in parking facilities operated in and around Albany by the Office of General Services, Bureau of Parking Services, shall remain in full force and effect according to its provisions.

## **ARTICLE 20**

### **REVIEW OF PERSONAL HISTORY FOLDER**

20.1 There shall be only one official personal history file maintained for any employee. The personal history folder shall contain all memoranda or documents relating to such employee's job performance which contain criticism, commendation, appraisal or rating of such employee's performance on the job. Copies of such memoranda or documents shall be sent to such employee simultaneously with their being placed in the personal history folder.

20.2 An employee, or a PEF representative designated by the employee, shall have an opportunity to review the official personal history folder in the presence of an appropriate official of the department or agency within three working days' notice, provided, however, where the employee's personal history folder is kept at a location other than the employee's place of work, five working days' notice shall be required. Where such review is requested in connection with a pending disciplinary

action or a pending grievance, every reasonable effort should be made to schedule the review within a time period that will permit adherence to the time requirements of the grievance or discipline procedure. An employee shall have the opportunity to place in his/her personal history folder a response of reasonable length to anything contained therein which such employee deems to be adverse.

20.3 An employee shall be permitted to be accompanied by a PEF Steward or other PEF representative during the review of the personal history folder pursuant to this Article.

20.4 Upon an employee's written request, material over three (3) years old shall be removed from the personal history folder, except unsatisfactory performance evaluations, personnel transactions, pre-employment materials and notices of discipline and all related records. Notices of discipline and related records wherein the final determination is that the employee was completely absolved of guilt shall not remain part of the personal history file.

## **ARTICLE 21**

### **EMPLOYMENT CONTINUITY COMMITTEE**

21.1 The State and PEF shall establish an Employment Continuity Committee to participate in the development and implementation of strategies to provide continuity of employment and, when displacement of employees occurs, to participate in the development and implementation of strategies to ease the impact of such displacement.

21.2 The Employment Continuity Committee shall consist of two designees of the Director of the Governor's Office of Employee Relations and two designees of the President of PEF. The Committee shall meet at least quarterly. The Committee shall establish by agreement such operating procedures as it deems necessary to conduct its activities. In the case of a failure of the Committee to reach agreement on any matter, such matter shall be referred to the Professional Development and Quality of Working Life Coordinating Committee for resolution.

21.3 The Committee shall use such funds as are made available to it by the Professional Development and Quality of Working Life Coordinating Committee for the study and analysis of programs or activities that can be utilized to avoid displacement of employees or to

ease the impact of such displacement. When instances of possible displacement occur, the Committee shall recommend that these or other activities be undertaken and shall use such funds as are made available for such purposes by the Professional Development and Quality of Working Life Coordination Committee to undertake such activities.

21.4 In recognition that employment continuity is a matter that may affect employees across negotiating unit lines, the Committee shall, where appropriate, act cooperatively with employment continuity committees established jointly by the State and other unions.

21.5 The parties agree that the matter of the configuration of layoff units is an appropriate subject for discussion by the Committee.

## **ARTICLE 22**

### **PROTECTION OF EMPLOYEES**

22.1 There shall be no loss of present jobs by permanent employees as a result of the State's exercise of its right to contract out for goods and services.

22.2 No permanent employees will suffer reduction in existing salary as a result of reclassification or reallocation of the position they hold by permanent appointment.

22.3 A Joint Committee shall be established to examine the concept of increasing work force flexibility and mobility and alternate ways of deploying personnel for the following purposes:

(1) as a way of improving employment security in the context of changing employment security needs;

(2) as a way of accommodating the State's right to contract out for goods and services pursuant to Article 22.1, while also enhancing reasonable continued employment opportunities for affected employees.

The Committee shall explore, among other possibilities, changes in applicable laws, rules, regulations and/or collective bargaining agreement provisions which affect personnel deployment. Recommendations of this Committee shall be presented to the parties by April 1, 1993, or as soon as practicable thereafter.

## **ARTICLE 23**

### **LAYOFFS IN NON-COMPETITIVE CLASS**

23.1 Permanent non-competitive class employees in this negotiating unit if laid off will be laid off within title on the basis of seniority, provided, however, that such employees shall not gain greater rights than they would have if they were covered by the provisions of Sections 80 and 81 of the Civil Service Law, and provided, further, however, that this provision does not extend to these employees coverage under Civil Service Law § 75 or Article 33 of the Agreement with PEF.

23.2 Where under current layoff law and procedures permanent employees are to be laid off within a given layoff unit and there are provisional or temporary employees in the same title in another layoff unit not projected for layoff, such provisional or temporary employees will be displaced in order to provide continued employment for those affected permanent employees. The State will manage centrally the placement of the affected permanent employees.

23.3 Permanent non-competitive class employees in this negotiating unit with one year or more of permanent continuous State service who are laid off have such layoff governed by the process presently applicable to competitive class employees for the purpose of reemployment to future vacancies.

## **ARTICLE 24**

### **LABOR/MANAGEMENT COMMITTEE PROCESS**

24.1 The State and PEF have an interest in maximizing the effectiveness of operations, the delivery of quality services and the promotion of a satisfied work force. To further this interest, the parties endorse the Labor/Management Committee Process as an appropriate means to identify and understand workplace issues and develop viable solutions. The State and PEF intend to foster an ongoing, communicative relationship in which the parties are encouraged to speak freely and resolve issues within the Labor/Management forum. The State and PEF shall cooperate in using training and other mutually agreed upon methods, within available resources, to assist agency and local level labor/management committees to be more effective.

24.2 The Director of Employee Relations or the Director's

designees shall meet with the President of PEF or the President's designees at mutually agreed upon times to discuss and attempt to resolve matters of mutual concern. At the request of the other party, each party shall submit a written agenda at least seven days in advance of the meeting. Meetings shall be held at least quarterly, subject to the agenda for any such meeting having been mutually agreed upon in advance.

Among the topics for this forum will be joint discussion, planning, and problem-solving regarding the Quality through Participation initiative, particularly as it impacts PEF and PS&T employees. Quality through Participation seeks to introduce, adapt and install total quality management methods (such as customer-driven quality goals and standards, employee empowerment, analysis of work processes, and continuous improvement) into State operations to support high quality services and increased job satisfaction for employees.

Other matters for discussion may include, but will not be limited to centralized travel management, expedited travel reimbursement, and issues referred by agency and local level management committees.

24.3 Department or Agency heads, or their designees, shall meet with PEF representatives periodically to discuss and attempt to resolve matters of mutual concern. Such meetings shall be held at times mutually agreed to but shall be held no less frequently than biannually. Subjects which may be discussed at such meetings may include, but are not limited to: questions concerning implementation and administration of this agreement which are department-or agency-wide in nature, continuity of employment, institution of alternative work schedules, staff development and training issues, distribution and posting of civil service examination announcements and other matters as mutually agreed. Written agenda shall be exchanged by the parties no less than seven days before the scheduled date of each meeting. At the time of the meeting additional subjects for discussion may be placed on the agenda by mutual agreement.

An agency-level labor/management committee which has reviewed an issue but has been unable to agree on the disposition of that issue shall refer that issue to the State-level labor/management committee established in accordance with Section 24.1 above.

24.4 Facility or Institution heads, or their designees, shall meet with

PEF representatives periodically to discuss and attempt to resolve matters of mutual concern. Such meetings shall be held at times mutually agreed to but shall be held no less frequently than biannually. Subjects which may be discussed at such meetings may include, but are not limited to: questions concerning implementation and administration of this Agreement which are local in nature, questions concerning the scheduling of employee workdays within the established workweek, distribution and posting of civil service examination announcements, continuity of employment, institution of alternative work week schedules, staff development and training issues and other matters as mutually agreed. Written agenda shall be changed by the parties no less than seven days before the scheduled date of each meeting. At the time of the meeting additional subjects for discussion may be placed on the agenda by mutual agreement.

A local-level labor/management committee which has reviewed an issue but has been unable to agree on the disposition of that issue shall refer that issue to the appropriate agency-level labor/management committee established in accordance with Section 24.2 above.

24.5 The results of a labor/management meeting held pursuant to this Article shall not contravene any term or provision of this Agreement or exceed the authority of the management at the level at which the meeting occurs. The results of such meetings may, by mutual agreement, be placed in writing in the form of memoranda or correspondence between the parties, but such results shall not be subject to the provisions of Article 34, Grievance and Arbitration.

Disputes arising from an alleged failure to comply with a local-level labor/management agreement shall be referred to the appropriate agency-level labor/management committee for resolution. Such disputes that are not resolved by the agency-level labor/management committee, and disputes arising from an alleged failure to comply with an agency-level labor/management agreement, shall be referred to the State-level labor/management committee for resolution.

## ARTICLE 25

### SENIORITY

#### 25.1 Definition

For purposes of this Agreement, seniority shall be defined as the length of an employee's continuous State service, whether part-time or full-time, from the date of original appointment in the classified service on a permanent basis. An employee who has resigned and who has been reinstated or reappointed in the service within one year thereafter, if such reinstatement or reappointment occurred prior to April 1, 1985, and within three years thereafter, if such reinstatement or reappointment occurred on or after April 1, 1985, shall be deemed to have continuous service for purposes of determining seniority. A period of employment on a temporary or provisional basis or in the unclassified service, immediately preceded and followed by permanent service in the classified service shall not constitute an interruption of continuous service for determining seniority nor shall a period of authorized leave without pay or any period during which employees suspended from their position pursuant to Section 80 or Section 80-a of the Civil Service Law.

#### 25.2 Application

(a) In the event that more employees request the same vacation time off than can be reasonably spared for operating reasons, vacation time off will be granted to such employees who can reasonably be spared, in order of seniority.

(b) Shift and pass day assignments shall not be made for the purpose of imposing discipline. When the qualifications, training or any other factors which best serve the interest of the service to be rendered (including the subspecialties within the professional, scientific or technical services to be rendered) are equal, seniority will be a factor in the assignment of shift, pass days, overtime and voluntary transfers.

25.3 As soon as practicable in advance of the abolishment of any positions filled by permanent competitive class appointments, the State shall provide PEF with seniority lists of employees in the title(s) and agency(s) affected. It is understood by the parties that failure to comply with this provision shall not constitute a basis for preventing or delaying the job abolishments, nor shall failure to comply entitle displaced employees to any compensation or other monetary benefits they would otherwise not have been entitled to receive.

## **ARTICLE 26**

### **INSTITUTION TEACHERS**

#### **26.1 School Calendars**

Labor/management committees will discuss school calendars for institution teachers including their duration and their starting and ending dates.

#### **26.2 Payroll**

(a) Any full-time teacher in a State institution as defined in Section 136 of the Civil Service Law shall be given the option to receive biweekly salary payments either over the 10-month school year or over the calendar year.

(b) An eligible employee electing to receive salary payments over the calendar year shall notify the appropriate payroll office in writing between July 15 and August 15 of each year. Such election shall remain in effect each year unless the employee withdraws the election during the July 15-August 15 period of a subsequent year. Notifications shall be in effect for the entire school year and may not be withdrawn during the school year.

#### **26.3 Special Holidays**

Employees serving as institution teachers at times other than during the normal 10-month school year shall not lose pay for days which have been declared by the State as employer to be special holidays provided such employees were scheduled to work on such days.

#### **26.4 Leave**

The State agrees to provide each institution teacher a maximum of three days of leave with pay during each school year for religious observance, teacher conferences, professional meetings, extraordinary or emergency absences or other personal use except that institution teachers appointed on or after April 1, 1982 shall have a maximum of two days of leave with pay for such purposes in each of their first five years of employment, a maximum of two and one-half days of leave with pay for such purposes in each of their sixth and seventh years of employment, and a maximum of three days of leave with pay for such purposes in their eighth and subsequent years of employment. Such leave shall be approved on request insofar as it would not interfere with the proper conduct of governmental functions. Employees on leave as hereinabove



provided shall not be required to make up such time off by adjustments in their daily or weekly work schedules. Institution teachers shall not be allowed any other time off with pay for such purposes except as provided by Section 12.15.

## **ARTICLE 27**

### **REIMBURSEMENT FOR PROPERTY DAMAGE**

The State agrees to provide for the uniform administration of the procedure for reimbursement to employees for personal property damage or destruction as provided for by subdivisions 12 and 12-c of Section 8 of the State Finance Law and to provide for payments of up to \$50.00 out of local funds at the institution level as provided therein. Allowances shall be based upon the reasonable value of the property involved and payment shall be made against a satisfactory release.

## **ARTICLE 28**

### **DISTRIBUTION OF DIRECTIVES, BULLETINS, OR INSTRUCTIONS**

A copy of any directive, bulletin or instruction that is issued or published by an institution or facility for the information or compliance of all employees will be supplied to the local PEF designee.

## **ARTICLE 29**

### **EMERGENCY FIRST AID**

At an institution or facility where appropriate medical staff and facilities are normally available, when a medical emergency resulting from an injury or sudden illness occurs to an employee while on the premises, the injured or ill employee should be given emergency first aid by any qualified staff member who is on duty and reasonably available from medical duties. The employee will be assisted in arranging transportation as necessary to a general hospital, clinic, doctor or other location for more complete treatment as appropriate.

## **ARTICLE 30**

### **VERIFICATION OF DOCTOR'S STATEMENT**

30.1 (a) When the State requires that an employee who has been absent on sick leave be medically examined by a physician selected by the appointing authority before such employee is allowed to return to work, the appointing authority shall make a reasonable effort to complete the medical examination within 20 working days with the following provisos.

(b) The 20 day period during which the appointing authority has to complete the examination shall include no more than ten days of an employee's advance notice of his or her return to work date. Such notice must include a physician's statement attesting to the employee's fitness and the specified date on which the employee may return to work. For each day of advance notice given, which is less than ten working days from the employee's return to work date, the appointing authority is allowed an additional workday to have the medical examination completed.

(c) If no decision is reached concerning the employee's request to return to duty within 20 workdays as specified in paragraph (a) above, the employee shall be placed on leave with pay without charge to credits until the date such decision is reached and not allowed to return to duty, except that leave with pay shall not be granted where the delay in determining the employee's fitness is caused by the employee's failure to appear for the medical examination or to otherwise cooperate in the scheduling and holding of the examination.

(d) If the physician selected by the appointing authority finds that the employee is not fit for return to duty, the employee shall be placed in the appropriate leave status in accordance with the Attendance Rules as of the date of receipt of the physician's report. Reexaminations by the appointing authority's physician shall not be required more often than once a month and if the appointing authority physician has set a date for reexamination or return to duty, not before such specified date.

(e) The provisions of this Article shall not be construed to require the extension of any employment beyond the time it would otherwise terminate, e.g., under Section 73 of the Civil Service Law.

(f) Employees who are required to submit to a medical examination conducted by a physician selected by the appointing authority shall be

considered to be in pay status during the time required for such examination and any necessary travel to and from the site of such examination, and are entitled to be reimbursed for actual and necessary travel costs and meal and lodging costs incurred as a result of travel in connection with such examination. Such reimbursement is to be made in accordance with the Comptroller's Rules and Regulations.

30.2 Local labor/management arrangements may be developed to require the designation of one person in a particular work location or area to receive, on a confidential basis, medical information provided by an employee in support of the use of sick leave credits and to transmit the authorization for the use of such credits back to the employee's immediate supervisor.

30.3 Medical certification forms shall not require an employee's physician, in describing the cause of the employee's absence, to provide more than a brief diagnosis.

## **ARTICLE 31**

### **STANDBY ON-CALL ROSTERS**

31.1 (a) Nurses, nurse anesthetists and physician assistants who are required to be available for immediate recall and who must be prepared to return to duty within a limited period of time shall be listed on standby on-call assignment rosters. Recall assignments from such rosters shall be equitably rotated, insofar as it is possible to do so, among those employees qualified and normally required to perform the duties. The establishment of such rosters at a facility shall be subject to the approval of the department or agency involved and the Director of the Budget.

(b) All employees in positions allocated to or equated with Grades 22 and below who are required to be available for immediate recall and who must be prepared to return to duty within a limited period of time shall be listed on standby on-call assignment rosters. Recall assignments from such rosters shall be equitably rotated, insofar as it is possible to do so, among those employees qualified and normally required to perform the duties. The establishment of such rosters at a facility shall be subject to the approval of the department or agency involved and the Director of the Budget.

31.2 The State shall provide an amount equal to 15 percent of the

daily rate of compensation payable to employees in the titles in Section 31.1 of this Article which will be paid to such employees who are eligible to earn overtime for each eight hours or part thereof that the employees are actually scheduled to remain and do remain available for recall pursuant to such roster, provided, however, in the event the employees are actually recalled to work, they will receive appropriate overtime or recall compensation as provided by law instead of said 15 percent of the daily salary. Standby on-call payments pursuant to this Article shall be paid quarterly. Administration of such payments shall be at the rate of 1/10 of the biweekly rate of compensation and will include the geographic, location, inconvenience and shift pay as may be appropriate to the place or hours normally worked.

31.3 Employees who are recalled to work from a standby roster shall not be assigned "make-work" during such recall.

## **ARTICLE 32**

### **WORKWEEK AND WORKDAY**

32.1 The normal work schedules of employees shall be as described below:

(a) For full-time employees not employed on a seasonal or field basis or in a facility where shift work is required or in a shift operation in a non-facility location - The normal workweek shall be Monday through Friday; the normal workday shall commence between 6:00 a.m. and 10:00 a.m.

(b) For full-time employees, except seasonal employees, employed in a facility where shift work is required or employed in a shift capacity in a location other than a facility - Wherever practicable and consistent with program needs, the workweek shall consist of five consecutive days of work followed by two consecutive days off. There shall be no restriction on the time of commencement of the workday.

(c) For full-time employees, except seasonal employees, employed in field positions - Wherever practicable and consistent with program needs, the normal workweek shall be Monday through Friday. There shall be no restriction on the time of commencement of the workday.

(d) For part-time employees and seasonal employees - Wherever practicable and consistent with program needs, the normal workweek

shall consist of five consecutive days of work followed by two consecutive days off except where a different schedule has been established at the beginning of the part-time or seasonal employment. There shall be no restriction on the time of commencement of the workday.

32.2 (a) Within 90 days of the execution of this Agreement, State departments and agencies shall prepare and furnish to the Governor's Office of Employee Relations and the President of PEF a written statement of workweeks or workdays in such departments which on the date of this Agreement differ from the normal workweek or workday.

(b) A work schedule established pursuant to Section 32.1 above or Sub-section 32.2(a) above may be changed with the consent of the employee(s) affected or in an emergency or as described below:

1. For full-time employees except those employed on a seasonal basis - After reasonable advance notice and consultation and a minimum of 30 days' advance notice, in writing, to the affected employee(s).

2. For part-time employees and seasonal employees - After a minimum of 48 hours' advance notice to the affected employees. Notification of such changes shall be made to PEF, and PEF shall be consulted with regard to the changes, except that such consultation may take place either before or after the change.

32.3 For the sole purpose of 32.2 above, the term emergency as used in this Agreement shall mean an unscheduled situation or circumstance which is expected to be of limited duration and either presents a clear and imminent danger to person or property, or is likely to interfere with the conduct of the agency's or institution's statutory mandates or programs.

32.4 There shall be no rescheduling of days off or tours of duty to avoid the payment of overtime compensation except upon two weeks' notice.

32.5 The lunch period of State employees shall not be extended for the purpose of increasing the working time of such employees.

32.6 Breaks in working hours of more than one hour shall not be scheduled in the basic workday of any employee whose position is allocated to SG-22 or below without the consent of the employee affected.

32.7 The development, application and utilization of alternative

work schedules shall be an appropriate subject for discussion at local level and/or agency level labor/management meetings held pursuant to Article 24.

## **ARTICLE 33**

### **DISCIPLINE**

#### **33.1 Applicability**

The disciplinary procedure set forth in this Article shall be in lieu of the procedure specified in Section 75 and 76 of the Civil Service Law and shall apply to all persons currently subject to Section 75 and 76 of the Civil Service Law. In addition, it shall apply to those non-competitive class employees described in Section 75(1)(c) of the Civil Service Law who, since last entry into State service, have completed at least two years of continuous service in the non-competitive class, or who were appointed to a non-competitive class position as described in Section 75(1)(c) of the Civil Service Law on or after April 1, 1979, and have completed at least one year of continuous service in such position.

#### **33.2 Purpose**

The purpose of this Article is to provide a prompt, equitable and efficient procedure for the imposition of discipline for just cause. Both parties to this Agreement recognize the importance of counseling and the principle of corrective discipline. Prior to initiating formal disciplinary action pursuant to this Article, the appointing authority, or the authority's designee, is encouraged to resolve matters informally: provided, however, such informal action shall not be construed to be a part of the disciplinary procedure contained in this Article and shall not restrict the right of the appointing authority, or the designee, to consult with or otherwise counsel employees regarding their conduct or to initiate disciplinary action.

#### **33.3 Employee Rights**

(a) Employees may represent themselves or be accompanied for purposes of representation by PEF or an attorney, at meetings or hearings held pursuant to the disciplinary procedure set forth in Section 33.5, and when, as provided in subdivision (b) or (c) below, the employee is required to submit to an interrogation or requested to sign a statement. Unless the employee declines representation, a reasonable period of time

shall be given to obtain a representative. If the employee requests representation and the employee or PEF fails to provide a representative within a reasonable period of time, the meetings or hearings under the disciplinary procedure may proceed, an interrogation as provided in subdivision (b) below may proceed, or, the employee may be requested to sign a statement as provided in subdivision (c) below. An arbitrator under this Article shall have the power to find that a delay in providing a representative may have been unreasonable. Where an employee elects to be represented by PEF exclusively, the PEF representative assigned by PEF, if a State employee, shall not suffer any loss of earnings or be required to charge leave credits for absence from work as a result of accompanying an employee for purposes of representation as provided in this subdivision.

(b) An "interrogation" shall be defined to mean the questioning of an employee who, at the time of the questioning, has been determined to be a likely subject for disciplinary action. The routine questioning of an employee by a supervisor or other representative of management to obtain factual information about an occurrence, incident or situation or the requirement that an employee submit an oral or written report describing an occurrence, incident or situation, shall not be considered an interrogation. If during the course of such routine questioning or review of such oral or written report, the questioner or reviewer determines that the employee is a likely subject for disciplinary action, the employee shall be so advised. An employee shall be required to submit to an interrogation by a department or agency (1) if the information sought is for use against such employee in a disciplinary proceeding pursuant to this Article, or (2) after a notice of discipline has been served on such employee, only if the employee has been notified, in advance of the interrogation, of the rights to representation as provided in subdivision (a) above. If an employee is improperly subjected to interrogation in violation of the provisions of this subdivision (b), no information obtained solely through such interrogation shall be used against the employee in any disciplinary action. No recording device shall be used nor shall any stenographic record be taken during an interrogation unless the employee is advised in advance that a record is being made. A copy of any formal record shall be supplied to the employee upon request.

(c) No employee who has been served with a notice of discipline pursuant to Section 33.5, or who has been determined to be a likely subject for disciplinary action, shall be requested to sign any statement regarding a matter which is the subject of a disciplinary action under Section 33.5 of this Article unless offered the right to have a representative of PEF or an attorney present and, if he or she requests such representation, is afforded a reasonable period of time to obtain a representative. A copy of any statement signed by an employee shall be supplied to him or to her. Any statements signed by an employee without having been so supplied to him or her may not subsequently be used in a disciplinary proceeding.

(d) In all disciplinary proceedings under Section 33.5, the burden of proof that discipline is for just cause shall rest with the employer. Such burden of proof, even in serious matters which might constitute a crime, shall be preponderance of the evidence on the record and shall in no case be proof beyond a reasonable doubt.

(e) An employee shall not be coerced, intimidated or caused to suffer any reprisals, either directly or indirectly, that may adversely affect wages or working conditions as the result of the exercise of the rights under this Article.

#### 33.4 Suspension or Temporary Reassignment Before Notice of Discipline

(a) Prior to the service of a notice of discipline or the completion of the disciplinary procedure set forth in Section 33.5, an employee may be suspended without pay or temporarily reassigned by the appointing authority, or the authority's designee, in his or her discretion, only pursuant to paragraphs (1) and (2) of this subdivision.

(1) The appointing authority or his or her designee may, in his or her discretion, suspend an employee without pay or temporarily reassign him or her when a determination is made that there is probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would interfere with operations. A notice of discipline shall be served no later than five calendar days following any such suspension or temporary reassignment.

(2) The appointing authority or his or her designee, in his or her discretion, may suspend without pay or temporarily reassign an employee



charged with the commission of a crime. Such employee shall notify the appointing authority in writing that there has been a disposition of a criminal charge within seven calendar days thereof. Following such suspension or temporary reassignment under this paragraph, within seven calendar days from receipt by the appointing authority of notice of disposition of the criminal charges as provided in the Criminal Procedure Law of the State of New York, a notice of discipline shall be served on such employee or such employee shall be reinstated with back pay or reassigned to the regular assignment. Nothing in this paragraph shall limit the right of the appointing authority or the authority's designee to take disciplinary action during the pendency of criminal proceedings.

(3) During the period of any suspension without pay pursuant to the provisions of this Section 33.4, the State shall continue the employee's and dependents' health insurance coverage that was in effect on the day prior to the first day of the suspension, and shall pay the employer's share of any premium or subscription charges to maintain such coverage. Any such suspended employee shall be counted for the purpose of calculating the amount of any periodic deposit for the employee benefit fund for the period applicable. Any such suspended employee shall be responsible for paying the employee's share of premium or subscription costs for such health insurance coverage. The State shall not be liable for payment of the employer's share of the health insurance premium or for the benefit fund payment for any period of time during which the suspended employee fails to pay the employee's share of the health insurance premium.

**(b) Temporary Reassignment**

(1) Where the appointing authority has determined that an employee is to be temporarily reassigned pursuant to this Article, the employee shall be notified in writing of the location of such temporary reassignments and the fact that such reassignment may involve the performance of out-of-title work. The employee may elect in writing to refuse such temporary reassignment and be suspended without pay. Such election must be made in writing before the commencement of the temporary assignment. An election by the employee to be placed on a suspension without pay is final and may not thereafter be withdrawn. Once the employee commences the temporary assignment, no election is

permitted.

(2) The fact that the State has temporarily reassigned an employee rather than suspending him or her without pay or the election by an employee to be suspended without pay rather than be temporarily reassigned shall not be considered by the disciplinary arbitrator for any purpose.

(3) Temporary reassignments under this section shall not involve a change in the employee's rate of pay.

(c) (l) Suspensions without pay and temporary reassignments made pursuant to this Section shall be reviewable by a disciplinary arbitrator in accordance with provisions of Section 33.5 to determine whether the appointing authority had probable cause.

(2) Where an employee has been suspended without pay or temporarily reassigned he or she may, in writing, waive the agency or department level meeting at the time of filing a disciplinary grievance. In the event of such waiver, the employee shall file the grievance form within the prescribed time limits for filing a department or agency level grievance directly with the American Arbitration Association in accordance with Section 33.5. The AAA shall give the case priority assignment and shall forthwith set the matter down for hearing to be held within 14 calendar days of the filing of the demand for arbitration. The time limits may not be extended.

(3) Where an employee is suspended without pay or temporarily reassigned, and the hearing will extend beyond one day, either party may authorize the arbitrator to issue an interim decision and award solely with respect to the issue of whether there was probable cause for the suspension or temporary reassignment, such request to be permitted at any time after the completion of the State's direct case.

(4) Within five calendar days of any suspension without pay or temporary reassignment pursuant to this section, the President of PEF or the President's designee shall be sent a notice advising him or her, in writing, of such suspension without pay or temporary reassignment. Such notice shall be sent by certified mail, return receipt requested.

(d) In the event of a failure to serve a notice of discipline within the time limits established in Section 33.4(a), the employee shall be deemed to have been suspended without pay as of the date of service of the notice

of discipline or, in the event of a temporary reassignment, may return to his or her actual assignment until such notice is served. In the event of failure to notify the President of PEF or the President's designee of the suspension within the time period established in Section 33.4(c)(4), the employee shall be deemed to have been suspended without pay as of the date the notice is sent to the President of PEF or the President's designee.

### 33.5 Disciplinary Procedure

(a) Where the appointing authority or the authority's designee seeks to impose discipline, notice of such discipline shall be made in writing and served upon the employee. Discipline shall be imposed only for just cause. Disciplinary penalties may include a written reprimand, a fine not to exceed two weeks pay, suspension without pay, demotion, restitution, dismissal from service, loss of leave credits or other privileges, or such other penalties as may be appropriate. The specific acts for which discipline is being imposed and the penalty or penalties proposed shall be specified in the notice. The notice shall contain a description of the alleged acts and conduct, including reference to dates, times and places. Two copies of the notice shall be served on the employee. Service of the notice of discipline shall be made by personal service or by certified mail, return receipt requested.

(b) The President of PEF or the President's designee shall be advised by certified mail, return receipt requested, of the name and work location of an employee against whom a notice of discipline has been served.

(c) The notice of discipline served on the employee shall be accompanied by a copy of this Article and a written statement<sup>1</sup> that:

(1) the employee has a right to object by filing a disciplinary grievance within 14 calendar days;

(2) he/she has the right to have the disciplinary action reviewed by an independent arbitrator;

(3) the employee is entitled to be accompanied for the purposes of representation by PEF or an attorney at every step of the disciplinary proceeding;

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<sup>1</sup>In the case of an employee who speaks only Spanish, the written statements required shall also be given in a Spanish translation.

(4) if a disciplinary grievance is filed, no penalty can be implemented unless the employee fails to follow the procedural requirements, or until the matter is settled, or until the arbitration procedure specified in subdivision (f) below, is completed.

(d) The penalty proposed by the appointing authority may not be implemented until (1) the employee fails to file a disciplinary grievance within 14 calendar days of the service of the notice of discipline, or (2) having filed a grievance, the employee fails to file a timely appeal as provided in subdivision (f) below or (3) the penalty is upheld or a different penalty is determined by the arbitrator to be appropriate, or (4) the matter is settled.

(e) If not settled or otherwise resolved, the notice of discipline may be the subject of a grievance before the department or agency head, or a designee, and shall be filed either in person or by certified mail, return receipt requested, by the employee or by the representative with the employee's consent, within 14 calendar days of service of the notice of discipline. If the disciplinary grievance is signed by the employee's representative, and the appointing authority or the designee of the appointing authority requests written confirmation of the employee's consent to the filing of the grievance, such written consent must be provided to the appointing authority or the designee of the appointing authority no later than 3 days prior to the meeting. The employee shall be entitled to a meeting with the department or agency head, or a designee. The meeting shall include an informal presentation by the department or agency head, or a designee, and by the employee, or a union representative, of relevant information concerning the acts or omissions specified in the notice of discipline, a general review of the evidence and defenses that will be presented if the matter proceeds to the next level, and a discussion of the appropriateness of the proposed penalty. The meeting need not involve the identification or presentation of prospective witnesses, the identification or specific description of documents, or other formal disclosure of evidence by either party. The meeting provided for herein may be waived, in writing, on the grievance form, only in accordance with Section 33.4(c)(2). A written response shall be rendered in person, or by certified mail, return receipt requested, no later than seven calendar days after such meeting. If possible, the department or

agency head, or a designee, should render the written response at the close of such meeting. When the department or agency head, or a designee, fails to issue a written response within seven calendar days from such meeting, the grievant or the grievant's representative has the right to proceed directly to the next appropriate level by filing an appeal in accordance with subdivision (f).

(f) Disciplinary Arbitration

(1) If a disciplinary grievance is not settled or otherwise resolved, it may be appealed to independent arbitration. Such appeal must be filed with the American Arbitration Association by certified mail, return receipt requested, on a disciplinary grievance form, with a copy to the appointing authority, within 14 calendar days of service of the department or agency response. If there is no department or agency response received within ten calendar days after the department or agency meeting, the appeal to arbitration must be filed within 24 calendar days of such meeting. If the appeal to arbitration is filed by the employee's representative, and the employee or employee's representative has not already furnished the employee's written consent, the appointing authority or the designee of the appointing authority may request written confirmation of the employee's consent to the filing of such appeal. Such written consent must be provided to the appointing authority or the designee of the appointing authority no later than 5 days prior to the first day of the arbitration hearing.

(2) The disciplinary arbitrator shall hold a hearing within 14 calendar days after his selection. A decision shall be rendered within seven calendar days of the close of the hearing or within seven calendar days after receipt of the transcript, if either party elects a transcript as provided in paragraph (8), or within such other period of time as may have been mutually agreed to by the department or agency and the grievant or his or her representative.

(3) Protection of Patient or Client Witnesses

(i) A patient or client witness will be protected, when giving testimony in a disciplinary arbitration hearing, by shielding the employee from view, in one of the following ways:

- use of a portable screen or partition consisting of one-way glass; or
- use of a closed circuit television in a live transmission with the

employee in a separate room and the arbitrator, the representatives and the witness(es) in another room; or

- use of a one-way mirrored room with the employee in a separate room with the ability to view and hear the proceedings; or
- in a manner comparable and as effective as one of the above-stated.

A patient or client witness will be shielded in one of the described ways when a certified or licensed professional determines that there is a need for such protection for the patient or client witness. A determination that there is a need for such protection is not subject to review.

(ii) Additionally, where the employee is in a separate room during the arbitration hearing, a method of communication will be provided for the employee to communicate with his or her representative.

(4) Disciplinary arbitrators shall render determinations of guilt or innocence and the appropriateness of proposed penalties, and shall have the authority to resolve a claimed failure to follow the procedural provisions of this Article. Disciplinary arbitrators shall neither add to, subtract from nor modify the provisions of this Agreement.

(5) The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, probable cause for suspension, or temporary reassignment, if any, and a claimed failure to follow the procedural provisions of this Article, shall be final and binding on the parties. If the arbitrator, upon review, finds probable cause for suspension without pay, he or she may consider such suspension in determining the penalty to be imposed. Upon a finding of guilt the disciplinary arbitrator has full authority, if he or she finds the penalty or penalties proposed by the State to be inappropriate, to devise an appropriate penalty including, but not limited to, ordering reinstatement and back pay for all or part of any period of suspension. The amount of any back pay award shall be reduced by the amount of any unemployment compensation benefits and any outside earnings paid to the employee during the time period for which back pay is awarded. For the purpose of this paragraph, "outside earnings" shall mean monies paid for work performed during those hours the employee would have been scheduled to work for the appointing authority had no suspension occurred. Nothing contained in this paragraph shall apply to settlements achieved pursuant to Section 33.6,

Settlements. Under any such settlement, the amount of back pay, if any, and any offset thereto shall be determined by the parties as part of the settlement.

(6) The State and PEF agree that the American Arbitration Association shall administer the panel of disciplinary arbitrators, unless during the term of this Agreement the parties by mutual agreement develop a procedure for the joint administration of the panel of disciplinary arbitrators. The State and PEF shall jointly develop a statement of special procedures and instructions to be followed by AAA and by disciplinary arbitrators. Pending the development of this statement, the instructions to the arbitrators, dated March 15, 1978, as amended, shall be considered to be in effect in this unit. The composition of the panel of arbitrators shall be agreed to by the State and PEF and such panel shall serve for the term of this Agreement. In those cases involving an allegation of patient, client, resident or similar abuse, the AAA must appoint the disciplinary arbitrator from a Select Panel of Arbitrators jointly agreed to by the State and PEF for the term of this Agreement. Notices of discipline in which the alleged misconduct includes matters that the appointing authority considers to fall within the jurisdiction of the Select Panel of Arbitrators shall state in their text that this disciplinary action, if appealed to arbitration, shall be appealed to an arbitrator appointed from the Select Panel of Arbitrators. Disciplinary arbitrators on the Select Panel shall receive special training regarding patient abuse and the disciplinary process. The special training shall be jointly sponsored by the State and PEF and provided through the AAA.

(7) All fees and expenses of the arbitrator, if any, shall be divided equally between the appointing authority and PEF or the employee if not represented by PEF. Each party shall bear the costs of preparing and presenting its own case. The estimated arbitrator's fees and estimated expenses may be collected in advance of the hearing. When such request for payment is made and not satisfied as required, the grievance shall be deemed withdrawn.

(8) Either party wishing a transcript at a disciplinary arbitration hearing may provide for one at its own expense and shall provide a copy to the arbitrator and the other party without cost.

(g) The agency or department head or a designee has full authority,

at any time before or after the notice of discipline is served by an appointing authority or a designee, to review such notice and the proposed penalty and to take such action as he or she deems appropriate under the circumstances in accordance with this Article including, but not limited to determining whether a notice should be issued, amendment of the notice no later than the issuance of the agency response, withdrawal of the notice or a reduction of the proposed penalty.

(h) An employee shall not be disciplined for acts, except those which would constitute a crime, which occurred more than one year prior to the notice of discipline. The employee's entire record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed, if any.

### 33.6 Settlements

A disciplinary matter may be settled at any time following the service of the notice of discipline. The terms of the settlement shall be agreed to in writing. Before executing such settlement, an employee shall be advised of the right to have a PEF representative or an attorney present and, if such representation is requested, shall be afforded a reasonable period of time to obtain representation. A settlement entered into by an employee, the PEF representative or an attorney, on behalf of the employee, shall be final and binding on all parties. Within five calendar days of any settlement, the President of PEF or the President's designee shall be sent a notice advising him or her, in writing, of the settlement. Such notice shall be sent by certified mail, return receipt requested.

### 33.7 Definitions

(a) As used in this section, "days" shall mean calendar days unless otherwise specified.

(b) "Service" shall be complete upon personal delivery or, if it is made by certified mail, return receipt requested, it shall be complete upon the date the employee or any other person accepting delivery has signed the return receipt or when the letter is returned to the appointing authority undelivered.

(c) "Filing" shall be complete upon actual receipt or, if certified mail, return receipt requested is used, upon the date of mailing appearing on the postal receipt.



### **33.8 Timeliness**

In the event of a question of timeliness of any disciplinary grievance or appeal to arbitration, the date of actual receipt shall be determinative when personal delivery is used and the date of mailing appearing on the postal receipt shall be determinative when certified mail, return receipt requested is used.

### **33.9 Time Limits**

Except as provided in Section 33.4(c)(2), time limits contained in this Article may be waived by mutual agreement of the parties. Any such agreement must be in writing.

33.10 Changes in shift, pass day, job assignment, or transfer or reassignment to another facility, work location or job station may not be made for the sole purpose of imposing discipline unless imposed pursuant to the provisions of Section 33.5, provided, however, that temporary reassignments may be made pursuant to Section 33.4.

## **ARTICLE 34 GRIEVANCE AND ARBITRATION PROCEDURE**

### **34.1 Definition of Grievance**

(a) A contract grievance is a dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement. Other disputes which do not involve the interpretation, application, or claimed violation of a specific term or provision of this Agreement including matters as to which other means of resolution are provided or foreclosed by this Agreement, or by statute or administrative procedures applicable to the State, shall not be considered contract grievances. A contract grievance does not include matters involving the interpretation, application or claimed violation of an agreement reached pursuant to any previously authorized departmental negotiations.

(b) Any other dispute or grievance concerning a term or condition of employment which may arise between the parties or which may arise out of an action within the scope of authority of a department or agency head and which is not covered by this Agreement shall be processed up to and including Step 3 of the grievance procedure, except those issues for which there is a review procedure established by law or by or pursuant to rules or regulations filed with the Secretary of State.

### 34.2 Requirements for Filing Contract Grievances

(a) A contract grievance shall be submitted, in writing, on forms to be provided by the State.

(b) Each contract grievance shall identify the specific provision of the agreement alleged to have been violated, and shall contain a short plain statement of the grievance, the facts surrounding it, and the remedy sought.

(c) If the contract grievance identifies Article 45, Benefits Guaranteed, as the provision allegedly violated the particular law, rule or regulation at issue shall be specified.

### 34.3 Representation

(a) PEF shall have the exclusive right to represent any employee or employees, upon their request, at any Step of the grievance procedure, provided, however, individual employees may represent themselves in processing grievances at Steps 1 through 2.

(b) PEF shall have the right to initiate at Step 2 a grievance involving employees at more than one facility of a department or agency and to initiate at Step 3 a grievance involving employees at more than one department or agency. Any such grievance shall identify the act or omission giving rise to the grievance, shall identify the specific issue in the grievance, shall describe the common characteristic(s) of the employees that cause the employees to have been similarly affected by the act or omission giving rise to the grievance, shall specify the names of such employees if possible or, where the names cannot be specified, shall contain a description of the "class." Such description shall include such information as is appropriate and necessary to identify the employees who have been affected in the same manner by the act or omission giving rise to the grievance including, where relevant, but not limited to, title, occupational category, work location, hours of work, length of service or other characteristics common to the class.

(c) The State shall have the right to initiate grievances against PEF at Step 4.

### 34.4 Grievance Steps

Prior to initiating a formal written grievance pursuant to this Article, an employee or PEF is encouraged to resolve disputes subject to this Article informally with the appropriate immediate supervisor.

(a) Step One: The employee or PEF shall present the grievance to the facility or institution head or a designated representative not later than 30 calendar days after the date on which the act or omission giving rise to the grievance occurred. The facility or institution head or designated representative shall meet with the employee or PEF and shall issue a short plain written statement of reasons for the decision to the employee or PEF not later than 20 working days following the receipt of the grievance.

(b) Step Two: An appeal from an unsatisfactory decision at Step 1 shall be filed by the employee or PEF, on forms to be provided by the State, with the agency or department head or the designee within 10 working days of the receipt of the Step 1 decision. Such appeal shall be in writing and shall include a copy of the grievance filed at Step 1, a copy of the Step 1 decision and a short plain written statement of the reasons for disagreement with the Step 1 decision. The agency or department head or a designee shall meet with the employee or PEF for a review of the grievance and shall issue a short, plain written statement of reasons for the decision to the employee and to the President of PEF or the President's designee no later than 20 working days following receipt of the Step 1 appeal.

(c) Step Three: An appeal from an unsatisfactory decision at Step 2 shall be filed by PEF through its President or the President's designee, on forms to be provided by the State with the Director of the Governor's Office of Employee Relations, or the Director's designee, within 15 working days of the receipt of the Step 2 decision. Such appeal shall be in writing, and shall include a copy of the grievance filed at Step 1, and a copy of all prior decisions and appeals, and a short, plain written statement of the reasons for disagreement with the Step 2 decision. The Director of the Governor's Office of Employee Relations, or the Director's designee, shall issue a short, plain written statement of reasons for the decision within 15 working days after receipt of the appeal. A copy of said written decision shall be forwarded to the President of PEF, or the President's designee.

(d) Step Four, Arbitration:

(1) Contract grievances which are appealable to arbitration pursuant to the terms of this Article may be appealed to arbitration by PEF, by its

President or the President's designee, by filing a demand for arbitration upon the Director of the Governor's Office of Employee Relations within 15 working days of the receipt of the Step 3 decision. If the Step 3 decision has not been issued within the time period for the issuance of such decision, a demand for arbitration may be filed by the President of PEF or the President's designee at any time after expiration of the time period established for the issuance of the Step 3 decision, except that in no case may a demand for arbitration be filed later than 15 working days after receipt of the Step 3 decision.

(2) The demand for arbitration shall identify the grievance, the department or agency involved, the employee or employees involved, and the specific term or provision of the Agreement alleged to have been violated.

(3) Within a reasonable time after the effective date of this Agreement, the Director of the Governor's Office of Employee Relations and the President of PEF, or their designees, shall meet to agree upon a panel of arbitrators selected from lists submitted by the parties. The composition of the panel of arbitrators shall be agreed to by the State and PEF and such panel shall serve for the term of this Agreement. After receipt of the demand for arbitration, the parties shall meet to select an arbitrator from this panel. The essential method of selection of the arbitrator for a particular case shall be by agreement and, if the parties are unable to agree, the arbitrator shall be assigned from this panel on a rotating basis. Initial assignment for rotation shall be determined by lot.

(4) Arbitrators shall have no power to add to, subtract from or modify the terms or provisions of this Agreement. They shall confine their decision and award solely to the application and/or interpretation of this Agreement. The decision and award of the arbitrator shall be final and binding consistent with the provisions of CPLR Article 75.

(5) Arbitrators shall confine themselves to the precise issue or issues submitted for arbitration and shall have no authority to determine any other issues not so submitted to them nor shall they make observations or declarations of opinion which are not essential in reaching the determination.

(6) In the event that the demand for arbitration filed by PEF specifies a different term or provision of the Agreement alleged to have

been violated than specified at the submission of the grievance at Step 1, the grievance shall be remanded to Step 3 for processing in accordance with this Article.

(7) All fees and expenses of the arbitrator shall be divided equally between parties. Each party shall bear the cost of preparing and presenting its own case.

(8) Any party requesting a transcript at an arbitration hearing may provide for one at its expense and, in such event, shall provide a copy to the arbitrator and the other party without cost.

(9)(a) The arbitration hearing shall be held within 60 working days after receipt of the demand for arbitration or as soon thereafter as is practicable.

(b) The arbitration decision and award shall be issued within 30 calendar days after the hearing is closed by the arbitrator.

#### 34.5 Procedures Applicable to Grievance Steps

(a) Steps 1 and 2 shall be informal and the grievant and/or PEF shall meet with the appropriate step representative for the purpose of discussing the grievance, and attempting to reach a resolution.

(b) No transcript is required at any Step. However, either party may request that the review at Step 2 only be taperecorded at its expense and shall provide a copy of such taperecording to the other party.

(c) Step 3 is intended primarily to be a review of the existing grievance file; provided, however, that additional exhibits and evidence may be submitted in writing.

(d) Any meeting required by this Article may be mutually waived.

(e) All of the time limits contained in this Article may be extended by mutual agreement. Extensions shall be confirmed in writing by the party requesting them. Upon failure of the State, or its representatives, to provide a decision within the time limits provided in this Article, the grievant or PEF, as appropriate at each step, may appeal to the next step. Upon failure of the grievant, or the grievant's representative, to file an appeal from a written decision issued by the State or its representatives within the time limits provided in this Article, the grievance shall be deemed withdrawn.

(f) A settlement of or an award upon a contract grievance may or may not be retroactive as the equities of each case demand, but in no

event shall such a resolution be retroactive to a date earlier than 30 days prior to the date the contract grievance was first presented in accordance with this Article, or the date the contract grievance occurred, whichever is the later date.

(g) A settlement of a contract grievance in Steps 1 through 3 shall constitute precedent in other and future cases only if the Director of the Governor's Office of Employee Relations and the President of PEF agree, in writing, that such settlement shall have such effect.

(h) The State shall supply in writing, with each copy of each step response, the name and address of the person to whom any appeal must be sent, and a statement of the applicable time limits for filing such an appeal.

(i) All contract grievances, appeals, responses and demands for arbitration shall be submitted by certified mail, return receipt requested, or by personal service. All time limits set forth in this Article shall be measured from the date of certified mailing or of receipt by personal service. Where submission is by certified mail, the date of mailing shall be that date appearing on the postal receipt.

(j) Working days shall mean Monday through Friday, excluding holidays, unless otherwise specified, and days shall mean calendar days.<sup>2</sup>

(k) The State and PEF shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to establish a special appropriation fund to be administered by the Department of Audit and Control to provide for prompt payments of settlements reached or arbitration awards issued pursuant to this Article.

(l) The purpose of this Article is to provide a prompt, equitable and efficient procedure to review grievances filed by an employee or PEF. Both the State and PEF recognize the importance of the reasonable use of and resort to the procedure provided by this Article and the timely issuance of decisions to filed grievances among other aspects of the

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<sup>2</sup>In the case of a department or agency which normally operates on a seven-day-a-week basis, reference to 10 working days shall mean 14 calendar days and reference to five working days shall mean seven calendar days, and reference to two working days shall mean four calendar days.

procedure provided by this Article. Representatives of the Governor's Office of Employee Relations and PEF shall meet at mutually agreed upon times to discuss and take the necessary steps to resolve matters of mutual concern in the implementation and administration of this procedure.

(m) A claimed failure to follow the procedural provisions of Article 33, Discipline Procedure, shall be reviewable in accordance with the provisions contained in that Article.

## **ARTICLE 35**

### **RESIGNATION**

35.1 Employees who are advised that they are alleged to have been guilty of misconduct or incompetency and who are therefore requested to resign shall be given a statement written on the resignation form that:

1. They have a right to consult a representative of PEF or an attorney or the right to decline such representation before executing the resignation, and a reasonable period of time to obtain such representation, if requested, will be afforded for such purpose;

2. They may decline the request to resign and that in lieu thereof, a notice of discipline must be served upon them before any disciplinary action or penalty may be imposed pursuant to the procedure provided in Article 33 of the Agreement between the State and PEF;

3. In the event a notice of discipline is served, they have the right to object to such notice by filing a grievance;

4. The disciplinary arbitration procedure includes binding arbitration as the final step;

5. They would have the right to representation by PEF or an attorney at every step of the procedure, and,

6. They have the right to refuse to sign the resignation and their refusal in this regard cannot be used against them in any subsequent proceeding.

35.2 A resignation which is requested and secured in a manner which fails to comply with this procedure shall be null and void.

#### **35.3 Unauthorized Absence**

(a) Employees absent from work without authorization for ten consecutive workdays shall be deemed to have resigned from their

positions if they have not provided a satisfactory explanation for such absence on or before the eleventh workday following the commencement of such unauthorized absence.

(b) Within 20 calendar days commencing from the 10th consecutive day of absence from work without authorization, such employees may submit an explanation concerning their absence, to the appointing authority. The burden of proof shall be upon the employees to establish that it was not possible for them to report to work or notify the appointing authority, or the appointing authority's designee, of the reason for their absence. The appointing authority shall issue a short response, within 5 calendar days after receipt of such explanation. If the employees are not satisfied with the response, PEF, upon the employees' request, may appeal the appointing authority's response to the Governor's Office of Employee Relations, within 5 calendar days after receipt of the appointing authority's response. The Director of Employee Relations, or the Director's designee, shall issue a written response within five (5) calendar days after receiving such appeal. The procedure contained in this subsection shall not be arbitrable.

## **ARTICLE 36**

### **NO DISCRIMINATION**

36.1 PEF agrees to continue to admit all employees to membership and to represent all employees without regard to race, creed, color, national origin, age, sex or handicap.

36.2 The State agrees to continue its established policy against all forms of illegal discrimination with regard to race, creed, color, national origin, sex, age or handicap, or the proper exercise by an employee of the rights guaranteed by the Public Employees' Fair Employment Act.

36.3 The State and PEF shall form a Joint Affirmative Action Advisory Committee which shall develop appropriate recommendations on matters of mutual interest in the areas of equal employment and affirmative action.

## **ARTICLE 37**

### **INDEMNIFICATION**

37.1 Pursuant to Section 24 of the Correction Law and Section



19.13 of the Mental Hygiene Law, no civil action shall be brought in any court of the State, except by the Attorney General on behalf of the State, against any officers or employees of the Office of Alcoholism and Substance Abuse who are charged with the duties of securing custody of a drug dependent person or a person in need of care and treatment for alcoholism, or against any officers or employees of the Department of Correctional Services in their personal capacity for damages arising out of any act done or the failure to perform any act within the scope of employment and in the discharge of duties by any such officers or employees. Any claim for damages arising out of any act done or the failure to perform any acts within the scope of the employment and in the discharge of the duties of such officers or employees shall be brought and maintained in the Court of Claims as a claim against the State.

37.2 The Employer shall continue the existing policies as established by Section 19.13 of the Mental Hygiene Law. Pursuant to said Section 19.13 of the Mental Hygiene Law, the State shall save harmless and indemnify those officers and employees specified in Article 37.1 from financial loss resulting from a claim filed in a court of the United States for damages arising out of an act done or the failure to perform any act that was (1) within the scope of the employment and in the discharge of the duties of such officer or employee, and (2) was not in violation of any rule or regulation of the Office of Alcoholism and Substance Abuse or of any statute or governing case law of the State or of the United States at the time the alleged damages were allegedly sustained; provided that the officer or employee shall comply with the provisions of subdivision four of Section 17 of the Public Officers Law.

The provisions of Section 19.13 of the Mental Hygiene Law shall supplement, and be available in addition to, the provisions of Section 17 of the Public Officers Law and, insofar as said section 19.13 is inconsistent with Section 17 of the Public Officers Law, the provisions of said Section 19.13 shall be controlling.

The provisions of said Section 19.13 shall not be construed in any way to impair, modify or abrogate any immunity available to any officer or employee of the officer under the statutory or decisional law of the State or the United States.

37.3 The Employer acknowledges its obligation to provide for the

defense of its employees, and to save harmless and indemnify such employees from financial loss as hereinafter provided, to the broadest extent possible consistent with the provisions of Section 17 of the Public Officers Law in effect upon the date of the execution of this Agreement.

37.4 The Employer agrees to provide for the defense of employees as set forth in subdivision two of Section 17 of the Public Officers Law in any civil action or proceeding in any State or Federal Court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while employees were acting within the scope of their public employment or duties, or which is brought to enforce a provision of Section 1981 or 1983 of title forty-two of the United States Code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the State, provided further, that the duty to defend or indemnify and save harmless shall be conditioned upon (1) delivery to the Attorney General or an assistant attorney general at an office of the Department of Law in the State by the employees of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after they are served with such document, and (2) the full cooperation of such employees in the defense of such action or proceeding and in defense of any action or proceeding against the State based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by such employees that the State provide for their defense pursuant to this Section.

37.5 The Employer agrees to indemnify and save harmless its employees as set forth in subdivision three of Section 17 of the Public Officers Law in the amount of any judgment obtained against such employees in any State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employees were acting within the scope of their public employment or duties. The duty to indemnify and save harmless prescribed by this Section shall not arise where the injury or damage resulted from intentional wrongdoing on the part of the employees, provided further, that nothing contained herein shall authorize the State to indemnify or save harmless an employee with respect to fines or penalties, or money recovered from an employee

pursuant to Article 7(a) of the State Finance Law.

37.6 Employees shall inform their supervisor when they request a legal defense or seek indemnification from the Attorney General under paragraphs 37.3, 37.4 or 37.5 above. In addition, paragraphs 37.3, 37.4 and 37.5 of this Article shall not apply to employees of the Department of Correctional Services or the Office of Alcoholism and Substance Abuse to the extent they are covered by paragraphs 37.1 and/or 37.2 of this Article.

37.7 The Employer agrees to reimburse its employees to the broadest extent possible consistent with the provisions of Section 19 of the Public Officers Law in effect upon the date of the execution of this Agreement. Upon compliance by the employee with subdivision 3 of Section 19 of the Public Officers Law, it shall be the duty of the State to pay reasonable attorneys' fees and litigation expenses incurred by or on behalf of an employee in his or her defense of a criminal proceeding in a State or Federal court arising out of any act which occurred while such employee was acting within the scope of his or her public employment or duties upon his or her acquittal or upon the dismissal of the criminal charges against him or her or reasonable attorneys' fees incurred in connection with an appearance before a grand jury which returns no true bill against the employee where such appearance was required as a result of any act which occurred while such employee was acting within the scope of his or her public employment or duties unless such appearance occurs in the normal course of the public employment or duties of such employee.

Upon the application for reimbursement for reasonable attorneys' fees or litigation expenses, or both, made by or on behalf of an employee as hereinbefore provided, the Attorney General shall determine, based upon his investigation and his review of the facts and circumstances, whether such reimbursement shall be paid. The Attorney General shall notify the employee in writing of such determination. Upon determining that such reimbursement should be provided, the Attorney General shall so certify to the Comptroller. Upon such certification, reimbursement shall be made for such fees or expenses, or both, upon the audit and warrant of the Comptroller. Any dispute with regard to entitlement to reimbursement or the amount of litigation expenses or the reasonableness

of attorneys' fees shall be resolved by a court of competent jurisdiction upon appropriate motion or by way of a special proceeding.

Reimbursement of reasonable attorneys' fees or litigation expenses, or both, by the State as prescribed by this section shall be conditioned upon (1) delivery to the Attorney General or an assistant attorney general at an office of the Department of Law in the State by the employee of a written request for reimbursement of expenses together with, in the case of a criminal proceeding, the original or a copy of an accusatory instrument within ten days after he or she is arraigned upon such instrument or, in the case of a grand jury appearance, written documentation of evidence of such appearance and (2) the full cooperation of the employee in defense of any action or proceeding against the State based upon the same act, and in the prosecution of any appeal.

## **ARTICLE 38**

### **OVERTIME MEAL ALLOWANCES**

38.1 Overtime meal allowances shall be paid, subject to rules and regulations of the Comptroller, to employees ineligible to receive overtime compensation when it is necessary and in the best interest of the State for such employees to work at least three hours overtime on a regular working day or at least six hours overtime on other than a regular working day.

38.2 The overtime meal allowance for employees in this unit shall be \$5.50.

38.3 Part-time employees shall be eligible for payment of an overtime meal allowance when they meet all other eligibility criteria for such payment and, on either a regularly scheduled workday or a day other than a regularly scheduled workday, work the same number of hours as a full-time employee would be required to work on such day to be eligible for payment of an overtime meal allowance.

## **ARTICLE 39**

### **CLINICAL PRIVILEGING AND CREDENTIALING**

No plan for "clinical privileging" or "credentialing" established by any department, agency or institution shall contain any provision that conflicts with any article or section of this Agreement.

## **ARTICLE 40**

### **CREDIT UNION SPACE**

The State agrees to grant to credit unions of State employees occupying space in office buildings of the State on April 1, 1973 the use of their existing space without rental or other charge during the continuance of their services as such credit union and during the State's occupancy of the building, subject to their compliance with all appropriate rules and requirements of the building operation and maintenance. In consideration of said continuance of existing occupancy by credit unions, PEF expressly agrees that no claim by any credit union or other organization of State employees for any additional space under the jurisdiction or control of the State, except relocations of such credit unions to equivalent space in other state-owned buildings, shall hereafter constitute a term or condition of employment under any agreement between PEF and the State pursuant to Article 14 of the Civil Service Law.

## **ARTICLE 41**

### **PAYROLL**

#### **41.1 Computation on 10-day Basis**

Employees' salary payments will continue to be calculated on an appropriate 10 working day basis.

#### **41.2 Deliver/and Dating of Checks**

(a) Paychecks issued to employees paid from the "institutional payroll" will be dated and, absent unavoidable circumstances, delivered no later than the Thursday following the end of the payroll period.

(b) Paychecks issued to employees paid from the "administrative payroll" will be dated and, absent unavoidable circumstances, delivered no later than the Wednesday of the end of the payroll period.

#### **41.3 Deductions for Employee Credit Unions**

(a) The State will continue to deduct from the salary of an employee an amount authorized in writing by such employee, within the minimum and maximum amounts to be specified by the Comptroller, for payments to bona fide credit unions for appropriate purposes and to transmit the sum so deducted to such credit unions. Any such written authorization may be withdrawn by such employee at any time upon

filing of written notice of such withdrawal with the Comptroller. Such deductions shall be in accordance with rules and regulations of the Comptroller not inconsistent with the law as may be necessary for the exercise of his authority under this Section.

(b) Such rules and regulations may include requirements insuring that computations and other appropriate clerical work shall be performed by the credit union, limiting the frequency of changes in the amount of payroll deductions, indemnifying the State and establishing minimum membership standards so that payroll deductions are practicable and feasible.

41.4 The State will continue to provide the salary and deduction information on payroll statements to employees paid through the machine payroll procedure as is provided at the time of the execution of this Agreement.

## **ARTICLE 42**

### **CHILD CARE**

42.1 In recognition of the mutual advantages in providing worksite child care, the State and PEF agree to support the worksite child care center network. The State and PEF are committed to ensure that all worksite child care available to State employees is provided in safe, high quality centers and agree that all such centers are and will continue to be required to meet standards for child care established by the Department of Social Services or the New York City Department of Health, as appropriate.

42.2 The State and PEF support the continued development of worksite child care centers and the development of appropriate child care programs through the continuation of the New York State Labor/Management Child Care Advisory Committee. In addition to the technical assistance and other existing functions of the Committee, the Committee shall examine the operations of the worksite child care centers and child care programs, but such examination shall not replace the monitoring responsibilities of the appropriate State and local agencies of jurisdiction.

42.3 The Committee shall continue to address the needs of both pre-school and school-aged children, including after-school and summer

programs. The Committee shall continue to encourage where appropriate evening shift programs at worksite child care centers to address child care needs for employees who work during the evening shift or who are assigned to work overtime. The Committee shall continue to participate in appropriate cooperative projects with other employers and lessors of State space to enhance the availability of child care for employees. Employees who work in leased space or at State worksites for which a worksite center is not feasible will continue to be a focus of this effort.

42.4 The Committee shall continue to provide funds for start-up as appropriate, expansion of existing worksite child care centers and training, auditing and other initiatives and demonstration projects that support the development of child care programs for the benefit of employees and the State. The Committee grant program will continue to include support operating grants, renovation, and relocation grants, and other grant activity as appropriate, for the benefit of the child care centers. The primary purposes of the operating grants are to ensure the quality of the child care centers and to contribute to the general affordability of the centers.

42.5 The Committee shall continue to fund the administration of the Flexible Benefit Spending Program, (Dependent Care Advantage Account). This program will provide employees with the opportunity to increase their spendable income by paying for all or part of selected benefits such as child care, elder care, and dependent care with pre-tax dollars.

42.6 Employees choosing not to use the Flexible Benefit Spending Program who use worksite child care centers designated by the Governor's Office of Employee Relations may elect to pay their child care fees to the child care centers through a payroll deduction program to be put in place pursuant to law.

42.7 In the interest of providing greater availability of child care services to PEF represented employees and maximizing resources available, the Committee shall continue to support child care initiatives that provide alternatives to worksite centers. Specifically, building on experience with demonstration projects which supported enhanced child care resource and referral, the Committee shall evaluate the continuance and expansion of child care resource and referral services, and where

appropriate, funding will be provided to support this alternative.

42.8 The State shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain appropriations of \$1,400,000 to fund the activities of the Committee for each of Fiscal Years 1993-94 and 1994-95.

42.9 The President of PEF, or the designee of the President, shall serve as a member of the New York State Labor/Management Child Care Advisory Committee for the term of this Agreement.

## **ARTICLE 43**

### **EMPLOYEE ASSISTANCE PROGRAM**

43.1 In recognition of the mutual advantage to the employees and the employer inherent in an Employee Assistance Program, the State shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain an appropriation of \$275,000 for each of State fiscal years 1993-94, and 1994-95 to achieve the goals of the Employee Assistance Program.

43.2 The present joint labor/management arrangement, which recognizes the need for combined representation of all employee negotiating units and the State in a single workplace employee assistance program, shall continue.

## **ARTICLE 44**

### **JOINT COMMITTEE ON INSTITUTIONAL ISSUES**

44.1 The State and PEF shall establish a Joint Committee on Institutional Issues to study and make recommendations on matters of mutual interest with regard to problems and issues facing professional employees in institutional settings.

44.2 The Joint Committee on Institutional Issues shall consist of three designees of the Director of the Governor's Office of Employee Relations and three designees of the President of PEF. The committee shall meet at least quarterly. The committee shall establish by agreement such operating procedures as it deems necessary to conduct its activities. In the case of a failure of the committee to reach agreement on any matter, such matter shall be referred to the Professional Development and Quality of Working Life Coordinating Committee for resolution.



44.3 The Joint Committee on Institutional Issues shall use such funds as are made available to it by the Professional Development and Quality of Working Life Coordinating Committee to undertake such activities as it mutually agrees to.

## **ARTICLE 45**

### **BENEFITS GUARANTEED**

With respect to matters not covered by this Agreement, the State will not seek to diminish or impair during the term of this Agreement any benefit or privilege provided by law, rule or regulation for employees without prior notice to PEF; and, when appropriate, without negotiations with PEF; provided, however, that this Agreement shall be construed consistently with the free exercise of rights reserved to the State by the Management Rights Article of this Agreement.

## **ARTICLE 46**

### **PRINTING OF AGREEMENT**

The State shall cause this Agreement to be printed and shall furnish PEF with a sufficient number of copies for its use and distribution to current employees. The State agrees to provide each employee initially appointed on or after the date of this Agreement a copy thereof as soon as practicable following his or her first day of work. The cost of printing this Agreement shall be shared equally by the State and PEF.

## **ARTICLE 47**

### **CONCLUSION OF COLLECTIVE NEGOTIATIONS**

This Agreement is the entire agreement between the State and PEF, terminates all prior agreements and understandings and concludes all collective negotiations during its term. During the term of this Agreement, neither party will unilaterally seek to modify its terms through legislation or any other means. The parties agree to support jointly any legislation or administrative action necessary to implement the provisions of this Agreement. The parties acknowledge that, except as otherwise expressly provided herein, they have fully negotiated with respect to the terms and conditions of employment and have settled them for the term of this Agreement in accordance with the provisions thereof.

## **ARTICLE 48**

### **SEVERABILITY**

In the event that any Article, Section or portion of this Agreement is found to be invalid by a decision of a tribunal of competent jurisdiction or shall have the effect of loss to the State of funds made available through Federal law, then such specific Article, Section or portion specified in such decision or having such effect shall be of no force and effect, but the remainder of this Agreement shall continue in full force and effect. Upon the issuance of such a decision or the issuance of a ruling having such effect of loss of Federal funds, then either party shall have the right immediately to reopen negotiations with respect to a substitute for such Article, Section or portion of this Agreement involved. The parties agree to use their best efforts to contest any such loss of Federal funds which may be threatened. In the event that the Legislature fails to implement Sections 7.1 through 7.7, any or all Articles may be reopened at the option of PEF or the State, and renegotiated. In the event that any other Article, Section or portion of this Agreement fails to be implemented by the Legislature, then in that event, such Article, Section or portion may be reopened by PEF or the State and renegotiated. During the course of any reopened negotiations any provision of this Agreement not affected by such reopener shall remain in full force and effect.

## **ARTICLE 49**

### **APPROVAL OF THE LEGISLATURE**

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

## **ARTICLE 50**

### **DURATION OF AGREEMENT**

The term of this Agreement shall be from April 1, 1991 through April 1, 1995.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective representatives on May 12, 1993.

# **THE EXECUTIVE BRANCH OF THE STATE OF NEW YORK**

## **Governor's Office of Employee Relations**

Joseph M. Bress  
Director

Jerry J. Dudak  
Deputy Director

Christopher F. Eatz  
Assistant Director  
Chief Negotiator

Walter J. Pellegrini  
General Counsel

Nelson E. Carpenter  
Deputy Director of  
Health Benefits

Richard J. Dautner  
Deputy Counsel

Marina S. Sgroi  
Employee Relations  
Associate

Rita V. Pete  
Associate Director of  
Research

Beth M. Bonacquist  
Employee Relations Assistant

## **Negotiating Team**

Roswita Apkarian  
John Conroy  
Russell S. Fritz  
Maria Maglione  
Rebecca Meyers  
Steve Smits

Edwin F. Cedilotte  
Priscilla Feinberg  
Dorothy Mace  
E. Richard Martin  
Onnolee Smith

# **THE PUBLIC EMPLOYEES FEDERATION, AFL-CIO**

**Howard A. Shafer**  
President

**James J. Sheedy**  
Secretary-Treasurer

**Richard E. Casagrande**  
General Counsel

**Roger L. Scales**  
Director of Operations

**Calvin A. Thayer**  
Vice President

**Robert A. Carrothers**  
Director of Research

## **Negotiating Team**

**Mary C. Reid**  
Chair

**Frank C. Greco**  
Director of Field Services  
Negotiations

**Michael J. Birmingham**  
**Alice A. Burns**  
**P. Todd Fryer**

**Deborah G. Stayman**  
Health Program Analyst

**Lorraine A. Simpkins**  
Health Benefits Specialist

**Roberta L. Lettieri**  
Human Resources Administrator

## **APPENDIX I**

### **SALARY SCHEDULES**

These salary schedules are reproduced here for information. The official schedules are established in Section 130 of the Civil Service Law to implement provisions of Article 7 of the Agreement.

#### **1991-92 SALARY SCHEDULE**

##### **EFFECTIVE APRIL 1, 1991**

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
1	12299	16133	767
2	12787	16763	796
3	13439	17568	826
4	14067	18373	862
5	14761	19363	921
6	15582	20349	954
7	16487	21436	990
8	17425	22549	1025
9	18428	23738	1062
10	19504	25048	1109
11	20653	26561	1182
12	21843	27952	1222
13	23146	29500	1271
14	24509	31296	1358
15	25927	32964	1408
16	27412	34717	1461
17	28982	36636	1531
18	30655	38155	1500
19	32344	40157	1563
20	34030	42169	1628

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
21	35864	44361	1700
22	37821	46672	1771
23	39850	49069	1844
24	42003	51576	1915
25	44350	54333	1997
26	46716	57104	2078
27	49276	60211	2187
28	51898	63259	2273
29	54647	66445	2360
30	57533	69764	2447
31	60629	73318	2538
32	63883	76998	2623
33	67387	80936	2710
34	71006	85025	2804
35	74716	89186	2894
36	78500	93465	2993
37	82648	98080	3087
38	77070		

**1992-93 SALARY SCHEDULE****EFFECTIVE APRIL 1, 1992**

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
1	12299	16133	548
2	12787	16763	568
3	13439	17568	590
4	14067	18373	616
5	14761	19363	658
6	15582	20349	681
7	16487	21436	707
8	17425	22549	732
9	18428	23738	759
10	19504	25048	792
11	20653	26561	844
12	21843	27952	873
13	23146	29500	908
14	24509	31296	970
15	25927	32964	1006
16	27412	34717	1044
17	28982	36636	1094
18	30655	38155	1072
19	32344	40157	1117
20	34030	42169	1163
21	35864	44361	1214
22	37821	46672	1265
23	39850	49069	1317
24	42003	51576	1368
25	44350	54333	1427
26	46716	57104	1484



<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
27	49276	60211	1563
28	51898	63259	1623
29	54647	66445	1686
30	57533	69764	1748
31	60629	73318	1813
32	63883	76998	1874
33	67387	80936	1936
34	71006	85025	2003
35	74716	89186	2068
36	78500	93465	2138
37	82648	98080	2205
38	77070		

**1993-94 SALARY SCHEDULE****EFFECTIVE APRIL 1, 1993**

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
1	12791	16778	570
2	13298	17434	591
3	13977	18271	614
4	14630	19108	640
5	15351	20138	684
6	16205	21163	709
7	17146	22293	736
8	18122	23451	762
9	19165	24688	789
10	20284	26050	824
11	21479	27623	878
12	22717	29070	908
13	24072	30680	944
14	25489	32548	1009
15	26964	34283	1046
16	28508	36106	1086
17	30141	38101	1138
18	31881	39681	1115
19	33638	41763	1161
20	35391	43856	1210
21	37299	46135	1263
22	39334	48539	1315
23	41444	51032	1370
24	43683	53639	1423
25	46124	56506	1484
26	48585	59388	1544

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
27	51247	62619	1625
28	53974	65789	1688
29	56833	69103	1753
30	59834	72555	1818
31	63054	76251	1886
32	66438	80078	1949
33	70082	84173	2013
34	73846	88426	2083
35	77705	92753	2150
36	81640	97204	2224
37	85954	102003	2293
38	80153		

**1994-95 SALARY SCHEDULE****APRIL 1, 1994**

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
1	13303	17449	593
2	13830	18131	615
3	14536	19002	638
4	15215	19872	666
5	15965	20944	712
6	16853	22010	737
7	17832	23185	765
8	18847	24389	792
9	19932	25676	821
10	21095	27092	857
11	22338	28728	913
12	23626	30233	944
13	25035	31907	982
14	26509	33850	1049
15	28043	35654	1088
16	29648	37550	1129
17	31347	39625	1183
18	33156	41268	1159
19	34984	43434	1208
20	36807	45610	1258
21	38791	47980	1313
22	40907	50481	1368
23	43102	53073	1425
24	45430	55785	1480
25	47969	58766	1543
26	50528	61764	1606

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
27	53297	65124	1690
28	56133	68421	1756
29	59106	71867	1823
30	62227	75457	1890
31	65576	79301	1961
32	69096	83281	2027
33	72885	87540	2094
34	76800	91963	2167
35	80813	96463	2236
36	84906	101092	2313
37	89392	106083	2385
38	83359		

**1994-95 SALARY SCHEDULE**  
**EFFECTIVE OCTOBER 1, 1994**

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
1	13463	17659	600
2	13996	18349	622
3	14711	19230	646
4	15398	20111	674
5	16157	21195	720
6	17056	22274	746
7	18046	23463	774
8	19073	24682	802
9	20171	25984	831
10	21349	27418	867
11	22607	29073	924
12	23910	30596	956
13	25336	32291	994
14	26827	34257	1062
15	28380	36083	1101
16	30005	38002	1143
17	31723	40101	1197
18	33555	41764	1173
19	35404	43956	1222
20	37249	46158	1273
21	39257	48557	1329
22	41399	51087	1384
23	43620	53711	1442
24	45976	56455	1497
25	48546	59473	1561
26	51136	62506	1625

<b>SG</b>	<b>HIRING RATE</b>	<b>JOB RATE</b>	<b>ADVANCE AMOUNT</b>
27	53937	65906	1710
28	56808	69243	1777
29	59817	72731	1845
30	62975	76364	1913
31	66364	80254	1985
32	69926	84282	2051
33	73761	88592	2119
34	77723	93068	2193
35	81785	97623	2263
36	85926	102307	2341
37	90467	107358	2413
38	84361		

## **APPENDIX II SIDE AGREEMENTS**

### **MEMORANDUM OF INTERPRETATION BETWEEN THE STATE OF NEW YORK AND THE PUBLIC EMPLOYEES FEDERATION CONCERNING SEASONAL EMPLOYEES**

1. The following provisions of the 1991-95 Agreement between the State and the Public Employees Federation, AFL-CIO representing employees in the Professional, Scientific and Technical Services Unit shall, to the extent they are applicable, be applied to employees in that unit in positions designated as "seasonal" positions:

<b>Article No.</b>	<b>Article</b>
	Bill of Rights
1	Recognition
2	Statement of Policy and Purpose
3	Unchallenged Representation
4.1-4.5	Employee Organization Rights
5	Management Rights
6	No Strikes
8	Travel
9	Health Insurance
10	Employee Benefit Fund
11	Accidental Death Benefit
12.4	Vacation Credit Accumulation
12.5	Additional Vacation Credit
12.7	Vacation Use
12.8	Sick Leave Accumulation
12.9	Use of Sick Leave



**Article No.****Article**

12.10	Personal Leave Accumulation
12.11	Use of Personal Leave
12.12	Accounting of Time Accruals
12.13	Absence-Extraordinary Circumstances
12.14	Tardiness for Members of Volunteer Fire Departments, Volunteer Ambulance Services and Enrolled Civil Defense and Civil Air Patrol Volunteers
12.18	Leave for Bereavement or Family Illness
14	Professional Development and Quality of Working Life Coordinating Committee
15	Professional Development Committee
18	Health and Safety
19	Parking
20	Review of Personal History Folder
22	Protection of Employees
24	Labor/Management Committee Process
26	Institution Teachers
27	Reimbursement for Property Damage
28	Distribution of Directives, Bulletins or Instructions
29	Emergency First Aid
30	Verification of Doctor's Statement
32.5	Workweek and Workday
33	Discipline
34	Grievance and Arbitration
35	Resignation
36	No Discrimination
37	Indemnification
38	Overtime Meal Allowances
39	Clinical Privileging and Credentialing
40	Credit Union Space
41.3 and 41.4	Payroll
42	Child Care Centers
43	Employee Assistance Program
44	Joint Committee on Institutional Issues

<b>Article No.</b>	<b>Article</b>
45	Benefits Guaranteed
46	Printing of Agreement
47	Conclusion of Collective Negotiations
48	Severability
49	Approval of Legislature
50	Duration of Agreement

## **2. Compensation**

### **A. 1993-94**

1. Effective on April 1, 1993<sup>3</sup>\* the salary rate of seasonal employees who were in employment status on March 31, 1993 shall be increased by four percent.

2. Seasonal employees who were not in employment status on March 31, 1993 but who were employed in seasonal positions during the 1992-93 fiscal year, and who during the 1993-94 fiscal year become reemployed in seasonal positions in the same title in which they were employed in 1992-93, shall be compensated at a salary rate equal to their 1992-93 rate increased by four percent for service on or after April 1, 1993.

3. Seasonal employees who were not in employment status on March 31, 1993 but who were employed as seasonal employees during the 1992-93 fiscal year and who are employed as seasonal employees during the 1993-94 fiscal year in seasonal positions in different titles than those in which they were employed in 1992-93, shall be compensated at the salary rate they would have received if they had been employed as a seasonal employee in that title during the 1992-93 fiscal year, increased by four percent.

4. All other seasonal employees shall be compensated at a basic salary rate computed on the basis of the salary schedules applicable to the PS&T unit as of the date of their employment.

5. Lump Sum Payment for Fiscal Year 1993-94

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<sup>3</sup>Such increases shall become effective the payroll period nearest to the stated date, as provided in the New York State Finance Law Section 44(8).

Each seasonal employee who was eligible for the fiscal year 1993-94 salary increase and was employed on January 28, 1993 (for employees on the Administrative payroll) or February 4, 1993 (for employees on the Institutional payroll), and on April 1, 1993, shall, in December, 1993, receive a lump sum payment equal to the amount he or she would have received had the April 1, 1993 general salary increase been effective four biweekly payroll periods earlier. Seasonal employees who are otherwise eligible for such payment, but who were not on the payroll for the entire period between January 28 or February 4 and April 1, shall receive a pro rata payment based on the percentage of such time they were on the payroll. This provision shall apply on a pro rata basis to employees paid on an hourly or per diem basis or on any basis other than at an annual rate or to employees paid on a part-time basis. This provision shall not apply to employees paid on a fee schedule.

**B. 1994-95**

**1. April 1, 1994**

Effective April 1, 1994 or the date of employment in the seasonal position, whichever is later, the salary of seasonal employees will be based on the salary schedule applicable to unit employees April 1, 1994; except that persons who were employed in a seasonal position during fiscal year 1993-94 and who return to employment in a seasonal position in the same title on or after April 1, 1994 will be compensated at the salary rate they received in such title in 1993-94 increased by four percent if this results in a higher rate; and persons who were employed in a seasonal position during 1993-94 and who return to employment in a seasonal position in a different title on or after April 1, 1994 will be compensated at the salary rate they would have received had they been employed in a seasonal position in that title in 1993-94 increased by four percent if that results in a higher rate.

**2. October, 1994**

a. Effective October 1, 1994, the salary of seasonal employees, who were in employment status on March 31, 1994, will be increased by an amount equal to one and one-quarter (1.25) percent of their March 31, 1994 salary.

b. Effective October 1, 1994, seasonal employees who were not on the payroll on March 31, 1994, but who were employed in a seasonal

position during fiscal year 1993-94 and who return to employment in a seasonal position in the same title on or after April 1, 1994 will be eligible for an increase in an amount equal to one and one-quarter (1.25) percent of their 1993-94 salary.

c. Effective October 1, 1994, seasonal employees who were not on the payroll on March 31, 1994, but who were employed in a seasonal position during 1993-94 and who return to employment in a seasonal position in a different title on or after April 1, 1994 will be eligible for an increase in an amount equal to one and one-quarter (1.25) percent of the salary they would have received had they been employed in a seasonal position in that title in 1993-94.

3. All other seasonal employees shall be compensated at a basic salary rate computed on the basis of the salary schedules applicable to the PS&T unit as of the date of their employment.

4. Lump Sum Payment for Fiscal Year 1994-95

Each seasonal employee who was eligible for the fiscal year 1994-95 salary increase and was employed on January 27, 1994 (for employees on the Administrative payroll) or February 3, 1994 (for employees on the Institutional payroll) and on April 1, 1994, shall receive a lump sum payment in September, 1994, equal to the amount he or she would have received had the April 1, 1994 general salary increase been effective four biweekly payroll periods earlier. Seasonal employees who are otherwise eligible for such payment, but who were not on the payroll for the entire period between January 27 or February 3 and April 1, shall receive a pro rata payment based on the percentage of such time they were on the payroll. This provision shall apply on a pro rata basis to employees paid on an hourly or per diem basis or on any basis other than at an annual rate or to employees paid on a part-time basis. This provision shall not apply to employees paid on a fee schedule.

**C. Effect of Minimum Wage Level**

If during the term of this Agreement the rate of compensation of any employee in a seasonal position is increased at the discretion of the Director of the Budget for the purpose of making such rate equal to the Federal minimum wage level, the provisions of Paragraphs A and B above shall be applied to such seasonal employee in the following manner:

1. The seasonal employee's rate of compensation shall remain at the adjusted rate established by the Director of the Budget from the effective date established by the Director of the Budget until the date of the next general salary increase provided for in Paragraphs A or B.

2. Effective on the effective date of the next general salary increase provided for in Paragraphs A or B such employee's rate of compensation shall be either the adjusted rate established by the Director of the Budget; or his/her rate prior to the adjustment, increased by the percentage provided for in the applicable paragraph, whichever is higher.

D. All of the above provisions shall apply on a pro rata basis to seasonal employees paid on an hourly or per diem basis or on any basis other than at an annual rate, or to seasonal employees paid on a part-time basis. The above provisions shall not apply to seasonal employees paid on a fee schedule.

### **3. Holiday Compensation**

A seasonal employee regularly employed on a 37 1/2 or 40 hour per week basis who works at least 25 days during the season will be entitled to additional compensation at his/her hourly rate, up to a maximum of eight hours, for time worked on each of the first two (2) days during his/her employment in any seasonal period (4/1 to 9/30 and 10/1 to 3/31) which are observed as holidays by the State, provided he/she works on the workday before or the workday after such date in accordance with his/her regular schedule. Such compensation shall be paid retroactive upon completion of five weeks of work.

A seasonal employee who is entitled to time off with pay on days observed as holidays by the State as an employer and who has been scheduled or directed to work will receive additional compensation for time worked on such days.

### **4. Workers' Compensation Leave with Pay**

A. A seasonal employee covered by the Attendance Rules shall be covered by Article 13 of the State/PEF Agreement.

**FOR THE STATE:**

Joseph M. Bress  
Director, Governor's Office of  
Employee Relations

Date: May 12, 1993

**FOR PEF:**

Howard A. Shafer  
President

Date: May 12, 1993

**May 12, 1993**

**Howard A. Shafer, President  
Public Employees Federation, AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414**

**Dear Mr. Shafer:**

**This will confirm agreement reached during the course of negotiation of the 1988-91 State/PEF Agreement concerning Employee Organization Rights, Article 4, Section 4.6 of the Agreement.**

**Section 4.6 stipulates that the State will provide PEF with certain information on employees. The State agrees to provide PEF with any additional payroll data as is generally provided to employee organizations representing State employees.**

**Sincerely,**

**Joseph M. Bress**

**Countersigned for PEF:  
Howard A. Shafer  
President**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE STATE OF NEW YORK  
("THE STATE")  
AND  
THE PUBLIC EMPLOYEES FEDERATION, AFL-CIO  
("PEF")**

Pursuant to the agreement reached during the course of negotiation of the 1985-88 State/PEF Agreement, the parties hereto have met and have discharged their commitment to develop an indexing formula to adjust rates employees pay for State-provided meals and housing. As a result of these deliberations, the parties have agreed to the modifications of the terms and conditions of employment relating to the rates employees pay for meals and housing provided by the State as set forth below in this Memorandum of Understanding. The provisions of this Memorandum of Understanding supercede and replace any provisions of the State/PEF Agreement which are affected by the provisions herein.

This Memorandum of Understanding is entered into between the State of New York and PEF for the purpose of establishing a method by which the rates employees pay for meals and housing provided by the State will be calculated.

Accordingly, commencing on April 1, 1988, and effective each April 1 thereafter, the rate employees pay for meals and housing provided by the State in effect on the immediately preceeding March 31 shall be adjusted by the following:

1. For meal charges - the rate shall be adjusted by the CPI-U, United States, "Food away from Home" component, for the period October-September, published by the Bureau of Labor Statistics, U.S. Department of Labor.

2. For housing charges - the rate shall be adjusted by the CPI-U, United States, "Rent, Residential" component, for the period October-September, published by the Bureau of Labor Statistics, U. S. Department of Labor.

Such adjustment shall be determined as the percentage change in the



above-mentioned indices during each twelve month period ending September 30 of the year immediately preceeding the April 1 effective date. The resulting amount shall be rounded to the nearest whole dollar.

From the effective date of this MOU henceforth, the appropriateness of the above indices shall be subject to review one time during the term of each successor agreement to the 1988-91 Agreement, upon the request of either party.

**FOR THE STATE:**

Joseph M. Bress  
Director, Governor's Office of  
Employee Relations

Date: May 12, 1993

**FOR PEF:**

Howard A. Shafer  
President

Date: May 12, 1993

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF NEW YORK  
AND  
THE PUBLIC EMPLOYEES FEDERATION, AFL-CIO**

1) In accordance with the provisions of Article 19, Section 19.3 of the 1988-91 Agreement between the State and PEF, the Executive Branch of the State of New York (hereinafter "the State") and the Public Employees Federation, AFL-CIO (hereinafter "PEF"), hereby enter into this agreement concerning the fees for parking by employees in parking facilities operated in and around Albany by the Office of General Services, Bureau of Parking Services. (See attachment for list of facilities currently in operation.)

In the event that new parking facilities not currently provided by the State are provided under the auspices of the Bureau of Parking Services, these fee schedules will apply.

2) This Memorandum of Agreement shall be effective as of the date of its execution and shall remain in effect until or unless it is superseded by a successor agreement between the parties.

3) The monthly fees for employee parking at each of the parking facilities covered by this Agreement shall continue as follows unless modified by terms of this Memorandum or by other agreements to provide additional parking space that affect these rates:

Surface Parking	- \$ 7.00
Covered Parking	- \$14.00
Covered/Reserved Parking	- \$28.00

4) In the final quarter of each fiscal year of this agreement the State shall establish a fee schedule to be in effect in the next fiscal year. Such schedule shall be based upon review of the actual expenses and revenues of the current fiscal year and the projected expenditures and revenues for the next fiscal year, and when supplemented by net visitor revenue will recover the operating costs of employee parking, which includes maintenance and rehabilitation and any centralized services fund accrued deficit attributable to the Bureau of Parking Services.

In no event, however, will the total fee schedule increase more than \$1 for surface parking, \$2 for covered parking and \$4 for covered reserved parking in any fiscal year due to the above.

This cap on annual fee increases shall continue in effect through the fiscal year ending March 31, 1991.

5) Should the parking fee schedule be amended, successive rate changes will be effective on April 1 of each year, or on another date mutually agreed to by the parties. The amended fee schedules shall continue the same proportions as established above between the fees for surface, covered and covered/reserved parking.

6) Should any new parking facilities be constructed by the Bureau of Parking Services, the parking fees shall, if necessary, be increased over and above any increase required under sections 4 and 5 above. Such new fees may apply to all existing Bureau of Parking Services facilities. If it is necessary to finance construction of new facilities from the General Fund, parking fee increases will be designed to recoup such loans. No such facility construction or associated fee increase shall occur, however, except pursuant to a written agreement between the parties for the specific facility proposed.

7) The State shall continue to provide to PEF a quarterly report of expenses and revenues of the Bureau of Parking Services in the Centralized Services Fund.

**For The State of New York:**

Joseph M. Bress  
Director, Governor's Office of  
Employee Relations

Date: May 12, 1993

**For The Public  
Employees  
Federation, AFL-CIO:**

Howard A. Shafer  
President

Date: May 12, 1993

### **APPENDIX III**

#### **Memoranda and Side Letters**

These documents are reproduced here for information. While they are not subject to the provisions of Article 34 of the Agreement, the State and PEF acknowledge that they set forth certain understandings of the parties concerning certain articles; clarify the intent of the parties regarding certain articles; and confirm mutually accepted definitions and clarifications of the parties in connection with certain articles; and therefore, have value in connection with the interpretation and application of certain articles of the Agreement.

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

In the course of the negotiations of the 1991-95 State/PEF Agreement the parties agreed to the continuation of the Employee Organization Leave article which provides EOL for PEF designees for the purposes of investigation and processing of grievances.

As part of the parties' agreement to continue that article in the 1991-95 Agreement, the parties also agreed that the conditions which apply to the use of EOL as outlined in the OER November 1979 memorandum to State agencies on this subject, a copy of which is attached, will also continue to be in effect for the term of the 1991-95 Agreement.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

TO: STATE DEPARTMENTS AND AGENCIES

FROM: Meyer S. Frucher

SUBJECT: Grievance Representatives — PS&T Unit

Section 4.7(d) of the 1977-79 agreement in the PS&T unit provides for the granting of employee organization leave to union designees for the purposes of investigation of claimed grievances and processing of grievances. The employees on the attached list have been designated by the Public Employees Federation as grievance representatives eligible to be granted EOL under Section 4.7(d).

Agencies are authorized to grant EOL to the PEF grievance representatives on the attached list subject to the following conditions:

1. Eligibility for employee organization leave for the investigation of a claimed grievance or for the processing of a grievance shall be limited to one PEF steward or other PEF representative at one time for any single grievance.
2. Because PEF will have stewards in each work location, stewards will not be entitled to employee organization leave for the investigation or processing of grievances in work locations other than their own.
3. Because PEF will have stewards in each geographic location, stewards will be entitled to employee organization leave for travel in connection with grievance investigation and processing only if such travel time is required for attendance at a review meeting or hearing at any stage of the grievance procedure which is conducted at a geographic location other than that where the steward and grievant are assigned.

(Notwithstanding the limitations established in paragraphs 1, 2 and 3 above, an agency may, at its discretion, approve the use of EOL by more than one PEF steward or other PEF representative for the investigation or processing of the same grievance or may permit the use of EOL for the investigation or processing of a grievance at another work location or for travel, when the agency Employee Relations Officer or other appropriate management official believes that such approval will contribute to the effective utilization of the grievance procedure for the

review and/or resolution of a grievance.)

4. To assure that the use of employee organization leave does not unduly interfere with the conduct of an agency's programs, a steward must obtain the advance approval of his immediate supervisor before absenting himself from his work station to engage in the investigation or processing of a grievance. The approval of the immediate supervisor shall not be withheld arbitrarily.

5. Use of employee organization leave pursuant to Section 4.7(d) shall be subject to all other conditions and practices governing the use of employee organization leave generally.

6. Use of employee organization leave pursuant to Section 4.7(d) shall continue to be governed by the interpretations promulgated in OER 74-3:

"The operative words in Section 4.7(d) are investigation and processing. With regard to the former term, it is applicable only to the period of time prior to the filing of the grievance and through the second stage of the grievance procedure. After the second stage it would not appear that further investigation of the grievance should be necessary. It would be more appropriate to consider time, other than time spent at such hearings or reviews, as preparation time. Needless to say, employee organization leave is not authorized for "preparation time," although time off properly charged to employee credits should be liberally granted.

With regard to the term processing, this term is limited to such time as is reasonable and necessary for appearances at grievance hearings or reviews."

Employees named on the attached list are entitled to receive approval to use EOL for grievance representation, subject to the above conditions, retroactive to March 27. Such employees who would have been entitled to the use of EOL under these conditions, and who were absent from their work stations for grievance representation purposes and charged such absence to leave accruals, should be permitted to retroactively charge such absences to EOL and have their leave accruals restored.

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

I am writing to confirm the understanding of the parties in the negotiation of Article 4, Section 4.7(d) of the Agreement.

Section 4.7(d) provides that the Director of Employee Relations may grant additional Employee Organization Leave to designees of PEF under special circumstances.

We have established joint committee relationships in Article 15, Professional Development Committee, Article 18, Health and Safety, Article 21, Employment Continuity, and Article 44, Joint Committee on Institutional Issues. Time spent by PEF designees directly interacting with State representatives on these issues would be appropriately charged as EOL for labor/management committee participation under the provisions of Article 4, Section 4.7(c) of the Agreement. In addition to that need, however, we acknowledge that PEF has a need for study, review and internal preparation in connection with these joint committee relationships. To respond to this need we therefore agree that up to 70 days of EOL in each year of this Agreement shall be made available to PEF under the provision of Section 4.7(d) for preparation purposes in connection with PEF's participation in the joint relationships established in Articles 15, 18, 21 and 44.

Sincerely,  
Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President



**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**THE STATE OF NEW YORK**  
**and**  
**THE PUBLIC EMPLOYEES FEDERATION,**  
**AFL-CIO**  
**Concerning**  
**PERFORMANCE EVALUATION AND**  
**PERFORMANCE ADVANCES**

**I.** Effective on the date of execution of this Memorandum of Understanding, all previous memoranda, understandings and agreements between the Executive Branch of the State of New York (hereinafter "the State") and the Public Employees Federation, AFL-CIO (hereinafter "PEF") on the subject of Performance Evaluation and Performance Advances are discontinued. The PS&T Unit Performance Evaluation System and the payment of performance advances to PS&T Unit employees shall be subject solely to the provisions of this Memorandum. Payment of performance advances to PS&T Unit employees in accordance with the provisions of this Memorandum is acknowledged by the State and PEF to constitute full and complete compliance with the provisions of Article 7, Section 7.9 of the 1991-95 State/PEF Agreement.

**II.** The State and PEF acknowledge that performance evaluation is a management prerogative, and that the State has the full and complete authority to exercise its prerogative to evaluate its employees so long as it does so in a manner not inconsistent with any of the provisions of paragraphs III A through D below.

**III.** The PS&T Unit Performance Evaluation System shall include the following elements:

**A.** Each employee shall be provided with a written Performance Program at the beginning of his/her evaluation period.

**B.** Performance evaluation shall occur at the end of the evaluation period, shall be based on the employee's Performance Program, and shall include both a narrative discussion of the employee's performance and a summary rating.

C. An employee may attach written comments to his/her Performance Program and/or Performance Evaluation.

D. Employees whose summary rating is below "Effective" shall be entitled to appeal such rating as described below:

1. First, to an agency-level appeals committee consisting of three persons, one each designated by the State and PEF and the third selected by agreement of the other two, which shall make a non-binding recommendation to the agency head. An appeal to the agency-level appeals committee must be submitted within 15 calendar days of the receipt of the evaluation.

2. Second, if the decision of the agency head is to deny the first-level appeal, to a State-level committee consisting of three persons, one each designated by the State and PEF and the third selected by agreement of the other two, which shall render a final determination on the appeal. An appeal to the State-level appeals committee must be submitted within 15 calendar days of receipt of the determination of the agency head.

3. The employee shall have the right upon request to make a personal appearance before both appeals committees to present facts and make arguments in support of the appeal. The employee shall be entitled to PEF representation before both appeals committees if he/she so elects.

4. The appeal procedure described in this Section D shall not be applicable to employees who are in probationary status.

IV. The State and PEF agree that a comprehensive review of the PS&T Unit Performance Evaluation System shall be undertaken by the State during the term of this Agreement, the goal of which shall be the implementation of changes that will improve the overall effectiveness of the system. PEF will have the opportunity to provide input for such review. While the outcome of that review may include changes in several components of the system, the parties agree that any changes that would be inconsistent with the language of items III A through D above will be implemented only upon the agreement of both parties. It is further agreed that on a date no later than October 1, 1994, the system will be modified to reflect a change from a five-category rating scale to a two-category rating scale. Upon completion of the comprehensive review, and upon implementation of any system changes that may alter the provisions of

this Memorandum of Understanding, a new Memorandum of Understanding will be executed to reflect such changes.

V. Performance Advances shall be payable in accordance with the following provisions:

A. Performance advances are defined as salary adjustments between the hiring rate and job rate of an employee's salary grade.

B. Eligibility for performance advances shall be limited to employees in positions allocated to salary grades 1 through 37, and in unallocated positions equated for salary purposes to Grades 1 through 37, except unallocated trainee positions.

C. Effective April 1, 1992, performance advances shall be one-seventh of the dollar value of the difference between the hiring rate and job rate of the salary grade to which the employee's position is allocated or equated.

D. Each employee shall be eligible to receive a performance advance upon completion of each year of service in grade in full employment status at a basic annual salary rate which is below the job rate of his/her salary grade if his/her performance at the completion of such year of service is rated at least "Effective" or its equivalent.

E. Performance advances shall be paid in accordance with the provisions of Article 7, Section 7.9 of the 1991-95 Agreement.

F. Performance advances payable for evaluation periods ending prior to April 1, 1991, shall be paid in accordance with the provisions of the earlier Memorandum of Understanding.

G. No employee's basic annual salary rate shall exceed the job rate of the employee's salary grade as a result of the addition of a performance advance.

H. Promotion Adjustment:

Employees who are eligible for a performance advance in a lower salary grade but are promoted or appointed to a higher salary grade before receiving their next advance in the lower grade and who have not received an advance in the higher grade are entitled to a reconstructed promotion salary reflecting the performance advance which they would have been paid in the lower grade had the performance in that grade been rated at least "Effective" or its equivalent.

I. Reduction in grade:

Service in a higher salary grade by employees who are appointed or demoted to a lower salary grade is creditable toward the service in grade requirement for a performance advance in the lower salary grade.

J. Evaluation periods for employees in positions of Institution Teacher, and positions in other titles subject to the provisions of Section 136 of the Civil Service Law shall be subject to an amended schedule to reflect the 10-month work year of these titles:

1. Employees in these titles whose work year is September 1-June 30 shall have an evaluation period of September 1-June 30.

2. Employees in these titles whose work year is a ten-month work year other than September 1-June 30 shall have an evaluation period consisting of ten months commencing on the first day of their work year.

3. These employees shall receive performance advances if they are rated at least "Effective" or its equivalent, effective the first day of the work year following the work year immediately after the evaluation period.

4. Employees in these titles shall be eligible for performance advances after the completion of each evaluation period during which they have been in full pay status for at least 150 working days

VI. Any questions or disputes arising from the interpretation or implementation of this Memorandum, or any other questions or disputes arising from the administration of the PS&T Unit Performance Evaluation System, shall be subject to labor/management discussion at the Agency level and/or State level as appropriate as their sole and exclusive means of resolution.

For the State:

Joseph M. Bress  
Director  
Governor's Office of Employee  
Relations

For PEF:

Howard A. Shafer  
President  
Public Employees Federation  
AFL-CIO

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

I am writing to confirm our understanding in connection with the negotiation of Article 7, Section 7.10 of the 1991-95 State/PEF Agreement.

We acknowledge that it is our intent that in situations where an employee's salary is at the job rate of his or her grade and is subsequently temporarily reduced below the job rate because of the mechanics of salary computation when titles are reallocated, such a temporary drop below the job rate will not constitute a break in the required five years of service at the job rate required to qualify for performance awards under Section 7.10, so long as the employee's salary is at or above the job rate on the qualifying date(s) established in Section 7.10.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

Attachment

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
PO Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This is to confirm our understanding on the dual health enrollment provision of the State/PEF agreement. It is the intent of the State to prohibit two family enrollments among two State employees in a family unit. If one spouse is an employee of a participating subdivision, there shall be no impact on the coverage selected by the spouse who is a State employee.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This will confirm our mutual understanding of the provisions of Article 30, Verification of Doctor's Statement, Section 30.3, of the 1991-95 State/PEF Agreement.

The provision in Section 30.3 that medical information provided by an employee's physician in describing the cause of the employee's absence be brief in nature applies only to that part of the medical documentation which is the diagnosis. There is no restriction on other relevant information which would support use of sick leave credits, such as prognosis, expected date of return or other information properly required under the provisions of the New York State Attendance Rules.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

In the course of the negotiations of the 1991-95 State/PEF Agreement the parties agreed to the continuation of the Standby On-Call Rosters article from the 1988-91 Agreement.

As part of the parties' agreement to continue that article in the 1991-95 Agreement, the parties also agreed that the provisions of the 1979-82 side letter on this subject, a copy of which is attached, will also continue to be in effect for the term of the 1991-95 Agreement.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President



Mr. John J. Kraemer  
President  
Public Employees Federation  
258 Sawmill Road  
Elmsford, New York 10523

Dear Mr. Kraemer:

This will confirm our discussions regarding standby duty assigned to employees in the PS&T unit who are not eligible for payment for serving on Standby-On-Call Rosters under the provisions of Article 31 of the State/PEF agreement.

The State and PEF acknowledge that because of the nature of the duties of certain professional employees, and the requirements of the programs to which certain employees are assigned, it is sometimes necessary for the State to require such employees to be available for recall or to be available to perform certain activities during off-duty hours. The State and PEF also acknowledge that in agencies where such circumstances regularly occur, it is appropriate for agency-level labor/management committees to discuss steps that may be taken to reduce the resulting inconvenience to the employees, including the equitable distribution of such assignments and the provision of telephone answering services and/or paging devices to remove some of the restriction on employees' mobility.

Sincerely,

Meyer S. Frucher

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This is to confirm the State's intent to continue for the duration of the 1991-95 State/PEF Agreement the understanding between the parties in the area of counseling as provided in the January 1982 sideletter on this subject, a copy of which is attached.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

January 15, 1982

Mr. John J. Kraemer  
President  
Public Employees Federation  
10 Colvin Avenue  
Albany, New York 12206

Dear Mr. Kraemer:

Let this letter confirm our understanding in the area of Counseling:

Counseling is a means of instructing employees as to how performance can be improved; it is a constructive tool. In the event that an employee in the PS&T Unit receives a counseling memorandum that he alleges is a reprimand or discipline, he may submit a grievance pursuant to Article 34 of the Agreement asserting that he was denied the protections contained in Article 33, Discipline.

To further our understanding, the State will send to all agencies and facilities a memorandum setting out the purposes and philosophy of counseling.

Very truly yours,

Meyer S. Frucher

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees  
Federation, AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, N.Y. 12212-2414

Dear Mr. Shafer:

This is to confirm that the Memorandum of Interpretation between the State and PEF, dated May 23, 1984, a copy of which is attached, concerning disputes arising from the termination of probationary employees will continue during the duration of the 1991-95 State/PEF Agreement.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

Attachment

**MEMORANDUM OF INTERPRETATION**  
**Between**  
**THE EXECUTIVE BRANCH**  
**OF THE STATE OF NEW YORK**  
**And**  
**THE PUBLIC EMPLOYEES FEDERATION,**  
**AFL-CIO**

**I.** The Executive Branch of the State of New York and the Public Employees Federation, AFL-CIO have met and conferred regarding the interpretation of Sections 34.1(a) and 34.1(b) of Article 34 of the 1982-85 Agreement between the parties.

**II.** The parties have agreed that disputes arising from the termination of probationary employees do not fall within either the definition of a "contract grievance" as set forth in Section 34.1(a) or the definition of a non-contract grievance as set forth in Section 34.1(b).

**III.** Therefore, notwithstanding the fact that such disputes may in the past have been reviewed under the Section 34.1(b) non-contract grievance procedure, the parties agree that any such disputes shall not be subject to any of the provisions of Article 34, Grievance and Arbitration Procedure of the Agreement, except that this agreement shall not apply to such disputes which are the subject of non-contract grievances properly filed at Step 1 prior to the date of execution of this Memorandum.

For the State:

For PEF:

/s/Thomas F. Hartnett

/s/Joseph B. Sano

Date: May 23, 1984

## **MEMORANDUM OF PROCEDURE**

This is to confirm the procedure agreed upon by the State and the Public Employees Federation, AFL-CIO concerning the assignment to negotiating units and/or designation as managerial/confidential of new positions and reclassified positions.

1. The State will transmit to PEF on a monthly basis a listing of newly established positions and reclassifications, with a proposed negotiating unit or managerial/confidential designation for each position listed. Upon the request of PEF, the State will provide a duties description for any position listed. Upon the request of either party, representatives of the State and PEF will meet to discuss proposed designations.

2. Within 60 days of receipt of a monthly listing, PEF shall notify the State of any negotiating unit assignment or M/C designation with which PEF disagrees.

3. In the event PEF disagrees with a proposed negotiating unit assignment or M/C designation, the unit assignment or M/C designation shall be considered tentative pending final resolution.

4. After PEF has had an opportunity to disagree with proposed negotiating unit assignments and M/C designations, the State shall report to PERB those unit assignments and M/C designations on which there is no disagreement and those on which PEF has disagreed and which are therefore considered to be tentative.

5. All positions whose negotiating unit assignment or M/C designation are considered to be tentative will be placed in the negotiating unit or M/C category as proposed by the State, except as provided for in paragraph six below, and so reported to PERB.

6. In cases of tentative negotiating unit assignments or M/C designations not agreed to by PEF, where the tentative negotiating unit assignment or M/C designation has been proposed by the State as the result of the reclassification of a filled PS&T unit position, the position shall remain in the PS&T unit pending final resolution of the disagreement.

7. Tentative negotiating unit assignments and/or M/C designations will be reported to PERB with the understanding that at a later date those

positions will be subject to such formal actions as either the State or PEF may choose to take in accordance with the provisions of Article 14 of the Civil Service Law. The State and PEF shall jointly request of PERB that a process be instituted to provide for resolution of all pending tentative designations semi-annually in June and December of each year.

8. The State agrees to maintain accurate records of positions and titles for which the unit assignment or M/C designation is tentative and to make them available to PEF at reasonable times upon request.

9. This procedure may be amended from time to time upon the mutual agreement of the parties.

For PEF:

/s/ Frank C. Greco

For the State:

/s/ James D. Brown

Date: October 17, 1986

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE STATE OF NEW YORK  
AND  
THE PUBLIC EMPLOYEES FEDERATION, AFL-CIO  
CONCERNING  
PAYROLL DEDUCTION  
OF  
PEF/COPE CONTRIBUTIONS**

Agreement made this 17th day of October, 1986, by and between the State of New York ("State") and the Public Employees Federation, AFL-CIO in its capacity as representative of employees in the Professional, Scientific and Technical Unit and in accordance with the collective bargaining agreement between the State and PEF.

**WITNESSETH**

WHEREAS, federal law, 2 U.S. C. Section 441b, 11 C.F.R. Section 114, et seq., authorizes a separate segregated fund established by a labor organization to solicit its members and their families for voluntary contributions for the support of candidates for federal office and permits the facilitation of such contributions through a payroll checkoff;

NOW, THEREFORE, it is mutually agreed as follows:

1. PEF, having established a separate segregated fund pursuant to federal law to receive contributions for the support of candidates for federal office only, shall have the right in conformance with all applicable law to the checkoff for such purposes. The fund is known as the New York State Public Employees Federation Committee on Political Education (PEF/COPE). Such PEF/COPE is affiliated with separate segregated funds established by the Service Employees International Union and/or the American Federation of Teachers pursuant to federal law, however any PEF/COPE contributions shall only be for the purposes of federal elections.

2. An employee in the Professional, Scientific and Technical unit



who is a member of PEF and who is having union dues deducted from his/her wages may authorize deductions from his/her wages for contribution to the PEF/COPE separate segregated fund ("political contribution deductions") by completing the authorization form annexed hereto which bears the signature of the member and specifies the amount of such deductions that shall be made each payday. Such authorization is entirely voluntary and may be revoked by the employee at any time in writing. The authorization shall remain in effect until the State is notified pursuant to the provisions of paragraph 6 of this Agreement of the revocation of the authorization.

3. Authorizations for political contributions to the PEF/COPE separate segregated fund shall be solicited by PEF strictly in accordance with applicable law and in conformance with paragraph 2 of this Agreement.

4. PEF shall prepare a list of the written authorizations received and such other information, punch-cards, computer tapes and any other material in whatever form needed by the State for processing; and it shall transmit such information and material to the State or its designee or designees.

5. The State shall begin making such political contribution deductions in the amounts specified on the authorization forms as soon as practicable after receipt of the items described in paragraph 4 above. Such deductions shall be made from regular payrolls only.

6. All requests for revocation of authorization for political contribution deductions shall be in writing and may be delivered to the Union or the payroll office of the State Comptroller on behalf of the State. The party receiving such written request shall, as soon as practicable, send a copy of such request to the other. The political contributions deductions will cease as soon as practicable after the State has received the appropriate notice.

7. The State shall cause to be transmitted to PEF or its designee on each payday the amounts authorized, as well as a list of employees for whom political contribution deductions have been made and the amounts deducted.

8. PEF shall be responsible for complying with all legal requirements regarding the collection of contributions for the PEF/COPE

separate segregated fund for the support of only candidates for federal office. The State shall have no responsibility for or liability in connection with the establishment, operation and maintenance of any such fund and the collection of contributions therefor.

9. Guidelines for contributions may be suggested by PEF, provided that the person being solicited is informed by PEF that the guidelines are merely suggestions and that an individual is free to contribute more or less than the guidelines suggest and PEF will not favor or disadvantage anyone by reason of the amount of the contribution or decision not to contribute.

10. PEF shall submit to the State a separate statement affirming that it is a collecting agent for the PEF/COPE separate segregated fund which is registered with the Federal Election Commission and that such fund is authorized to solicit contributions and make expenditures in accordance with applicable law and giving the name of such fund and evidence of such registration, as well as the names of funds to which it is affiliated.

11. PEF solely shall be responsible for any contribution wrongfully deducted from an employee's wages and transmitted to the PEF/COPE separately segregated fund or to one of the funds to which it is affiliated and solely shall be responsible for refunding such amount to any such employee.

12. If for any reason it is found that the gross amount of a paycheck drawn to an employee must be recalled and redeposited, any deductions from it must necessarily be recovered. Since a deduction made pursuant to this Agreement would already have been forwarded to the Union, the State Comptroller will reduce a check issued subsequently to the Union by the amount of such erroneous deduction.

13. The State, its trustees, its officers, its employees and its agents shall not be liable for any mistake, error of judgment or any other act of omission or commission in the operation of the political checkoff established pursuant to this Agreement. PEF agrees to hold the State, its trustees, its officers, its employees and its agents harmless against any complaint, claim, action, grievance, proceeding or the like arising out of the solicitation, deduction, transmittal or expenditure of said political contributions.

14. Political contribution deductions will be considered last in

arithmetical sequence. Where the residual amount of wages after other deductions is less than the full amount of the authorized political contribution deduction, no fractional amount of such deduction will be made or carried over for deduction in any subsequent payroll period.

15. No arrears of any kind or nature will be collected from any employee through the political checkoff system established pursuant to this Agreement.

**STATE OF NEW YORK**

**PUBLIC EMPLOYEES  
FEDERATION,  
AFL-CIO**

By:/s/James D. Brown

By:/s/Frank C. Greco

Date: October 17, 1986

Date: October 17, 1986

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

During the negotiation of Article 8 of the 1988-91 State/PEF Agreement the parties discussed extension of the American Express Card program to employees in the PS&T unit. That program was subsequently made available to PS&T unit employees. This letter confirms the basis on which this program operates.

Certain employees are provided with an American Express Card at no cost to them. The card is restricted to use for payment of travel expenses incurred while in travel status in the performance of official duties. Employees are personally responsible for payment of all expenses charged on the card, and they obtain reimbursement of their expenses at the rates and under the procedures established by the Comptroller. Employees who have obtained the card are not eligible to use Travel Requests or Lodging Requests, or to receive travel advances. Employees may participate in the program only if they are expected to incur travel expenses above an established level on a yearly basis, and participation of any individual employee is subject to the approval of American Express based on whatever review of the individual employee's credit record that company determines to be appropriate.

The program available to PS&T unit employees is the same one available to other employees, and any changes in the program that may from time to time be made by agreement of the State and American Express, or that may be made by the State in connection with its administration of the program, will apply to PS&T employees in the same

manner they are applied to other employees. The State will notify PEF of changes in the program that may from time to time be made by agreement of the State and American Express, or that may be made by the State in the administration of the program.

Employees who participate in the program will have the option to discontinue their participation at any time with reasonable advance notice.

Please confirm PEF's agreement with the contents of this letter by countersigning it below.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer,  
President

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation  
AFL-CIO  
1168-70 Troy-Schenectady Road  
PO. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

In accordance with the discussion of the parties during the negotiation of Article 8 of the 1991-95 State/PEF Agreement, the following is information concerning meal allowances to be paid to employees in travel status who are not eligible for lodging:

**Meal Allowances for Non-Overnight Travel**  
**in New York State**

I. The Comptroller in accordance with the provisions of Article 8, Section 8.1(c) will establish a schedule of meal allowances for meals which are substantiated by receipts. The schedule will be based on the federal daily meal allowance. Specifically, the federal allowance shall be apportioned into breakfast and dinner maximums on a 20% – 80% basis, each rounded to the nearest whole dollar. The total of the breakfast and dinner maximums shall equal the federal daily meal allowance. Should the federal meal allowances be adjusted during the term of the agreement, the Comptroller shall adjust the State schedule accordingly. The rates include tax and gratuities.

II. When **no receipts** are submitted for breakfast or dinner, the allowances will be paid in accordance with the following schedule

established by the the Comptorller in accordance with the provisions of Article 8, Section 8.1(c):

<u>Location</u>	<u>Breakfast Maximum</u>	<u>Dinner Maximum</u>
New York City boroughs of Bronx, Brooklyn, Manhattan, Queens and Staten Island	\$3.50	\$10.50
Counties of Nassau, Suffolk, Rockland, and Westchester	\$3.50	\$10.50
All other locations in New York State	\$3.50	\$ 9.50

**NOTE: The rates include tax and gratuities.**

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

I am writing to confirm understandings reached during the course of negotiation of the 1991-95 State/PEF Agreement.

In connection with these negotiations, we agreed that the State will continue to advise PEF regarding the results of the administration of the job evaluation system; and that PEF will have the opportunity to advise the State of any issues or concerns it may have in this area.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President



May 12, 1993

Mr. Howard A. Shafer  
President  
Public Employees Federation  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

The following will confirm the understandings on the subject of vacancy posting reached by the parties during negotiation of the 1991-95 State/PEF Agreement.

In order to achieve the advantages of a wide program of vacancy posting, while at the same time assuring that such a program appropriately reflects the operating needs of State departments, agencies and facilities, the State and PEF agree that this subject should be discussed in agency-level and/or local-level labor/management meetings as appropriate. Discussion in such forums is intended to result in the joint development of posting procedures that will meet the needs of both employees and management of the agency or facility at which such discussion takes place.

Any posting procedures developed through such labor/management discussion shall address at least the following issues:

A definition of the scope of the procedure, including any understandings regarding positions, titles, types of appointments, and/or durations of appointments to which the procedure will be applicable.

A definition of any positions, titles, types of appointments, durations of appointments and/or special situations for which the procedure is understood by the parties to be specifically not applicable.

A definition of the organizational and/or geographic distribution of the posting, i.e., facility-wide, all field offices within a certain area, etc.

A definition of the time period of the posting.

A definition of the information to be included on the posting notice.

A procedure for the notification of specified PEF representatives when management has determined that a position or vacancy which otherwise would be covered by the posting procedure will be exempted from the procedure.

It is intended by the State and PEF that labor/management discussions should also result in the joint development of a monitoring and reporting process so that both PEF representatives and top management representatives at the local and agency levels can from time to time review implementation of the procedure to be sure it is working effectively. It is not intended that procedures developed through the labor/management process provide for the cancellation of appointments that have been made without the posting procedure having been followed. If labor/management deliberations at any level do not result in the development of a mutually satisfactory procedure, or if after the development of such a procedure one party believes the other is failing to comply with the agreement, that matter is an appropriate subject for discussion at the next higher level of the labor/management process.

Sincerely,

Joseph M. Bress

Countersigned for PEF:

Howard A. Shafer

President

May 12, 1993

Mr. Howard A. Shafer  
President  
Public Employees Federation, AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, NY 12212-2414

Dear Mr. Shafer:

This will confirm our understandings reached during the course of negotiation of the 1991-95 State/PEF Agreement, on the subject of performance evaluation.

The State and PEF acknowledge that performance evaluation is a management prerogative, and that the State has the full and complete authority to exercise its prerogative to evaluate its employees so long as it does so in a manner not inconsistent with the provisions of Section III of the MOU executed in conjunction with the 1991-95 State/PEF Agreement.

The parties acknowledge that the performance evaluation system is designed to improve individual and organizational performance and productivity, recognize and reward achievement, and identify needs for training, development, and personnel actions. The parties further acknowledge that the performance evaluation system provides a means for supervisors and employees to communicate with each other about tasks, objectives, and work performance. It provides positive opportunities for supervisors to communicate tasks, objectives, standards, and the manner in which work is to be performed to employees, and to provide feedback and evaluation of employees' performance. It provides employees with positive opportunities to have constructive input into the process by which tasks, objectives and standards are established and, where necessary, to obtain clarification of what tasks and objectives they are required to perform and meet and the standards by which their performance will be rated.

Recognizing the benefits the performance evaluation system can provide to both employees and supervisors, the parties agree that facility-level and agency-level implementation of the performance evaluation system is an appropriate subject for discussion in the labor/management forum. Facility-level and agency-level labor/management committees shall, at the request of either party on such committee, jointly review and address problems arising from local implementation of the performance evaluation system.

Sincerely,

Joseph M. Bress

Countersigned for PEF:  
Howard A. Shafer  
President

May 12, 1993

Mr. Howard A. Shafer  
President  
Public Employees Federation  
1168-70 Troy-Schenectady Road  
PO Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This letter will confirm the understandings of the parties reached in connection with the negotiation of Article 11, Accidental Death Benefit, in the 1991-95 State/PEF Agreement.

The original intent of the parties in the negotiation of this provision in the 1985-88 State/PEF Agreement, which is hereby reaffirmed, was as follows in regard to eligibility for the tuition benefit set forth in Section 2 of Article 11:

The Section 11.2 tuition benefit was intended to provide assistance to deceased employees' children who would have been dependent on the employee to provide that assistance. Thus it is restricted to persons whose enrollment in college has begun before their twenty-first birthday, and whose attendance continues for consecutive semesters thereafter. It does not apply to persons who begin college after their twenty-first birthday, and it ceases to be applicable to persons who, after reaching their twenty-first birthday, have a break of one full semester (or trimester or other normal school term except "summer school") after reaching their twenty-first birthday.

The Section 11.2 tuition benefit is applicable to any single person for only the equivalent of eight full semesters, or such other period as is normally required to obtain a bachelor's degree.

Please confirm that this letter accurately sets forth our understandings on this subject by countersigning below.

Sincerely,

Joseph M. Bress

Countersigned for PEF:

Howard A. Shafer

President

Date: May 12, 1993

May 12, 1993

Mr. Howard A. Shafer  
President  
Public Employees Federation  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This letter will confirm the understanding of the parties reached during discussions on Article 8, Travel, in the 1991-95 State/PEF Agreement with respect to the concept of a centralized travel management system.

Within the overall context of Article 8, the PEF acknowledges that the State retains the right to establish a centralized reservation system for employee lodging and transportation arrangements, and to designate specific lodging facilities and transportation modes for locations within and outside of New York State.

Please signify your concurrence with this previously agreed to understanding by signing below.

Sincerely,

Joseph M. Bress  
Director

Countersigned for PEF:  
Howard A. Shafer  
President

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
P.O. Box 12414  
1168-70 Troy-Schenectady Road  
Albany, New York 12212-2414

Dear Mr. Shafer:

This will confirm our understanding reached during the course of negotiations of the 1991-95 State/PEF Agreement, on the subject of seven-consecutive day vacations.

The parties agree that it is desirable for employees to be afforded the opportunity to take at least one seven-consecutive day vacation (5 working days and 2 pass days) during each calendar year. Should an employee be denied this opportunity, during the term of this Agreement, the employee may request a review of the matter by the Agency Level Labor/Management Committee, and if not resolved there, to the Executive Level Labor/Management Committee.

It is understood that reviews will be afforded only when the employee is denied an opportunity to take a seven-consecutive day vacation during a calendar year. Reviews will not be applicable to situations where an employee was denied only his/her preferred vacation request(s).

Sincerely,

Countersigned for PEF:  
Howard A. Shafer  
President  
Date: May 12, 1993



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE PUBLIC EMPLOYEES FEDERATION, AFL-CIO  
AND  
THE STATE OF NEW YORK**

The undersigned agree to and understand the following:

1. If an agreement is not reached in Article 19.3 parking fee negotiations within 180 days of their commencement, the dispute shall be submitted to final offer binding arbitration, as outlined below:

a. A demand may be sent by either party to the local American Arbitration Association (AAA) office, requesting a list of arbitrators. A copy of such demand must be sent also to the other party.

b. If mutual agreement can be reached on the selection of an arbitrator, the AAA selection procedure will not be necessary. If mutual agreement cannot be reached, the AAA Rules and procedures regarding the selection of an arbitrator shall govern the selection process.

c. The arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence and argument of their respective positions. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as desired from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record for the arbitrator to be borne by the requesting party. The non-requesting party need only pay the cost of a copy if so desired.

d. Each party will provide the arbitrator their final offer at the beginning of the hearing, and such offer shall be irrevocable. The arbitrator shall be limited to accepting the final offer of either party, on the issues of monthly rates, daily rate and/or effective date. The arbitrator's decision shall be based solely on the information submitted by the parties.

e. The arbitrator shall specify the basis for the selection of one final

offer over the other.

f. The arbitrator's determination shall be final and binding, and issued no later than 30 days after the record is closed.

g. Each party shall be given the opportunity to present its entire case, with the party demanding LOBA proceeding first and the other party second. At the end of the direct testimony, the party demanding LOBA first shall have the option of a closing statement, and the other party shall have the option of the final closing statement. The parties shall have the option of presenting a brief to the arbitrator and/or a factual rebuttal in writing. The brief or rebuttal option shall be chosen by the parties at the conclusion of the hearing, and must be submitted to AAA no later than 15 working days from the close of hearing.

2. The above agreement is limited in scope to disputes regarding parking fee negotiations, and shall not be extended to other disputes, unless mutually agreed by the parties.

3. The arbitrator shall take the AAA oath, and shall place witnesses, if any, under oath.

4. Commencing with the first hearing date, the entire process shall take no longer than 60 calendar days.

For the State:

Joseph M. Bress  
Director  
Governor's Office of  
Employee Relations  
Date: May 12, 1993

For PEF:

Howard A. Shafer  
President  
The Public Employees  
Federation, AFL-CIO  
Date: May 12, 1993

May 12, 1993

Mr. Howard A. Shafer  
President  
Public Employees Federation  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This will confirm our understanding reached during the course of negotiations of the 1991-95 State/PEF Agreement, on the subject of grievance and arbitration procedures.

The State and PEF agree to continue, as a pilot program for the term of this Agreement, the expedited arbitration procedure which had terminated by agreement of the parties on June 30, 1991.

Sincerely,

Joseph M. Bress  
Director

Howard A. Shafer  
President PEF

May 12, 1993

Mr. Howard A. Shafer  
President  
Public Employees Federation  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This letter represents the mutual understanding between the Public Employees Federation, AFL-CIO, and the State of New York regarding the continuation of the New York Statewide Joint Labor/Management Employee Assistance Program for the period of the successor agreement to the 1988-91 State/PEF Agreement.

The parties recognize the mutual benefits to a program whose mission is to offer to employees of the State of New York and their families assistance with personal problems that affect their performance on the job and we reaffirm our commitment to providing guidance and direction to the operation of the program in order to maximize its quality and potential.

It is our intent to work together to accomplish the following:

1. Clarify the mission of EAP so that it is clear to staff, recipients of service and other interested parties.
2. Establish clear and consistent organizational roles and responsibilities for all program staff, local labor/management committees, EAP coordinators and Statewide administrative program staff, as well as members of the Executive Board and the Union Advisors, insofar as how they interact within the program structure.
3. Create and/or refine program direction that appropriately meets the increased and growing demand for comprehensive services designed to meet the specific needs of both employees and management; i.e., program direction should provide for self access by the employee as well

as a tool for management usage to positively affect worker performance and productivity.

4. Establish policy and procedures to provide a greater measure of consistency in both the delivery of service and the program structure at all levels of the program.

5. Re-evaluate, refine and direct training initiatives that focus specifically on the current trends, needs and ability of EAP practitioners to provide quality services to employees and management.

6. Establish a means to statistically measure and evaluate the effectiveness of program objectives and cost, without jeopardizing confidentiality.

7. Incorporate a method by which employee referrals would have prior evaluation of the costs and coverage under New York State health insurance plans.

8. Incorporate a defined process, which is agreed to and approved jointly by the members of the Executive Board, for the hiring of all new EAP staff/employees. Establish criteria/standards to be used by local committees in the selection of EAP coordinators.

9. Establish a method of review, authorization, and reporting of the fiscal status and expenditures of the program for consistent accountability to the members of the Executive Board.

Sincerely,

Joseph M. Bress  
Director

Howard A. Shafer  
President PEF

May 12, 1993

Mr. Howard A. Shafer  
President  
The Public Employees Federation,  
AFL-CIO  
1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, New York 12212-2414

Dear Mr. Shafer:

This will confirm an Agreement on behalf of the State and PEF in the negotiations for the 1991-95 collective agreement concerning fee increases for State Fire Instructors.

Notwithstanding the provisions of Article 7.8 of the 1991-95 Agreement, the provisions for percentage increases in salary over the term of the Agreement will apply to fee schedules currently in effect for the Fire Instructors who are employed by the Department of State.

Sincerely,

Countersigned for PEF:  
Howard A. Shafer  
President

# **RPCI CLINICAL PRACTICE PLAN**

## **A. General**

1. RPCI shall provide the office space, clinical support services and facilities for Plan members to perform the professional clinical practice of medicine or dentistry at no charge to the Plan or to Plan members.

2. The cost of the Plan's use of facilities at RPCI for the administrative operations of the Plan shall be considered Plan expenses and payable from Plan income.

3. Nothing contained in the Plan shall be construed to allow actions by the Plan which are inconsistent with the mission of RPCI and with the requirements of applicable statutes, rules or regulations.

4. Policies and procedures consistent with applicable statutes and the Department's regulations for the collection and disbursement of Plan income shall be established by the Plan's Governing Board. The Plan shall notify the RPCI CEO regarding any policies, procedures, fees and charges of the Plan in advance of their implementation. No policies and procedures proposed by the board shall be implemented without the approval of the RPCI CEO.

5. The Plan shall coordinate the scheduling of services by Plan members through the RPCI CEO or his/her designee.

## **B. Governance**

1. The Plan shall have a facility-based Governing Board, which shall consist of seven members. Two members shall be elected by simple majority vote from the membership of the Plan for a two year term. Four members shall be appointed by the RPCI CEO from the membership of the Plan for a two year renewable term. The RPCI CEO shall be the seventh voting member of the Board. Procedures for the election of members of the Board, which shall provide for secret ballots and equal voting rights for Plan members, except for associate members, shall be established by the RPCI CEO and the President of the Medical Staff.

2. The powers and duties of the Governing Board shall be to establish the administrative and financial direction of the Plan and to oversee the management of the Plan. This includes at least:

A. the development and promulgation of operating procedures for the orderly transaction of its functions including but not limited to

quorums, officers, and meetings of the board;

B. the duty to ensure that Plan income is maintained in separate accounts established by and for the Plan and not commingled with any other funds;

C. the provision of centralized billing and collection services for the Plan;

D. the development of policies and procedures for the maintenance of the special funds required by the Plan;

E. the development of policies and procedures to ensure proper accounting, auditing and reporting of the collection and disbursement of Plan income, consistent with Part F of this document.

### **C. Membership in the Plan**

1. Employees of RPCI who perform the professional clinical practice of medicine or dentistry for which a fee is customarily paid (except for interns, residents or fellows) shall be members of the Plan and those members who work 50% time or more at RPCI shall have full voting rights in practice plan governing board elections.

2. Other RPCI employees who are licensed health professionals performing patient care services for which a fee is customarily paid may, at their request and, upon the approval of the Board and the Commissioner after consultation with the Director of the Governor's Office of Employee Relations become Plan associate members without voting rights in Board elections. Notice of a final determination on any request by an employee for associate member status shall be provided to the President of PEF or his or her designee at the same time that notice is provided to the employee.

3. Practice Plan Membership shall be terminated "for cause" when a practice plan member's clinical privileges or medical staff membership have been suspended or terminated in writing by the CEO after an internal RPCI hearing, if requested, pursuant to the RPCI medical staff bylaws. Termination of clinical privileges or medical staff membership for any reason shall result in termination of practice plan membership.

4. Term appointments for practice plan members who are new employees in the PS & T unit:

A. Any newly appointed employee within the PS & T unit at RPCI eligible to be a member of the practice plan may, at the discretion of the



RPCI CEO, be given a term appointment or consecutive term appointments up to, but not to exceed a date, 30 days prior to the maximum probation period for that position as provided pursuant to the rules of the classified service of the Civil Service Department. During such term appointment(s), that employee may not be removed from employment at RPCI except as provided in Section 88-4.3(f)(6) of the regulations of the Commissioner of Health.

B This provision does not constitute a waiver of any of the rights of employees in the PS & T unit under the Civil Service Law or any of the rules and regulations promulgated pursuant to it.

#### **D. Plan Income**

1. Plan income is that derived from fee billing (clinical income) by the Plan for clinical services provided by Plan members and associate members at or through RPCI. Income received from Health Research, Inc. as reimbursement to the practice plan for services performed by a member of the practice plan in conjunction with grants or contracts of Health Research, Inc. at RPCI ("grant revenue") shall be considered clinical practice income.

2. In no event shall individual Plan members or associate plan members bill separately outside of the Plan for fees for professional services unless approved by the RPCI CEO and the Governing Board.

3. State base annual salary, royalties, prizes and awards for professional excellence, honoraria for lectures and income unrelated to patient care are not considered Plan income.

#### **E. Compensation**

Plan members shall be eligible to receive compensation from the Plan (subject to the availability of funds pursuant to Part G of this document) as follows:

##### **1. Base Salary and Supplement:**

A. Plan members as defined in Part C.1 of this document shall receive the base salary specified by the State of New York for the grade level of the employee. In addition to State base annual salary, supplemental compensation may be given by the Plan to bring the member's compensation up to or equal to the 50th percentile of the compensation levels for full-time faculty (with MD degree adjusted for faculty rank) in the same or comparable professional discipline receiving

base and supplemental salary components in the Northeast region of the United States as reported in the most recent edition of the American Association of Medical College's (AAMC) Report on Medical School Faculty Salaries.

B. Eligibility for and the amount of supplemental compensation above the base level shall be determined by the RPCI CEO at least once in each calendar year. In determining the total of the base salary and supplement, the RPCI CEO shall also consult with the member's Chairperson, and the RPCI Associate Director for Clinical Affairs and shall also consider job performance such as:

(1) the extent and quality of clinical, research, educational and administrative activities; (2) academic and scholarly productivity as measured by the quality of publications, success in obtaining peer reviewed grants and recognition by the scientific community outside of RPCI; (3) effectiveness of interactions with other Institute departments and disciplines that promote progress in areas of high priority to the Institute; (4) service on Institute committees, participation in community outreach and other professional services to the community; and (5) performance in leadership roles that foster the goals of the Institute.

Each member shall be provided with an annual written statement setting the allowable compensation that member may earn, including State base annual salary and supplement from Plan income.

C. Other RPCI employees who are Plan associate members, as defined in section C(2) of this document, may receive, in addition to State base annual salary, Plan supplement sufficient, when added to the State base annual salary, to be competitive with salaries of persons performing the same or comparable patient care duties in Western New York State.

**D. Insufficient Plan Income**

In the event practice plan income is insufficient to assure payments of the supplemental income to all members entitled to such payment, such supplemental compensation may be reduced in accordance with the provisions of Section 88-4.3(e)(1)(iii) of the regulations of the Commissioner of Health.

**2. Maximum Compensation:**

A. Part C(1) Plan members will also be eligible for compensation to a maximal level which includes the base plus supplemental income. The

maximum compensation for eligible Plan members shall not exceed the 80th percentile of the compensation levels for full-time faculty rank in the same or comparable professional discipline receiving base and supplemental components for the northeastern region of the United States as reported in the most recent edition of the AAMC Report on Medical School Faculty Salaries. In special circumstances relating to the recruitment or retention of employees, the Institute CEO may, with the written approval of the Commissioner, exceed the 80th percentile as defined in this paragraph if in the CEO's judgement, the best interest of RPCI is served, but in no case may total compensation exceed 275 percent of the maximum state base annual salary paid by SUNY to members of its practice plan.

B. Eligibility for and the amount of the maximum compensation shall be determined by the RPCI CEO at least once in each calendar year using the same criteria specified in Section E.1.B.

### 3. Fringe Benefits:

A. The Governing Board of the Plan shall recommend fringe benefit policies which it determines are in the best interests of the Plan to be paid from practice plan income for approval by the Commissioner after consultation with the Director of the Governor's Office of Employee Relations. As State employees, Plan members are also entitled to the fringe benefits provided by law, rule, regulation or the applicable collective bargaining agreement, except that Plan members may elect to join the SUNY optional retirement program under the conditions established by Public Health Law Article Section 206 (14) as amended in 1992.

B. Notice of any changes in fringe benefits available to plan members to be paid from plan income shall be provided to the President of PEF or his or her designee at the same time notice is provided to plan members.

### **F. Accounting, Auditing and Reporting Requirements**

1. The plan shall have a central billing and accounting system. The accounting system shall record transactions and develop financial reports involving the collection and disbursement of Plan income in accord with generally accepted accounting principles.

2. The Plan shall have a financial reporting system under which all

accounts and financial reports shall be available at any reasonable time for inspection by the Commissioner of Health or designee and by representatives of the State Division of the Budget and the State Department of Audit and Control.

3. The Plan shall provide each member with a quarterly report of the amounts billed as a result of the individual member's clinical practice.

4. The Plan shall be audited annually by an independent certified public accountant chosen by the Governing Board, to determine whether the operations of the Plan have been conducted in accordance with generally accepted accounting principles, to ensure the provisions of the Plan for the management and disbursement of Plan income have been followed and to ensure that supplementary guidelines for disbursement of clinical practice income have been followed.

5. The Governing Board shall make available for inspection a copy of the annual audit to each member of the Plan.

#### **G. Plan Income Disbursement**

Plan income shall be disbursed in the following priority order, subject to the availability of funds sufficient for each purpose:

1. Five percent of the gross clinical practice income collected by the Plan shall be deposited into a fund established by the Plan entitled "RPCI CEO's Fund". Disbursements from this fund shall be at the discretion of the RPCI CEO for the benefit of clinical, research and academic programs at RPCI.

2. Payment of administrative expenses of the Plan in accordance with the Plan's administrative budget to include but not limited, to where applicable, rent, equipment and supplies, telephones, the Plan's billing and collection services and other contractual services and the Plan's audit expenses.

3. Payments to members in accordance with Section E.1.A. and E.1.B. above and to associate members in accordance with Section E.1.C. above.

4. Payment to members in accordance with Section E.2.A. above. No such payments shall be made until the annual audit is complete.

5. Capital Costs of the Plan as established by the Governing Board of the Plan.

6. After payment of all costs listed above, the residual funds shall

be deposited in the "RPCI Development Fund". The funds shall be used for academic development purposes, such as the purchase of professional journals, travel and research and teaching support, but not for salary supplementation, pursuant to a list of bona fide uses of these funds developed by the Governing Board. No disbursements shall be made by the Plan from this fund until the fiscal year is closed and the annual audit is completed. Disbursement of such funds shall be at the discretion of the RPCI CEO (50%) and the Department chairpersons (50%); allocations among Department chairpersons shall be in proportion to the revenues generated by each of the Departments.

## **H. Grievance Procedures**

### **1. Appeals of Disputed Salary Determinations**

A. PS & T unit practice plan member may appeal an unsatisfactory salary determination made pursuant to Part E of this side letter under the following procedure.

B. A three member committee consisting of (1) one board member selected by the RPCI CEO, (1) one board member selected by the appellant and (1) one practice plan member physician mutually agreed upon by the RPCI CEO and the appellant, shall consider the appeal, submitted either orally or in writing, and make a written recommendation to the RPCI CEO. A copy of that recommendation will be provided to the appellant at the same time it is provided to the RPCI CEO.

C. The RPCI CEO shall, within 20 working days of receipt of the committee's recommendation, either accept or reject the recommendation and notify the committee and the appellant of his or her decision.

D. A unanimous recommendation of this committee which is accepted by the RPCI CEO is final and may not be further appealed.

E. A unanimous recommendation which is rejected by the RPCI CEO or a recommendation of the committee which is not unanimous may be appealed, in writing, to the Commissioner of Health or his or her designee. For purposes of this paragraph any designee of the Commissioner of Health shall not be employed at RPCI. The written determination of the Commissioner or designee is not subject to the grievance and arbitration procedures of Article 34 of the PEF/State Agreement and will constitute the final agency determination.

### **2. Non-Salary Disputes**

Non-salary disputes are subject to the non-contract grievance

procedures and shall not be arbitrable.

For the State:

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Joseph M. Bress  
Director  
Governor's Office of  
Employee Relations

For PEF:

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Howard A. Shafer  
President  
The Public Employees  
Federation, AFL-CIO

## **APPENDIX IV**

### **VRWS Guidelines**

#### **VOLUNTARY REDUCTION IN WORK SCHEDULES PROGRAM GUIDELINES FOR FISCAL YEARS 1993-94 and 1994-95**

##### **Introduction:**

Voluntary Reduction in Work Schedule (VRWS), commonly referred to as Voluntary Furlough, is a program that allows employees to voluntarily trade income for time off. This program is in effect for Fiscal Years 1993-94 and 1994-95. The VRWS program is available to eligible annual-salaried employees in the Professional, Scientific and Technical Services Unit (PS&T).

##### **1. Purposes**

- a. VRWS provides agencies with a flexible mechanism for allocating staff resources.
- b. VRWS permits employees to reduce their work schedules to reflect personal needs and interests.

##### **2. Limitations: Eligibility, Work Schedule Reduction,**

##### **Term of VRWS**

- a. Eligibility: This program is available to certain annual-salaried employees in the Professional, Scientific and Technical Services Unit (PS&T).

(1) Employees are required to have 26 consecutive payroll periods of full-time annual salaried State service immediately prior to entry into a VRWS program. Payroll periods of VRWS participation, Sick Leave at Half Pay, or Workers' Compensation Leave will count as full-time annual salaried service in computation of the 26 consecutive payroll periods so long as the employee was working on a full-time annual salaried basis immediately prior to the VRWS participation, Sick Leave at Half Pay, or Workers' Compensation Leave. For example, an employee who had worked twenty-one payroll periods on a full-time annual salaried basis followed by five payroll periods on Sick Leave at Half Pay and then returned to work would be eligible for VRWS upon return to work.

- (2) An exception will be made to the requirement that employees

have 26 consecutive payroll periods of full time service, as required in Section 2a.1 above, for those employees who were participating in the Fiscal Year 90-91 VRWS program and who transitioned to part-time status upon termination of such program.

(3) Employees who were eligible for the VRWS program under the 1984-86 Program Guidelines continue to be eligible to participate in the program even if they never participated in the 1984-86 VRWS program. (Under the Guidelines for the 1984-86 program, VRWS was available to employees 1) who were full-time annual-salaried employees as of April 1, 1984 or 2) who first entered the PS&T unit as full-time annual-salaried employees between April 1, 1984 and April 1, 1986.)

b. Work Schedule Reduction: Participating employees may reduce their work schedules (and salaries) a minimum of 5%, in 5% increments, up to a maximum of 30%.

c. Term of VRWS Program: The VRWS program is in effect through the term of the 1991-95 State/PEF Agreement.

3. Description of an Employee VRWS Program

a. Employee develops a plan for a reduced work schedule.

b. Management reviews and approves plan as long as it is consistent with operating needs.

c. Jointly agreed plan specifies:

(1) Duration of VRWS agreement.

(2) Percentage reduction of work schedule and salary.

(3) Amount of VR Time earned in exchange for reduced salary.

(4) Schedule for use of VR Time earned. This may be either a fixed schedule, i.e., every Friday, every Wednesday afternoon, an entire month off, etc., or intermittent time off.

(i) An employee's fixed schedule VR Time off, once the VRWS schedule has been agreed upon by management, cannot be changed without the consent of the employee except in an emergency. In the event an employee's schedule is changed without the consent of the employee, the employee may appeal this action through an expedited grievance procedure.

(ii) VR Time used as intermittent time off will be subject to scheduling during the term of the VRWS agreement, and will require advance approval by the employee's supervisor.



d. While the VRWS agreement is in effect, the employee will earn and accumulate VR credits in accordance with the percentage reduction in workweek, i.e., a 10% reduction will result in 7.5 or 8 hours of VR credit earned each payroll period; the employee will charge VR credits on his or her scheduled VR absences, i.e., an employee whose VRWS schedule calls for one-half day off every Friday afternoon will charge 3 3/4 or 4 hours VR credits each Friday afternoon. An employee whose VRWS agreement calls for a 10% reduction and taking an entire month off will work his or her full 37 1/2 or 40 hours each week, accrue 7.5 or 8 hours of VR credit each payroll period, and have the accumulated VR credits to use during that month.

e. The employee never goes off the payroll. The employee remains in active pay status for the duration of the agreement and receives pay checks each payroll period at the agreed-upon temporarily reduced level.

f. The employee will work a pro rata share of his or her normal work schedule over the duration of the agreement period.

g. Participation in the VRWS program will not be a detriment to later career moves within the agency or the State.

h. Scheduled non-work time taken in accordance with a VRWS program shall not be considered to be an absence for the purpose of application of Section 4.5(f) of the Civil Service Rules governing probationary periods.

#### 4. Time Limits

The employee and management can establish a VRWS program of any number of payroll periods in duration from 1 to the number of payroll periods remaining in the term of the VRWS program. The VRWS agreement must begin on the first day of a payroll period and end on the last day of a payroll period. The employee and management may, by agreement, discontinue or modify the VRWS agreement if the employee's needs or circumstances change.

#### 5. Time Records Management

a. All VRWS schedules will be based on the crediting and debiting of VR credits on the employee's time card against a regular 37 1/2 or 40 hour workweek.

b. VR credits earned during FY 93-94, and 94-95 may be carried over on the employee's time card past the end of the individual VRWS

agreement and past the end of the VRWS program period but must be liquidated by September 30, 1995.

c. There is no requirement that existing paid leave credits (including previously earned and banked VR credits) be exhausted prior to the beginning of the new VRWS agreement.

#### 6. Advancing of VR Credits: Recovering a VR Credit Debit

a. To accommodate employees whose VRWS agreement calls for an extended absence during the agreement period, agencies may advance VR credits in an amount not to exceed the number of hours for which the employee is paid in one payroll period.

b. If an employee terminates his or her employment and has a VR debit, the agency shall recover the debit from the employee's lagged salary payment for his or her last payroll period at work.

#### 7. Coordination with Alternate Work Schedules

a. It is possible to coordinate VRWS agreements with alternate-work-schedule-type arrangements when desired by the employee and consistent with operating needs. For example, a VRWS agreement can be combined with four-day week scheduling for a 37 1/2 hour/week employee by the employee opting for a 10% reduction to produce a workweek of 3 days of 8 1/2 hours and 1 day of 8 1/4 hours. Such a schedule would generate savings of commuting expenses, child care costs, etc. for the employee.

b. Copies of the "Application for Voluntary Reduction in Work Schedule (VRWS)" must be filed with the Division of the Budget, Attention: Management Review and Labor Relations Unit, for those applicants who propose to use VR time credits in conjunction with a newly established alternative work schedule (AWS), e.g., longer workday/shorter workweek. Agencies may utilize this filing procedure instead of that currently required by Budget Policy and Reporting Manual, Item G-068 for employees who propose to combine a Voluntary Reduction in Work Schedule program with an Alternative Work Schedule option.

#### 8. Effect on Benefits and Status

The effect of participation in the VRWS program on benefits and status is outlined in Appendix A (attached).

#### 9. Effect on Overtime Payment for Overtime Eligible Employees

Scheduled absences charged to VR credits, unlike absences charged to leave credits, are not the equivalent of time worked for purposes of determining eligibility for overtime payments at premium rates within a workweek. For example, an employee who, under an 80% VRWS schedule works four days, charges the fifth day to VR credits, and is called in to work a sixth day, will not be considered to have worked the fifth day and thus will not be entitled to premium rate payments on the sixth day.

Sections 135.2(h) and (i) of Part 135 of the Budget Director's Overtime Rules are waived to the extent necessary to permit payment of overtime compensation to overtime-eligible employees who are participating in this program.

#### 10. Discontinuation of VRWS Agreements

Although VRWS agreements are for stated periods of time, they can be discontinued by mutual agreement at the end of any payroll period. Employees who go on Sick Leave at Half Pay for 28 consecutive calendar days or who are absent because of a work-related injury or illness for 28 consecutive calendar days will have their VRWS agreement cancelled and be returned to their normal work schedule and pay base.

#### 11. Provisions for Payment of Banked (Unused) VR Time in Exceptional Cases

The VRWS program is intended to be a program that allows employees to voluntarily trade income for time off. The plan for program participation between the employee and management includes a plan for the use of VR Time earned. Management must make every effort to ensure that VR Time earned by an employee is used under the terms of the individual VRWS program, before the September 30, 1995 liquidation date (see section 5b), before the employee separates from State service, and while the employee is on the job he or she was in when the VRWS program agreement was made. If this is not possible, payment for Banked (Unused) VR time can be made in exceptional cases that fall under the following criteria:

- 1) Employees who accumulate VR Time during the 1993-95 VRWS program and are unable to utilize VR Time by September 30, 1995 due to management requirements predicated on workload will be paid at the then current straight time rate of pay. Payment will be made within two

payroll periods following the September 30, 1995 liquidation date.

2) Unused VR Time will be paid at the then current straight time rate of pay upon layoff, resignation from State service, termination, retirement or death.

3) Upon movement of an employee from one agency to another or between facilities or institutions within an agency, unused VR Time will be paid at the then current straight time rate of pay by the agency or facility/institution in which the VR Time was earned, unless the employee requests and the new agency or facility/institution accepts the transfer of the VR Time on the employee's time card. The lump sum payment for VR balances upon movement to another agency or facility/institution will be made irrespective of whether or not the employee is granted a leave of absence from the agency where the VR time was earned. Payment will be made within two payroll periods following the move to the new agency/facility/institution.

4) Requests for payment in exceptional cases other than those specified above should be directed to GOER Research Division—VRWS Program and will be decided on a case-by-case basis.

In all cases where payment for unused VR Time is made, notification of payment must be sent to GOER Research Division-VRWS Program. Such notification must include date of payment, circumstances of payment, employee's name, title, number of hours in the employee's normal workweek (37 1/2 or 40), number of days of unused VR Time, daily rate of pay, and gross dollar amount of payment. In addition, agencies must certify that they have not already used these savings for replacement staff in other programs or, if they have, identify another funding source for the payment.

## **12. Review of VRWS Denials**

### **a. Individual Requests**

An employee whose request to participate in the VRWS program has been denied shall have the right to request a written statement of the reason for the denial. Such written statement shall be provided within five working days of the request. Upon receipt of the written statement of the reason for the denial, the employee may request a review of the denial by the agency head or the designee of the agency head. Such requests for review must be made, and will be reviewed, in accordance

with the following procedure:

(1) Requests must be submitted by the employee or the employee's representative within ten working days of receipt of the written statement or of the date when the written statement was due.

(2) Requests must be submitted to the official who serves as the agency head's designee at Step 2 of the grievance procedure. Employees of facilities must concurrently provide a copy of such request to the facility head.

(3) Such requests shall specify why the employee believes the written reasons for the denial are improper. The request must explain how the employee believes his/her work can be reorganized or reassigned so that his/her participation in the VRWS program will not unduly interfere with the agency's program operations.

(4) The designee of the agency head shall review the appeal and make a determination within ten working days of receipt. The determination shall be sent to the employee with a copy to the President of PEF. The determination shall be based on the record, except that the agency head's designee may hold a meeting with the employee and/or the employee's supervisors if the designee believes additional information or discussion is required to make a determination. If the employee believes that there are special circumstances that make a meeting appropriate, the employee may describe these circumstances in addition to providing the information specified in paragraph 3 above, and request that a review meeting be held. The agency head's designee shall consider such request in determining whether or not to hold a review meeting.

(5) The determination of the agency head's designee shall not be subject to further appeal.

#### **b. Facility-Wide or Agency-Wide Practices**

When PEF alleges that an agency or a facility, or a sub-division thereof, has established a practice of routinely denying employee applications to participate, this matter shall be an appropriate subject for discussion in a labor/management committee at the appropriate level. Such labor/management discussions shall be held in accordance with the provisions of Article 24 of the State/PEF Agreement.

#### **13. Exceptions**

The restrictions and limitations contained in these Program

Guidelines may be waived by the Governor's Office of Employee Relations whenever that Office determines that strict adherence to the guidelines would be detrimental to the sound and orderly administration of State government.

Note 1: The Department of Civil Service will issue Attendance and Leave Guidelines that describe the way in which the leave provisions of the Attendance Rules, negotiated agreements, and related laws and policies apply to VRWS participants. See Attendance and Leave Manual Advisory Memoranda No. 93-02 Section 26.1, for chart for calculating Accrual and Grant Rates for Employees Participating in the VRWS Program.

Note 2: The Office of the State Comptroller will issue a payroll Bulletin explaining PR-75 transaction codes and data requirements for employees participating in VRWS. See Bulletin P-486 dated June 13, 1986 until a new bulletin is issued. Form PR-75, Payroll and Personnel Transactions, using transaction code "VOL.REDUCT" must be submitted to place an employee on a VRWS program with reduced pay. A new form PR-75 must be submitted if there is a change in an employee's VR schedule that involves a change in the salary payment (percent of reduction). Upon termination of the VRWS agreement, Form PR-75 using the transaction code "CHG PT FUL" must be submitted to return the employee to full time employment and full pay.

**Appendix A**  
**VOLUNTARY REDUCTION IN WORK SCHEDULE**  
**Effect on Benefits and Status**

**Annual Leave**

prorated accruals, based on the employee's VRWS percentage

**Personal Leave**

prorated credits, based on the employee's VRWS percentage

**Sick Leave at Full Pay**

prorated accruals, based on the employees VRWS percentage

**Holidays**

no change in holiday benefit

**Sick Leave at Half Pay**

no impact on eligibility or entitlement. Employees who go on Sick Leave at Half Pay for 28 consecutive calendar days will have their VRWS agreement cancelled and be returned to their normal work schedule and pay base.

**Worker's Compensation Benefits**

no impact on eligibility for entitlement to worker's compensation benefits pursuant to Rule or contract. Following 28 consecutive calendar days of absence due to a work-related injury or illness, the VRWS agreement is cancelled and the employee returned to his or her normal work schedule and pay base. At that point the employee receives worker's compensation benefits based on the normal full-time salary and no longer earns VR credits.

**Military Leave**

no impact on eligibility or entitlement

**Jury-Court Leave**

no impact on eligibility or entitlement

### **Paid Leave Balances on Time Card**

There is no requirement that leave credits be exhausted prior to the beginning of the VRWS agreement. Paid leave balances are carried forward.

### **Shift Pay**

prorate

### **Inconvenience Pay**

prorate

### **Standby Pay**

no impact

### **Location Pay**

prorate

### **Geographic Pay**

prorate

### **Pre-Shift Briefing**

prorate

### **Salary**

normal gross salary earned is reduced by percentage of voluntary reduction in work schedule; no effect on base annual salary rate

### **Payroll**

employee never leaves the payroll; employee remains in full payroll status with partial pay for the duration of the agreement period and receives pay checks each pay period at the agreed upon temporarily reduced level

### **Return to Normal Work Schedule**

employee will return to his other normal work schedule upon completion of the VRWS agreement period



**Banked (Unused) VR Time Upon Return to Normal Work Schedule**

VR Time Credits earned during Fiscal Years 1993-94, and 1994-95 program may be carried forward on the employee's time card after completion of the individual VRWS agreement period and past the end of the VRWS program period but must be liquidated by September 30, 1995

**Banked (Unused) VR Time Upon Separation**

unused VR Time Credits will be paid at the straight time rate upon layoff, resignation from State service, termination, retirement or death

**Banked (Unused) VR Time Upon Promotion, Transfer or Reassignment Within an Agency or Within a Facility or Institution**

unused VR Time Credits are carried forward on the employee's time card when movement is within an appointing authority. Continuation of the VRWS program is at the discretion of management

**Banked (Unused) VR Time Upon Movement From One Agency to Another or Between Facilities or Institutions Within an Agency**

unused VR Time Credits will be paid at the straight time rate by the agency or facility/institution in which the VR Time was earned, unless the employee requests and the new agency or facility/institution accepts the transfer of VR Time on the employee's time card

**Health Insurance**

no effect; full coverage

**Dental Insurance**

no effect; full coverage

**Employee Benefit Fund**

no effect

**Survivor's Benefit**

no effect

**Retirement Benefit Earnings**

will reduce final average salary if VRWS period is included in three years earnings used to calculate final average salary

**Retirement Service Credit**

prorate

**Social Security**

no change; contribution rate is set by Federal Law and is applied to the salary which the employee is paid

**Unemployment Insurance**

no change; formula set by statute

**Performance Advance or Increment Advance**

evaluation date is not changed; no change in eligibility

**Performance Award or Lump Sum Payment**

no impact; no change in eligibility

**Longevity Increase**

no change in eligibility

**Probationary Period**

no effect

**Traineeship**

no effect

**Layoff**

no impact; seniority date for layoff purposes is not changed

**Seniority**

no impact; employee never leaves the payroll; seniority date is not changed; full seniority credit is earned

**Seniority for Promotion Examinations**

no impact; VR time used shall be counted as time worked in determining seniority credits for promotion exams

**Eligibility for Promotion Examinations**

no impact; VR time used shall be counted as time worked in determining eligibility for promotion exams

**Eligibility for Open Competitive Examinations**

prorate; VR time used shall not be considered time worked for determining length of service for open competitive examinations

**Overtime Work**

VR time used shall not be counted as time worked in determining eligibility for overtime payments at premium rates within a workweek

