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INVESTIGATIVE REPORT

E11-0002

CHARGING PARTY: Lynne Silloway

RESPONDING PARTIES: Vermont Department of Corrections (DOC); Vermont Agency of Human Services (AHS).

CHARGE: Discrimination in Employment on the basis of sex.

SUMMARY OF CHARGE: In July of 2010, Lynne Silloway, an Administrative Services Coordinator III at the Marble Valley Regional Correctional Facility (MVRCF) in Rutland, discovered that she was making approximately $10,000 less than a male co-worker, Mr. Doe,[1] who held the same position. Ms. Silloway has been in state service longer than Mr. Doe, and has more experience in this position than Mr. Doe has. As a result, Ms. Silloway filed a charge of discrimination with the Human Rights Commission alleging a violation of the equal pay provision of the Vermont Fair Employment Practices Act (VFEPA).

[1] To protect his privacy, this employee is referred to throughout this report as "Mr. Doe."

SUMMARY OF RESPONSE: The State has not provided any of the affirmative defenses authorized by the Equal Pay Act.[2]

PRELIMINARY RECOMMENDATIONS: (1) This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that the Agency Human Services (AHS) discriminated against Ms. Silloway because of her sex, in violation of the equal pay provision of Title 21 V.S.A. §495(8)(A) of Vermont's Fair Employment Practices Act. **(2)** This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that the Department of Corrections (DOC) discriminated against Ms. Silloway because of her sex, in violation of the

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[2] The responses the State has provided are not any of the affirmative defense authorized by the EPA, but the responses to the charge it has provided are the following:
1) **State's Response to Charge 9/9/2010 –Factual defense (no legal defense set forth)**: Mr. Doe makes more money than Ms. Silloway because he was "hired-into-range" as a Food Services Supervisor (which is not classified as a supervisory position) at a pay grade 18 step 13. Additionally, he received an 8% raise for being a first time supervisor when he became a Business Manager A. These factors resulted in his making more money than Ms. Silloway. The State agreed that Ms. Silloway and Mr. Doe perform "substantially similar work" and share the same pay grade.
2) **State's Memorandum of Law in its Motion for Protective Order 3/3/11**: On page 5 of its Memorandum of Law, the State asserted that it had established a "non-discriminatory reason" for hiring Mr. Doe into range and stated the burden had then shifted to Ms. Silloway. The State cited case law noting its burden was "exceedingly light." The State's assertion is incorrect; that burden applies in a Title VII case complaint but is not applicable in an Equal Pay Act case and Ms. Silloway's complaint falls under the EPA. In an EPA case, the State's burden is a "heavy one" and the State is charged with asserting and proving one of four affirmative defenses. The State appeared to be confusing the two statutes since at one point the State indicated that "her [Ms. Silloway's] claim falls under the Equal Pay Act."
3) **Interview with Molly Paulger, Director, Human Resources Services & Operations 2/9/12**: The State asked Ms. Paulger if there was any indication of intent to discriminate against women at any point in the hiring or promotion of Mr. Doe. She answered that she had no knowledge of any intent to discriminate, however intentional discrimination need not be shown under the Equal Pay Act – it is relevant to a Title VII case and Ms. Silloway's case is an EPA case.
4) **Interview with Mr. Doe 3/26/12**: The State asked Mr. Doe if he worked at a larger facility than the one Ms. Silloway works at and he answered in the affirmative. However in its 9/9/12 response to her charge, the State previously admitted that Ms. Silloway and Mr. Doe do "substantially similar work" which would make this question, and the answer irrelevant to her EPA claim.

equal pay provision of Title 21 V.S.A. §495(8)(A) of Vermont's Fair Employment Practices Act.

SUMMARY OF INVESTIGATION

Interviews:

Lynne Silloway- Complainant – Administrative Services Coordinator III – Approximately fifty contacts between 7/28/10 and 3/26/12

Keith Tallon – Community Corrections District Manager, formerly Southern State Correctional Facility (SSCF) Superintendent from 2003-2005 – the "Appointing Authority" - 1/18/12

Chris Teifke –Operations Director for VSEA - 2/2/12

Molly Paulger - Director, Personnel Division Services & Operations – the "Hiring Authority" in DHR who had ultimate approval over the DOC's request to hire Mr. Doe into-range– 2/9/12

Mr. Doe– Administrative Services Coordinator III - 3/26/12

Documents/Research

a. Charge of Discrimination alleging a violation of the equal pay provision of the Vermont Fair Employment Practices Act (VFEPA)

b. State's Response to Charge November 19, 2010

c. VSEA Supervisory Collective Bargaining Agreement

d. Vermont Personnel Policy & Procedures Manual

e. Equal Employment Opportunity Commission (EEOC) Compliance Manual

f. Personnel division data on promotion and pay grade/step movement

g. Personnel division data on hire-into-range figures between 2000-2010

h. Statutes/case law/law review articles/treatise extracts

i. Review of legislative history file of Vermont's Equal Pay Act provision

j. Pay history of Mr. Doe and Ms. Silloway

k. Documents of the other four Department of Corrections (DOC) employees who were hired-into-range between 2002-2004

l. Vermont Transparency Website Data - www.vttransparency.org

m. Articles from The Rutland Herald, Vermont Public Radio, The Concord Monitor and www.prisontalk.com on Keith Tallon's removal as SSCF Superintendent

Acronym KEY

AHS – Agency of Human Services –the hiring authority

AHS/HRU – The Human Resources Unit of the Agency of Human Services

ASCIII- Administrative Services Coordinator III (Ms. Silloway & Mr. Doe were reclassified as ASCIII's from Business Manager A's)

DOC – Department of Corrections-the appointing authority

EPA – Equal Pay Act

FSS – Food Service Supervisor

MVRCF – Marble Valley Regional Correctional Facility (Where Ms. Silloway works)

SSCF – Southern State Correctional Facility (Where Mr. Doe works)

PG – Pay Grade

VLRB: Vermont Labor Relations Board

VSEA – Vermont State Employees Association

VFEPA – Vermont Fair Employment Practices Act

UNDISPUTED FACTS

In 2002, Lynne Silloway was hired by the Department of Health at pay grade (PG) 19, step 1. At the time she was hired, her hourly wage was $13.75. She was classified as a supervisor.

In September of 2003, she applied for the position of Business Manager A at the Department of Corrections (DOC). Her PG increased to 21, step 2. Her wage increased to $16.75 an hour. She continued to be classified as a supervisor.

In September 2003, the Human Resources unit of the Agency of Human Services (AHS), (hereinafter "AHS/HRU"), approved a request from DOC to hire Mr. Doe "into-range" pursuant to state policy §12.2[3] as a Food Service Supervisor.

He was hired to open the kitchen at the newly constructed Southern State Correctional Facility (SSCF). Mr. Doe was hired-into-range at PG 18, step 13, at an hourly wage of $19.94. The normal entry rate for a Food Service Supervisor in 2003 was PG 18, step 1 at $13.65 an hour. This job was not classified as a supervisory position.

A new employee can only be hired-into-range in "rare circumstances" where there is a "compelling reason" to make an exception to "the basic principle that employees are hired at the entry rate established for the job."[4]

An applicant can only be hired-into-range for the following reasons:[5]

- There is a shortage of qualified applicants for the position;
- An applicant who has special qualifications, training, or experience that while are not necessarily a requirement of the job, have some unique value to the organization;
- The candidate possesses exceptional and outstanding qualifications that exceed those of other applicants and to such an extent that not hiring that particular employee will be detrimental to the State.

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[3] STATE OF VERMONT PERSONNEL POLICIES AND PROCEDURES MANUAL §12.2 (2008), [hereinafter POLICIES AND PROCEDURES MANUAL]. See ATTACHMENT A.
[4] Id.
[5] Id.

Section 12.2 of the state policy and procedures manual dictates the specific information that both the AHS/HRU and DOC were required to generate and consider to justify hiring Mr. Doe into-range.

The AHS/HRU and DOC failed to follow all of the required policies and procedures of §12.2 both individually and collectively when they hired Mr. Doe. The process through which Mr. Doe received his salary at PG 18, step 13, was therefore not in compliance with the hire-into-range policy.

In addition 3 V.S.A. §327(a) requires that "When a vacancy in the classified service occurs, the appointing officer [here DOC] shall make a diligent effort to recruit an employee from within the classified service to fill the vacancy."

Though there appeared to be an internal applicant, neither the AHS/HRU, nor DOC, could identify that internal candidate by name, sex, qualifications or by agency at the time of application.

In 2006, Mr. Doe applied for a Business Manager A position at SSCF. Ms. Silloway had held this same position for approximately three years at MVRCF by the time Mr. Doe applied. Ms. Silloway also had one more year of seniority than Mr. Doe. However Mr. Doe's hourly wage when he became a Business Manager A was $25.10 and Ms. Silloway's wage was $19.72, a $5.38/hour difference.[6]

Soon after Mr. Doe was hired, DOC reclassified all Business Manager A's to Administrative Service Coordinator III's. The pay grade of all ASCIII's increased to pay grade 23. The reclassification recognized that all ASCIII's perform the same or similar duties. Nonetheless, Mr. Doe still makes approximately $10,000 more than Ms. Silloway.

The salary Mr. Doe received when he was hired-into-range is the primary reason that Mr. Doe earns more than Ms. Silloway despite the fact that they have the same job classification, perform the same or similar duties and despite the fact she has greater seniority and supervisory experience than Mr. Doe.

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[6] The $25.10 also represented an 8% increase for becoming a first time supervisor. Without the 8% increase his hourly wage would have been $23.07 which would have been due solely to the step 13 he received upon being hired in 2003. Ms. Silloway never received an 8% increase since she had been hired into state service as a supervisor. The federal Equal Pay Act has a provision which prohibits unions from contributing to pay disparities based on sex, but the HRC does not have jurisdiction over the union. See FN 23 for more discussion.

I. ELEMENTS OF THE EQUAL PAY ACT

To establish a prima facie case of discrimination based on sex pursuant to the Vermont Fair Employment Practices Act, 9 V.S.A. §495(a)(8), Ms. Silloway must show by a preponderance of the evidence (i.e. that it is more likely than not) that:

1. The employer pays different wages to employees of the opposite sex; (Ms. Silloway makes less than Mr. Doe so this element is met).

2. The employees perform equal work on jobs requiring equal skill, effort, and responsibility; and

3. The jobs are performed under similar working conditions. (Elements 2 and 3 are met; Ms. Silloway and Mr. Doe are both Administrative Service Coordinator III's and perform the same or similar jobs and are both Pay Grade 23).

Once Ms. Silloway has made a prima facie case, DOC and AHS may assert an affirmative defense to justify the wage differential by producing evidence and proving by a preponderance of the evidence (i.e. that it is more likely than not), that the wage disparity results from:

1. A seniority system;
2. A merit system;
3. A system which measures earnings by quantity or quality of production; or
4. A differential based on any other factor other than sex.[7]

In contrast to Title VII of the Civil Rights Act, the EPA is a "strict liability"[8] statute and the employer's burden is a "heavy" one.[9] This report does not analyze Ms. Silloway's case pursuant to the Vermont Fair Employment Practices Act, 9 V.S.A. §495(a) and Title VII of the Civil Rights

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[7] See 9 V.S.A. §495(a)(8)(A)(i)-(iv) and 29 U.S.C. § 206(d)(1)(1982).
[8] Ryduchowski v. Port Authority of New York and New Jersey, 203 F.3d 135, 142 (2nd Cir. 2000).
[9] Timmer v. Michigan Dep't. of Commerce, 104 F.3d 833, 843 (6th Cir. 1997).

Act.[10] Title VII only requires that a respondent produce a "legitimate non-discriminatory reason"[11] for the complained of action and requires evidence of intent to discriminate. The employer has no burden of proof in a Title VII action, in contrast to the heavy burden of production and persuasion it has under the EPA. While the EEOC and some federal circuit courts find a per se violation of Title VII where there is an EPA violation,[12] Ms. Silloway is not alleging an intent to discriminate, so Title VII does not apply.[13] Ms. Silloway's complaint simply alleges that DOC and the AHS/HRU failed to follow a specific state hiring policy and statutory provision and that this failure caused a "domino effect" which resulted in sex-based wage discrimination.

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[10] 42 U.S.C. §§ 2000e et seq.

[11] Carpenter v. Central Vermont Medical Center, 170 Vt. 565, 566 (1999).

[12] The Equal Employment Opportunity Commission (EEOC) takes the position that a violation of the EPA is essentially a violation of Title VII. The Circuit Courts of Appeal throughout the country are split on this interpretation. The Second Circuit, which is the controlling circuit for Vermont, has not directly addressed this issue, but that court distinguishes between the two statutes in its analyses and rulings which suggest it does not take the EEOC's position. See 29 C.F.R. 1620.27.Section (a): "In situations where the jurisdictional prerequisites of both the EPA and title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., are satisfied, any violation of the EPA is also a violation of title VII. However, title VII covers types of wage discrimination not actionable under the EPA. Therefore, an act or practice of an employer or labor organization that is not a violation of the EPA may nevertheless be a violation of title VII."

[13] Several courts have imposed the Equal Pay Act burdens of proof and persuasion on those filing under Title VII only based on a rather confusing decision by the Supreme Court that has resulted in a split amongst the circuit in the context of Title VII cases where equal pay violations are alleged. See Gunther v. County of Washington, 452 U.S. 161 (1981). Ms. Silloway's case is distinguished from that body of analysis since it is only an Equal Pay Act complaint and not a Title VII complaint.

Since there is no Vermont state case law on point to provide relevant statutory interpretation, this investigation turned for guidance to the federal Equal Pay Act as it has been interpreted by the Court of Appeals for the Second Circuit, (NY, CT, VT), since that Court is the controlling authority for Vermont.[14]

II. BACKGROUND OF THE COMPLAINT

1. In July of 2010, Lynne Silloway discovered that a male co-worker, Mr. Doe, was earning approximately $10,000 more than she was earning. They had the same pay grade (PG 23), same job title - Administrative Services Coordinator III (ASC III) - for the Department of Corrections (DOC) and performed the same or similar duties. Ms. Silloway had been hired into state service as a supervisor in 2002, and therefore had more seniority in state employment than Mr. Doe. Additionally she had three more years of experience in the job they both held. Mr. Doe was hired in 2003 as a Food Service Supervisor (FSS) at Southern State Correctional Facility (SSCF). Despite the title, this job was not classified as a supervisory position. His assignments were to start-up and manage the prison kitchen at the newly opened SSCF.

[14] Lavalley V. E.B. & A.C. Whiting Company, 166 Vt. 205 (1997). The Vermont Supreme Court has "look[ed] to federal case law for guidance in construing identical provisions of two statutes." Lavalley at 210. See also Hogdon v. Mt. Mansfield Co., Inc., 160 Vt. 150, 165 (1993). The Vermont Supreme Court has not been presented with an equal pay case of this nature. As noted in the first section, Vermont must look to the federal EPA for interpretation since there is no Vermont case on point. This investigation researched the legislative history and it essentially silent about lawmaker intent with respect to the four defenses. There were approximately two hours of unintelligible recorded committee testimony concerning the passage of equal pay provisions of the VFEPA so there was no guidance regarding passage of the law generally or the exceptions in particular.

2. When Ms. Silloway went to the Vermont Transparency website, she discovered that Mr. Doe was also earning a higher salary than their other female ASCIII counterparts, some of whom had significant state seniority over Mr. Doe – a fact verified by the State. The figures in Chart A were provided by the State in 2010. **Attachment B** shows those figures from the Vermont Transparency website as of May 2, 2012.[15]

CHART A

Gender	PG/ Step	Salary		Start Date	Years of Service
		Hourly	Annual		
Male **(Mr. Doe)**	23-12	$28.14	$58,531.20	9/15/2003	7 yrs.
Female	23-12	$28.14	$58,531.20	9/3/1974	36 yrs.
Female	23-12	$28.14	$58,531.20	8/2/1982	28 yrs.
Female	23-08	$25.07	$52,145.60	2/2/1998	12 yrs.
Ms. Silloway	23-06	$23.44	$48,755.20	6/10/2002	8 yrs.
Female	23-05	$22.71	$47,236.80	5/13/2002	8 yrs.

3. This investigation determined that Mr. Doe's salary was higher than Ms. Silloway's because he had been hired-into-range by the DOC with approval from the AHS/HRU. Instead of hiring Mr. Doe at step 1, where most state worker pay begins, Mr. Doe was hired to be a Food Services Supervisor at step 13. There are 15 steps within any pay grade and it can take approximately eighteen and one half years for an employee who starts at step 1 and stays in the same position throughout their career, to reach step 13. This investigation reviewed documents that showed that over a ten (10) year period, from 2000-2010, Mr. Doe was the only employee hired by DOC over step 8. The DOC employee hired-into-range at step 8 was hired for a newly created position.

[15] The actual FY 2010 chart on the VT Transparency website. Since it is a public document, names have not been redacted.

4. Hiring Mr. Doe at step 13 gave Mr. Doe significant immediate and future advantages. The immediate advantage was that Mr. Doe received a far greater salary than other Food Services Supervisors already employed by the state. The future advantage was that his step 13 compounded his earnings as he moved through the state system in comparison to employees who were not hired-into-range. In other words, pay increases from subsequent upgrades or promotions would be calculated from the original step 13, as opposed to step 1 or 2 where most employee salaries are set. This caused the significant pay disparity with Ms. Silloway despite the fact that she had greater state seniority and three more years of experience in the position than he had when he moved to her job class in 2006.

5. This pay disparity has several financial impacts on Ms. Silloway. The first and most obvious one is that she makes a lower annual salary than a male employee who has less state seniority and three years less experience in the job they both hold. However this disparity has further implications affecting Ms. Silloway's retirement contributions, social security benefits and potentially, her retirement age. In light of the fact that Mr. Doe was hired-into-range at step 13, his retirement and federal social security benefits will be greater due to larger contributions and theoretically, he could retire earlier.

6. Hiring a new state employee into-range continues to be a state policy. This investigation is not recommending that the Human Rights Commission find that the hire-into-range policy itself violates the EPA. This investigation is not suggesting Mr. Doe should be penalized in some way. To their credit, Mr. Doe and Ms. Silloway have maintained a professional relationship throughout the investigation of this charge. The State entities that created the wage disparity are the AHS/HRU and the DOC. Both the AHS/HRU and DOC failed to follow the required policies and procedures set forth in §12.2 of the Vermont State Employee Personnel Manual and DOC failed to follow

3 V.S.A §327(a) which requires that it make "diligent" efforts to recruit internal candidates. Their failure to follow policies, procedures and laws set a domino effect into motion that was unknown by anyone until Ms. Silloway discovered the pay disparity in July of 2010.

7. Since the Equal Pay Act is a strict liability statute, Ms. Silloway does not need to show that there was any *intent* to violate the EPA or any intent to discriminate against her as a female. Ms. Silloway need not show malice, sexist behavior, harassment or any of the elements a complainant must show under Title VII of the Civil Rights Act. The EPA seeks to redress organizational flaws and employer oversights within the workplace that result in compensation systems where women are paid less than men for the same work. The strict liability aspect of the EPA recognizes that the illegal consequences of these hiring practices may be unintended and that the causes of unequal pay may be the result of negligence rather than malice, however the EPA holds employers liable for the inequity unless a recognized affirmative defense is successfully produced and proven.

III. THE PAY GRADE AND STEP SYSTEMS AND THE HIRE-INTO-RANGE POLICY §12.2

1) Overview

8. In order to better understand Ms. Silloway's case, there are several aspects of the Vermont compensation system that must be explained.

A) Section 2 explains the pay grade and step systems and how they determine an employee's salary.

B) Section 3 explains how Mr. Doe was hired within the context of the pay grade and step system.

C) Section 4 explains Vermont hire-into-range policy, §12.2, the policy that the State used to justify hiring Mr. Doe.

D) Section 5 details the ways that DOC and the AHS/HRU violated policy §12.2 when they hired Mr. Doe into-range and includes information from interviews with the two persons responsible for hiring him into-range.

E) Section 6 discusses the implications of the failure to follow policy, law and procedures.

Part IV concludes with a discussion of the EPA and relevant case law and reviews the basis for the recommendation. Due to the complexity of the State compensation system and hire-into-range policy, this report highlights the grounds for the recommendation in each section.

2) **Pay Grade & Step System**

9. A brief overview of the state pay system is necessary to understand how Ms. Silloway ended up being paid less than Mr. Doe. In September of 2003, when Mr. Doe was hired, there were thirty-two (32)[16] pay grades with minimum and maximum pay rates established for each pay grade.[17] The pay rates within the particular pay grade are assigned a "step" and all pay grades contain fifteen (15) steps.[18] Typically, a new employee starts at step 1 for a period of six months. At the end of a successful probation the employee moves to step 2. An employee receives an annual one step increase until he/she reaches step 6.

10. At steps 6-12, an employee must wait two years between each step increase. At steps 13-15 an employee must wait 3 years for the next step increase to take effect. Thus, if an employee were to stay within one pay grade throughout his or her career, and have satisfactory job performance, it would take approximately twenty-four and half years to reach step 15.[19]

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[16] POLICIES AND PROCEDURES MANUAL §12.1. The manual says there are 28, but the current pay chart reflects 32 pay grades.
[17] Id. at §6.0
[18] Id. at §12.1. See ATTACHMENT C.
[19] Variations can occur via cost-of-living increases, changes in the amount each step pays based on legislative action such as step increase freezes, or faster step movement based on merit and/or the union contract. However once step15 is reached within any pay grade, an employee would have to move to a higher pay grade for significant increases in salary.

When Mr. Doe was hired at step 13, DOC and the AHS/HRU essentially gave him a salary that could take a state employee (using the assumptions just set forth) approximately 18.5 years to achieve.[20]

11. An employee's salary can also increase if he/she is moved to a higher pay grade by promotion or reclassification. When this occurs, the employee does not start at step 1 in the new pay grade. Instead, the employee takes the rate of pay they had at their then current step to their new position. A complex provision from the bargaining contract provides the calculation performed by personnel to set the new step when a higher pay grade is achieved.[21] Usually, the step is adjusted down one or two steps.[22] Thus, each time Mr. Doe moved to a new pay grade, his pay reflected the financial advantage attached to the step he was originally hired into - the higher the original step the greater the new rate of pay. This is the framework that resulted in the pay inequity with Ms. Silloway.

3) **<u>DOC and the AHS/HRU hire Mr. Doe's into-range</u>**

12. In September 2003, Mr. Doe, an external applicant, was hired as a "Facility Food Services Supervisor"[23] at the then newly constructed Southern State Correctional Facility (SSCF) in Springfield, Vermont. In spite of his title

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[20] Step acceleration can also occur, for instance, if an employee advances their education. VSEA SUPERVISORY BARGAINING UNIT AGREEMENT EFFECTIVE JULY 1, 2010 — EXPIRING JUNE 30, 2012, Article 81 - Accelerated Step Advancement Program.

[21] VSEA CORRECTIONS BARGAINING AGREEMENT-ARTICLE 50 (SALARIES AND WAGES) §9: "...upon promotion, upward reallocation or reassignment of a position to a higher pay grade, an employee covered by this Agreement shall receive a salary increase by being slotted onto that step of the new pay grade which would reflect an increase of at least five percent (5%) over the salary rate prior to promotion (i.e., five percent (5%) is the lowest amount an employee will receive, and the maximum amount would be governed according to placement on a step which might be higher than, but nearest to, the five percent (5%) minimum specified). The rate of five percent (5%) as outlined above shall be eight percent (8%) if the employee is moving upwards three (3) or more pay grades."

[22] To help assess step movement, this investigation requested and reviewed 974 entries from State documents of men and women who were promoted three or more pay grades to see what if their pre and post step movement appeared gender based. This investigation could find no significant anomalies in the material provided.

[23] See ATTACHMENT D and D1 for the job description and pay chart in use in 2003.

he was not actually classified as a "supervisor." The pay grade for a Facility Food Services Supervisor position was (and still is) a PG 18. As noted, Step 1 is the "normal hiring rate established for most positions, and is the salary usually offered to applicants when they apply for positions in State Government."[24] Chart B shows the difference in pay between an employee normally hired at PG 18, step 1 and Mr. Doe who was hired at PG 18, step 13:

CHART B

Difference in salary using 2003-2004 pay chart	
PG 18 Step 1	**PG 18, Step 13** ***(Mr. Doe)***
$13.65/hr.	$19.94/hr. ***(Mr. Doe)***
$28,392.00/yr.	$41,475.20/yr.
	$13,083.20 difference in pay plus retirement benefits

13. Mr. Doe worked as a Food Services Supervisor until 2004 when he requested a reclassification and higher salary.[25] In 2006, Mr. Doe applied for a competitive posting for a supervisory position at SSCF - Business Manager A - and was selected for the job. Ms. Silloway had held this same position at MVRCF for three years prior to Mr. Doe and also had one year more of state seniority having been hired in 2002.

14. In spite of Ms. Silloway's seniority and greater experience in the same position, records show that Mr. Doe's hourly rate was $25.10 as opposed to

[24] See POLICIES AND PROCEDURES MANUAL §12.2. The details of this policy are discussed in greater detail below.

[25] In 2004 Mr. Doe asked for his specific position to be reclassified. His request for reclassification was granted and he became a Facility Food Services Supervisor II. As a result, within one year of being hired, his pay grade went from 18 to 20. His step was adjusted to a step 11 and his hourly wage went from $19.94 to $21.56.

Ms. Silloway's hourly rate of $19.72.[26] Chart C reflects the impact that Mr. Doe's hire-into-range at PG 18, step 13 had on Ms. Silloway's earnings:

CHART C

	Years of State service	Years classified as a supervisor	Years as a Business Manager A	Wage at time of Mr. Doe's promotion
Ms. Silloway	**4**	**4**	**3**	**$19.72**
Mr. Doe	**3**	**0**	**0**	**$25.10**

15. Shortly after Mr. Doe became a Business Manager A, the DOC central office requested that all Business Manager A's seek a classification review. As a result, all the Business Manager A's (which included Ms. Silloway and Mr. Doe) were reclassified as Administrative Service Coordinator III's.[27] That reclassification represented an administrative confirmation by DOC that all ASCIII's did the same work and that the work required the same skills, knowledge and abilities regardless of the size of the facility to which the individual ASCIII was assigned. This clearly establishes one of the elements of Ms. Silloway's prima facie case of discrimination - that Ms. Silloway and Mr. Doe do the same or similar work. During the interview with Mr. Doe, the State asked Mr. Doe questions about the greater size of SSCF compared to MVRCF, suggesting that Mr. Doe makes more

[26] Pay records for both Ms. Silloway and Mr. Doe are difficult to follow, but it appears that at the time Ms. Silloway and Mr. Doe became comparators, this was the wage difference. Upon becoming a Business Manager A, Mr. Doe also received an 8% raise because the new job represented a promotion into the supervisory bargaining unit, but the main increase in pay was his original hire at step 13. The Human Rights Commission does not have jurisdiction over the Vermont State Employees Union (VSEA) in an employment case. Nonetheless it could be argued that bargaining contract compounded the pay inequity between Ms. Silloway and Mr. Doe by giving him an 8% raise when he first came into her unit as a supervisor. The EPA prohibits unions from contributing to equal pay problems. However beyond mentioning this issue, this investigation is not authorized to make any finding or recommendation. See 29 U.S.C.A. § 206(d)(2). See also Hodgson v. Sanger, 326 F. Supp. 371, 373 (D.C. Md. 1971) ("There is no apparent reason why a union which violates Section 206(d) [of the EPA] should be treated any differently from an employer violator.").

[27] See Attachment E for job description of an Administrative Services Coordinator III.

money than Ms. Silloway because he works at a larger facility. This investigation believes this to be a fundamental misunderstanding of the state classification system,[28] the re-classification that occurred when Business Manager A's became ASCIII's, the impact of hiring Mr. Doe into-range, and in any event, is not an affirmative defense that the State has shown is authorized by the EPA.

16. This investigation asked the State to release records for hire-into-range numbers from 2000-2010. These records showed that during that period, DOC had not hired a new employee into-range above a step 8 except Mr. Doe who was hired at step 13. The four other employees who were hired-into-range in the same time period as Mr. Doe, 2002-2004, were hired into newly created, unique or specialized positions.[29]

17. This investigation compared the hire-into-range requirements of §12.2 with the manner in which Mr. Doe was actually hired and the comparison is outlined in greater detail in the next section. However there was no shortage of qualified applicants for the position and unknown/unidentified internal candidate who by statute, contract and policy should have had preference. Additionally, Mr. Doe's qualifications, training, or experience had no unique value to DOC since it was admitted that existing staff could have opened the new kitchen if no one had been hired. Nor would a failure to hire Mr. Doe have been detrimental to DOC since existing staff (or even contractors) could have been brought in to open and run the new kitchen until a FSS could be hired in the "usual" manner.

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[28] See 3 V.S.A. § 323(2) reads: "Class" means one or more positions sufficiently similar in nature, scope, and accountability that the same title, test of fitness and schedule of compensation may be applied to each position."

[29] This investigation subpoenaed the files of other DOC employees hired into range from 2002-2004 for comparison.

4) **The rules for hiring a new employee into range - §12.2 of the policy manual**

18. The state policy manual places strong emphasis on fairness and equity with respect to employee compensation.[30] In Rule 1.01, General Purpose, the manual states: "These rules shall give effect to the provisions of Chapter 13, Title 3, Vermont Statutes Annotated, and shall be applied in accordance with the objectives of the personnel law, among which are: '....To establish and maintain an equitable classification and compensation program designed to provide State government with sufficient numbers of qualified personnel; [and] To promote efficiency and high morale among State employees;....'"

19. It would follow from this statement that exceptions to the usual hiring practices would have to be transparent and that the specific rules, procedures and laws governing those exceptions would have to be strictly followed. The basis of Ms. Silloway's complaint is a consequence of not following all relevant requirements.[31]

20. Section 12.2 of the Vermont state policy and procedures manual requires that the appointing authority (DOC), and the hiring authority (AHS/HRU), follow specific procedures when hiring a new employee into-range. The manual requires accountability from both agencies. The reciprocal relationship between the appointing authority and hiring authority theoretically provides a check and balance system, however the hiring authority (AHS/HRU) has the final approval of the hire-into-range request. Therefore, when DOC failed to provide all of the required information and

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[30] See also 3 V.S.A. Ch. 13 for the personnel classification provisions.

[31] The VSEA SUPERVISORY BARGAINING AGREEMENT recognizes the potential problems associated with hiring a new employee into range in the following article: "[the] Commissioner of Human Resources may raise the rate of current employees in that department in the same class and/or associated class to the rate of the newly hired employee. Employees so raised shall retain their old step date and time already accrued toward his/her next step movement. VSEA SUPERVISORY BARGAINING UNIT AGREEMENT EFFECTIVE JULY 1, 2010 — EXPIRING JUNE 30, 2012 - Article 49, §15(a) – Salaries and Wages.

justification for hiring Mr. Doe into-range, AHS/HRU should not have approved the hire until DOC provided that information. In addition, AHS/HRU was required by §12.2 to generate its own set of data to determine the validity of DOC's hire-into-range request. However neither agency fulfilled all of these requirements when Mr. Doe was hired.

21. The State presented no evidence that would allow either the hiring authority or the appointing authority to treat §12.2 in a discretionary manner, that is, to follow some, but not all of the procedures required by the policy. A decision by the Vermont Labor Relations Board, Grievance of Hooper, 27 VLRB 167 (2003), found that the hiring of the most desired employee in that case was "invalid" because those doing the hiring failed to follow all of the hiring rules and procedures in order to get the employee they wanted. In the Hooper case, the hiring irregularities were quickly discovered. In contrast, the implications of the failure to follow policies and procedures only came to light in Ms. Silloway's case some seven years after they occurred. Hooper is discussed further in Section IV..

5). **Specific violations of policy manual §12.2 and the role of 3 V.S.A. Ch. §327(a)**

22. This investigation obtained Mr. Doe's hiring file by subpoena. It showed that DOC failed to supply the specific information required by §12.2. It also showed that AHS/HRU not only failed to ensure that DOC provided this information, but that AHS/HRU failed to consider the factors that §12.2 requires it to specifically consider in order for it to approve a hire-into-range request. The following information required of DOC was missing or could not be produced by the State:

A. *Candidate and Job Information*:

1. There was no information on the qualifications of the staff serving in the same class as Mr. Doe; it appears that the impact on other Food Service Supervisors was not considered at all.

2. There was no explanation of how the request to hire Mr. Doe into-range met the regulatory standards under which the salary exception could be granted (possibly because this was not the kind of position contemplated by the hire-into-range policy).

B. *Hiring Process:*

1. There was an incomplete summary of recruitment efforts; 3 V.S.A. §327(a) requires that "When a vacancy in the classified service occurs, the appointing officer [here DOC] shall make a diligent effort to recruit an employee from within the classified service to fill the vacancy."

2. A copy of the hiring certificate was missing- this document would have identified whether the candidates were external or internal.

3. There appears to have been one internal applicant, however since the State could not produce the hiring certificate which would have identified that person, there was no way to know why that person did not qualify or who they were.

4. There was no information about turnover/vacancy data for the position class over the last two years.

C. *Implications (of hiring Mr. Doe into range)*:

1. There was no list of other employees or classes that would potentially be affected by the hire-into-range request, i.e. other Food Service Supervisors or other future co-workers.

2. There was no information regarding recent hires in the same or similar class and any other related factors.

23. Nor could AHS/HRU produce evidence that it had considered the following required issues:

1. There was no information on the recruitment and retention experience for the position.

2. There was no information on the salary market for the particular type of expertise.

3. There was no information about the impact on current incumbents with similar qualifications.

It is conceivable that it might have been difficult to obtain information on the salary market, recruitment, retention and regulatory standards for a Food Service Supervisor as it was perhaps not the type of position contemplated as appropriate for a hire-into-range request. The State has produced no evidence to refute this.

24. Mr. Doe's position was essentially fungible in nature and required no specialized skills. When Mr. Doe was hired, there were five other Food Service Supervisors in existence, all of whom were PG 18. As a non-unique, non-supervisory position that required only a high school education or equivalent, it was not the type of unique position contemplated by the hire-into-range policy. This would not excuse DOC and AHS/HRU from failing to gather the necessary information – however the difficulty in gathering it should have caused them to question the validity of its use in Mr. Doe's case. This investigation obtained further information from the two individuals responsible for hiring Mr. Doe, Keith Tallon from DOC, and Molly Paulger from DHR.

1) Interview with the DOC Appointing Authority – Keith Tallon

25. The primary persons responsible for hiring Mr. Doe were interviewed to the extent allowed by the State. Keith Tallon was the new

superintendent[32] of SSCF in the fall of 2003 and wrote the hire-into-range letter for Mr. Doe to Cynthia LaWare,[33] who was then the Commissioner of Personnel. The letter was then sent to Molly Paulger in the personnel division of DHR. Ms. Paulger was responsible for approving all hire-into-range requests from appointing authorities at that time. Mr. Tallon stated that he believed he would have had to discuss his hire-into-range request with his direct supervisor, but the State produced no documentation that he did so. Mr. Tallon believed it was his first hire-into-range request. He stated that he consulted the personnel manual before he hired Mr. Doe and that he went "by the book" in hiring Mr. Doe. However the paper record and his statements during the interview contradict this assertion.

26. During the interview, Mr. Tallon noted that the Woodstock Correctional facility was closing down at the same time SSCF was opening. He stated that Woodstock employees would have had priority for positions at SSCF. This investigation confirmed that there was an agreement between VSEA and the State which gave Woodstock employees a right of first refusal for SSCF jobs. In addition, the prison in Windsor was being converted to an all-female facility so some male staff from that facility might have been looking to transfer to other institutions.

27. The status of these two institutions held potentially significant staffing implications for the SSCF hiring pool. However while Mr. Tallon mentioned that there was one DOC candidate in his hire-into-range letter, he provided no information about the identity of that candidate, where he or she had come from, or why that internal applicant was not a viable candidate for the FSS position. Furthermore, the scoring chart he sent to the AHS/HRU did not

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[32] Mr. Tallon was removed from this position in 2005.

[33] She is no longer with the state. There was a brief one page cover letter to Ms. LaWare from Steve Gold. The letter was signed by Sister Janice Ryan, then Deputy Commissioner of DOC, on his behalf. Mr. Gold was the Commissioner of Corrections and he is also no longer with the state. His cover letter refers Ms. LaWare to Mr. Tallon's "memo." Other than this cover memo from Sister Ryan/Mr. Gold, there is no other evidence of their, or Ms. LaWare's involvement.

identify the internal candidate. Additionally, the hiring certificate which would have identified the internal candidate could not be produced by the State. Mr. Tallon did not recall seeing the hiring certificate but thought there must have been one since it would have identified the internal candidate. Section 12.2 and 3 V.S.A. §327(a) require that these issues be considered and accounted for in the hire-into-range request.

28. During the interview Mr. Tallon made the statement that "nobody even came close" to Mr. Doe as a good candidate. However the chart that Mr. Tallon submitted to the AHS/HRU showed that Mr. Doe had an overall score of 34 points, while two other interviewed candidates each scored 32.75. Mr. Tallon was unable to recall whether the particular position of Food Services Supervisor was advertised and there was no evidence in the file or in the letter he wrote to AHS/HRU detailing how the position had been advertised – information required by §12.2.[34] Mr. Tallon also stated he did not consider the impact of Mr. Doe's hire-into-range on future hires into the FSS position or on existing Food Service Supervisors who held that position when Mr. Doe was hired-into-range. A request for information from the State revealed that Mr. Doe's salary far exceeded every other FSS in the state, even one FSS with fifteen years of state seniority who had attained PG 18, step 11 when Mr. Doe was hired. DOC and AHS/HRU were required to individually and collectively consider the impact on existing and future FSS's prior to hiring Mr. Doe into range. Their failure to consider these employees violated §12.2.

29. Mr. Tallon was "not 100% sure" whether he had interviewed Mr. Doe for the position, but he thought he probably had. He said as the appointing authority it would have been up to him to write the letter asking that Mr. Doe be hired-into-range. He stated that he had spoken to Mr. Doe's references and that he and Mr. Doe may have had general salary discussions

[34] Mr. Doe stated in a later interview he saw the position advertised in a newspaper.

such as "what are you making now" but could not recall any other conversation as to salary.[35]

30. Mr. Tallon stated it was necessary to hire Mr. Doe at step 13 due to the necessity of getting the kitchen at the new facility quickly up and running, getting the "offender" work force assigned and other civilian staff hired.[36] Mr. Tallon stated that he believed these tasks and the timing element made the job unique and therefore worth an extraordinarily higher base pay. Mr. Tallon was asked whether in light of this "uniqueness" he could have re-classified the position (as Mr. Doe did on his own initiative a year later)[37] or have offered a moderate step increase. Mr. Tallon's answers suggested that these options were not considered at the time.

31. When asked what he would have done if he had been unable to hire someone for the position, Mr. Tallon stated he would have had to get staff from other facilities to do the job. Ms. Paulger, who ultimately approved the hire, also agreed that using staff from another facility was an option. This acknowledgement by both witnesses undermines the assertion that the job was unique. It also undermines the assertion that an outside applicant would have been the most qualified person to set up the new kitchen. Their answers reveal a lack of compliance with §12.2.

2) Interview with the AHS/HRU Hiring Director – Molly Paulger

32. Ms. Paulger became the Personnel Division Services Director in the spring of 2003, not long before she approved Mr. Doe's hire. She worked for the Department of Human Resources within the Agency of Administration. As the person in charge of compensation administration for the state, she reviewed and approved hire-into-range requests. She stated that she had

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[35] Mr. Doe, on the other hand, stated that Mr. Tallon did not interview him and that he therefore had no salary discussions with Mr. Tallon.

[36] The legislature passed the budget for staff salaries on July 1, 2003. Mr. Doe was hired in September of 2003 and the facility opened in October of 2003.

[37] See supra footnote 25. Mr. Doe reclassified as a FSS II after one year.

the sole authority to approve or deny these requests, and that no one reviewed her decisions. She also stated that it was her role to ensure compliance with state policy in the hiring process and she agreed that §12.2 outlined what was required of DOC and AHS/HRU with respect to hiring a new employee into range.

33. This investigation asked her for an explanation as to why there were several pieces of required information missing from the hiring file. Ms. Paulger could not recall whether that documentation had even existed or was just missing. This investigation would describe Ms. Paulger's response to Mr. Tallon's hire-into-range request as one of simple ratification. She simply accepted Mr. Tallon's representations and overlooked the fact that the rest of the requirements of §12.2 were missing as they applied to DOC and to herself as the hiring authority working with AHS/HRU. Again, the State has offered no authority to show that §12.2 can be treated in a discretionary manner. It would seem that a hiring policy that is only to be used in "rare" circumstances would require full compliance with all aspects of that policy on the part of all relevant parties. The Hooper decision mentioned above and discussed further in sections IV supports this principle.

34. When Ms. Paulger was asked about the lack of information on the identity and qualifications of the internal candidate, she could not recall either who the internal candidate was did not know the location of the hiring certificate. When asked if she was aware of the agreement between VSEA and the State with respect to Woodstock and Windsor employees, she indicated that this issue would have been an internal matter for DOC's consideration and she did not recall having any information about what was happening at either facility. She simply recalled that SSCF was opening and knew there was a push to get staff in place.

35. When Ms. Paulger was asked if she was surprised by the request to hire Mr. Doe at step 13, she stated she could not recall what she thought at

the time. However she stated that if she were presented with the same request at the current time she would need to be presented with a "very good case" for such a request.

36. Ms. Paulger was asked why the "best" candidate was chosen for a food service position instead of someone who might have been able to do the job just as well for less pay. She was reminded that §12.2 lists a "shortage of qualified applicants" as one of the central rationales of hiring someone into range. Her response was that she had had the "why hire a Rolls Royce when a less expensive model will do the job just as well"[38] conversation with hiring managers in more recent circumstances, but did not recall having it with Mr. Tallon. Therefore, the other two candidates with scores close to Mr. Doe's did not factor into her decision to approve or to question Mr. Tallon's request.

37. Ms. Paulger acknowledged that existing staff could have been brought from other facilities if DOC had not been able to hire someone for the job. She stated she had not discussed this alternative with Mr. Tallon since he did not raise the issue with her. Ms. Paulger had no records or documentation on Mr. Doe's hire and recalled very little about the request to hire him other than that SSCF was opening in October of 2003 and she knew staff was needed to fill positions. She could not identify the "exceptional and outstanding qualifications [of Mr. Doe]" that "exceed[ed] those of other applicants...to such an extent that not hiring [Mr. Doe would have been detrimental] to the state."[39] In sum, Ms. Paulger failed to hold Mr. Tallon accountable for the information that §12.2 required him to provide as the appointing authority. She also failed to generate the information that §12.2 required her to generate as the hiring authority.

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[38] This paraphrases the question and answer, but this was the example used.

[39] STATE POLICY AND PROCEDURES MANUAL §12.2 – this is a quotation from the hire-into-range policy.

6) **Summary: The Implications of Failing to Follow §12.2 and 3 V.S.A. Ch. §327(a)**

38. Failure to follow §12.2 resulted in the hiring of Mr. Doe at an incongruously high salary for a non-unique position. Both Mr. Tallon and Ms. Paulger stated that another FSS could have been brought in to open the kitchen if DOC had not been able to hire someone to do the job. This undermines the assertion that only someone like Mr. Doe could do the job. It also goes against the §12.2 mandate that there be a "compelling need" for a specific hire for a "unique" position. Needing an experienced person quickly to get a new kitchen up and running does not mean that that person qualifies for the hire-into-range provision if the job is not unique in an overall sense. Ms. Paulger essentially admitted that her lack of experience resulted in a failure to ask the right questions such as whether it was necessary to hire "the best" when "the best" was not needed for the particular job. She also stated that she would now need to be presented with a "very good case" for such a hire-into-range request.

39. 3. V.S.A. §327(a) requires that the appointing authority (DOC), make a "diligent effort to recruit an employee from within the classified service to fill the vacancy." There is no record or documentation that DOC made any effort at all to do so. There was one internal candidate, but there was no way to know whether he or she was qualified since neither Mr. Tallon nor Ms. Paulger kept any record of his or her name or qualifications. There was no hiring certificate which would have identified that applicant. The hiring chart sent to by Mr. Tallon to Ms. Paulger did not document an internal candidate.

40. In short, had there been the statutorily required effort to identify and recruit an internal candidate, it could have determined whether that candidate was a viable hire instead of Mr. Doe. If that candidate had been viable, a more fiscally sound and reasonable hiring decision might have been

made. However even if the internal candidate had been identified and found to be the wrong person for the job, there were other sections of §12.2 that both agencies failed to follow and would have therefore failed to justify hiring Mr. Doe into-range.

IV. THE EQUAL PAY ACT

1) Introduction

41. In a Vermont Equal Pay Act case, Knight v. G.W. Plastics, 903 F.Supp. 674 (1995), the federal district court of Vermont refused to grant G.W. Plastics' motion to dismiss the case. That court took issue with G.W. Plastics on several fronts, including the following:

> ....the defendant points out that the plaintiff started her career at a lower salary. However the defendant has not adequately explained why salaries established two decades ago, which may or may not have been discriminatorily established in the first instance, justify continued wage disparity once the plaintiff allegedly began her duties as a supervisor in 1984.[40]

The court stated two important points that are applicable to Ms. Silloway's case. First, the Equal Pay Act (which was passed in 1963) recognizes that present inequities can be the product of long-standing, systemic problems. This is applicable to Ms. Silloway because the present day pay inequity is the result of a hiring decision made nine years earlier in 2003. The second point focuses on the essential purpose behind the Equal Pay Act – remedying pay inequity between males and females even when the reason for the inequity is unintentional as it appeared to be in Knight or is the result of negligence or inexperience.

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[40] Knight, 903 F.Supp. 674 at 678. In Knight, the plaintiff, Marilyn Knight, had worked for defendant G.W. Plastics for 23 years. After her retirement she learned that the males who replaced her had been hired at salaries approximately $10,000 more than G.S. Plastics had paid her to perform the same job. Id. at 677.

42. Support for the obligation to follow hiring procedures can be found in the Vermont Labor Relations Board's Hooper decision. That Board found the hiring of the external employee invalid and called for the hiring process to be re-initiated[41] because those responsible for hiring that employee had not followed correct hiring procedures and had therefore prejudiced other internal applicants. In its decision, the Board wrote:

> ...the Employer contends that the rehire of Shea should not be impeded because she was an outstanding social worker and to make her and the Employer **"jump through unnecessary hoops that would not have changed the end result makes no sense."** This contention disregards the "Purpose and Policy Statement" of Policy 4.0, Recruitment...**When a vacancy in the classified service occurs, the appointing authority shall make a diligent effort to recruit employees from within the classified service to fill the vacancy."** The latter sentence of this statement is identical to 3 V.S.A. Section 327(a), which also is incorporated in Article 2 of the Contract. **The provisions of the Personnel Policies and Procedures violated by the Employer in rehiring Shea... are the specific means to ensure adherence to the policy and purpose behind the merit system in state government, and it is inappropriate for the Employer to minimize compliance with them.**[42] (emphasis added).

43. This portion of the Labor Board's opinion recognizes principles central to Ms. Silloway's case. The first is that following state hiring policies and procedures is mandatory, not discretionary. The second principle recognizes the legal directive pursuant to 3 V.S.A. § 327(a) to make "diligent" efforts to recruit and hire from within. The social worker in the Hooper case may have been considered to be "the best," applicant, but since hiring procedures had not been followed, this conclusion could not be fairly reached.

44. Like the hiring manager(s) in Hooper, AHS/HRU and DOC failed to execute a hiring process in conformity with law, policy and contract. They utilized a hiring provision, §12.2, that was inappropriate given the non-

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[41] This investigation is not suggesting that this should occur in the instant matter.
[42] Grievance of Hooper, 27 VLRB 167, 188 (2003).

unique nature of the position and the admission that other FSS's could have stepped into the job had it been necessary. The Labor Board went on to say:

> ...we disagree with the Employer's statement that to make...the Employer "jump through unnecessary hoops that would not have changed the end result makes no sense"....**The Employer's mishandling of the process of the rehiring of Shea as Social Worker B and subsequent promotion to Interim Intake Supervisor was so serious as to result in Hooper being denied a fair opportunity to compete for the Intake Supervisor position. The Employer was required by statute, rules and the Contract to "make a diligent effort to recruit employees from within the classified service to fill [a] vacancy" that arises in the classified service. Here, the Employer's efforts to recruit employees from within the classified service to fill the vacancy in the Intake Supervisor position fell far short of "diligent"....[the offer of] the Intake Supervisor position to Shea...even though Shea was no longer in the classified service...was in complete disregard of this requirement.**[43](emphasis added).

45. DOC's and AHS/HRU's failure to comply with §12.2 and 3 V.S.A. §327(a) ultimately resulted in Lynne Silloway being paid approximately $10,000 less than Mr. Doe for the same or similar work. The Equal Pay Act is a strict liability statute for this reason. It extracts "intent" as an issue, and indeed intent "may not even be relevant"[44] to the underlying reason for the pay inequity.

46. A lack of understanding, or inexperience, or carelessness by the hiring and appointing authorities are also not lawful justifications for pay inequity between men and women who do the same work. Automakers train their workers to prevent mechanical problems, but mechanical problems can occur anyway. The automaker did not intend to cause harm, but the automaker is nonetheless liable for the harm caused. The Equal Pay Act operates on the same principle within the workplace and provides a mechanism to seek a remedy.

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[43] Id. at 189.
[44] 26 Am. Jur. 3d Proof of Facts §14 (1994).

2) **The Defenses**

47. The State has not indicated which, if any, of the four affirmative EPA defenses it believes apply to Ms. Silloway's complaint. The legally required procedure for an employer in an EPA complaint is to produce one (or more) of these four affirmative defenses and then prove it so that a trier of fact can ascertain whether the employer has met its required burden of production and persuasion. Although it is not this investigation's responsibility, this investigation has attempted to anticipate what defenses the State might try to raise before the Commission. In one sense the State's approach subverts the HRC process because the HRC has to anticipate and explore affirmative defenses that were not raised during the investigation.

48. The "responses" offered by the State listed in footnote 2, *supra*, are not affirmative defenses recognized by the EPA.[45] Those responses either reference Title VII, which is not the applicable law, or offer factual defenses the State has not linked to a lawful EPA defense. The State had only four options set forth in the EPA through which it could have presented an affirmative defense. These affirmative defenses are: "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex."[46] An employer charged with violating the EPA may avoid liability if it can *produce* sufficient evidence and *prove* one or more of these affirmative defenses by a preponderance of the evidence, i.e. that it is more likely than not that it is true. This is a significantly heavier burden for the State than its burden under a Title VII case. Title VII requires that the State only produce evidence; the EPA requires that the State produce evidence and prove its truth.

49. In being forced to speculate on what affirmative defense the State might bring before the Commission, this investigation believes that there are

[45] See supra note 1.
[46] See supra note 7.

only two options: the "merit system" defense (which is a stretch), or the "any factor other than sex" defense.[47] Some courts have interpreted the "any factor other than sex" defense as one that reflects a "legitimate business reason" for the pay disparity.[48] Some courts have required the employer to articulate the reason[49] and some have given the employer *carte blanche* to come up with any reason whatsoever.[50] However the Second Circuit and the Vermont District Court have interpreted that defense in a much stricter manner that does not relieve the employer from showing *proof* of *actual* legitimacy. The Second Circuit has required that employers demonstrate that there is a well ordered, fairly administered system in place that reflects objectivity and compliance with established rules and procedures. The EEOC is in agreement with the Second Circuit's stricter interpretation of the "any factor other than sex" defense.[51]

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[47] Some circuit courts have interpreted the latter exception so broadly that the purpose of the law itself has been essentially eviscerated. See Ernest F. Lidge III, *Disparate Treatment Employment Discrimination And An Employer's Good Faith: Honest Mistakes, Benign Motives, And Other Sincerely Held Beliefs*, 36 Okla. City U. L. Rev. 45, 69-73 (2011); NATIONAL WOMEN'S LAW CENTER, *Closing the "Factor Other Than Sex" Loophole in the Equal Pay Act*, pp. 1-3., April 12, 2011 (http://www.nwlc.org/resource/closing-factor-other-sex-loophole-equal-pay-act); Nat'l Women's Law Center, *The Paycheck Fairness Act Resolves the Debate Among Courts over the Meaning of the "Factor other than Sex" Defense*, p. 1, APRIL 12, 2011 (http://www.nwlc.org/resource/paycheck-fairness-act-resolves-debate-among-courts-over-meaning-factor-other-sex-defense); Ruben Bolivar Pagán, Note, *Defending The "Acceptable Business Reason" Requirement Of The Equal Pay Act: A Response To The Challenges Of Wernsing V. Department Of Human Services*, 33 J. Corp. L. 1007, 1025-27 (2008); Jessica L. Linstead, *The Seventh Circuit's Erosion of the Equal Pay Act*, 1 SEVENTH CIRCUIT REV. 129, 130 (2006); NOTE, *When Prior Pay Isn't Equal Pay: A Proposed Standard For The Identification Of "Factors Other Than Sex" Under The Equal Pay Act*, 89 Colum. L. Rev. 1085, 1089-90 (1989).

[48] See Aldrich v. Randolph Central School District, 963 F.2d 520, 525 (2nd Cir. 1992).

[49] See, e.g., Belfi supra at 136 (noting that an employer seeking to rely on the "factor other than sex defense [ ] . . . must . . . demonstrate that it had a legitimate business reason for implementing the gender-neutral factor that brought about the wage differential").

[50] See, e.g., Fallon v. Illinois, 882 F.2d 1206, 1211 (7th Cir. 1989) (describing how the "factor other than sex" defense "embraces an almost limitless number of factors, so long as they do not involve sex").

[51] EEOC COMPLIANCE MANUAL §10-IV(F): "There is disagreement in the courts with regard to whether a factor other than sex must be based on the requirements of the job or otherwise beneficial to the business. The Commission agrees with the courts in the Second, Sixth, Ninth, and Eleventh Circuits that such a basis must be shown."

50. The State might offer the merit system defense if it defines the hire-into-range policy as a system which provides salary-based merit to the "best" candidate at the time of hire although this is not traditionally how a merit system is defined. [52] However the overall principles that should govern a valid merit system as discussed by the Second Circuit are also applicable to the principles and issues discussed in the "any factor other than sex" defense. The following two cases discuss both defenses.

3) **The Merit System Defense**

51. In Ryduchowski v. The Port Authority of New York and New Jersey, 203 F.3d 135 (2nd Cir. 2000)[53] the court considered the "merit system" defense.[54] The Ryduchowski Court found that the Port Authority's so-called "merit system" violated the EPA in several respects. The court noted that a bona fide "merit system" should be an "organized and structured procedure whereby employees are evaluated systematically according to predetermined criteria."[55] The Court went on to note that the defendant (Port Authority) had a "heavy burden" that required it to show it had "formulated an

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[52] Id. In describing a contemporaneous merit system, the EEOC listed several attributes of a valid merit system: "A seniority, merit, or incentive system must be bona fide to operate as an EPA defense." This means it was not "adopted with discriminatory intent;" "is an established system containing predetermined criteria for measuring seniority, merit, or productivity;" "has been communicated to employees;" "has been consistently and even-handedly applied to employees of both sexes;" "is in fact the basis for the compensation differential."

[53] The Second Circuit dismissed Port Authority's defense and remanded for trial, opining that a reasonable jury might find that they were not meritorious under the EPA.

[54] In Ryduchowski, the plaintiff filed claims under both the EPA and Title VII although only the EPA analysis is relevant here. Ms. Ryduchowski had come to the United States from Poland where she had received a Master's of Science and a Ph.D. in Civil Engineering from the University of Warsaw. In the subsequent twenty years following her education, "she gained practical experience and eventually became a licensed engineer in both New York and New Jersey. Between 1988 and 1995, she worked for the Port Authority as an engineer. In September 1995, she was terminated from her position with the Port Authority and sued. She asserted that the Port Authority failed to promote her and terminated her employment in violation of Title VII, and paid her less than a similarly situated male colleague in violation of the EPA. Ryduchowski 203 F.3d at 137.

[55] Id. at 142-43 (quoting EEOC v. Aetna Ins. Co., 616 F.2d 719, 725 (4th Cir. 1980)).

organized and structured system based on predetermined criteria."[56] In addition, it also had to prove that it "*systematically* administered its plans for a merit system."[57] The Court found there was "ample evidence that the Port Authority had failed to meet this burden."[58]

52. The Court objected to the Port Authority's failure to follow its own procedures in a systematic fashion: "Without systematic evaluation, a *valid* merit system cannot be said to exist."[59] First, the Court found that the jury could have concluded that the Port Authority failed to follow its own policies in determining merit increases.[60] Secondly, the Court stated that the jury could have found that the Port Authority "failed to properly correlate merit increases to an employee's evaluation."[61] The Court also found that a jury could have concluded that "the Port Authority's detailed evaluation procedures were not systematically applied to all employees" and that "Ryduchowski's supervisors manipulated the evaluation process according to their personal whims and prejudices, and thereby prevented the merit system from being systematically applied."[62]

53. In sum, the Court opined that "the jury could have concluded that the Port Authority's merit system, while admittedly detailed, was not applied systematically, rendering a facially valid adequate merit system invalid as applied to Ryduchowski....It was the Port Authority's burden to convince the jurors that it applied a valid merit system. The jury's verdict reveals that the Port Authority simply failed to meet this burden."[63]

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[56] Id. at 143.
[57] Id. (emphasis in the original).
[58] Id.
[59] Id. (emphasis in original).
[60] Id.
[61] Id. (The plaintiff had been given merit increases both in and out of range and the Port Authority did not produce the chart that specified the appropriate range of the merit increase for each performance evaluation rating).
[62] Id. at 144. (In this case, the court believed that the jury could find the manipulation was the result of "gender prejudice of Ryduchowski's superiors...").
[63] Id. at 145.

54. If the State argued that the merit system defense applied in this case, the Ryduchowski Court would likely take issue with the hiring practices of the AHS/HRU and DOC in Mr. Doe's case. There can be no bona fide merit system when there is a failure to systematically follow policies and procedures.

4) **The "Factor Other than Sex" Defense**

55. In Aldrich v. Randolph Central School District, 963 F.2d 520 (2nd Cir. 1992), Cora Aldrich, a female cleaner at an elementary school, alleged that she performed the same work as male custodians for less pay, and sued under the EPA.[64] The school district used a job classification system that distinguished between "cleaners," who happened to be all women, and "custodians," who happened to be all men.[65] Custodians were paid higher wages than cleaners.[66] In order to be eligible for a custodian position, an individual had to place in the top three applicants.[67] In defending against Ms. Aldrich's claim that the system violated the EPA, the school district argued that its civil service exam and job classification system constituted a "factor other than sex" defense *even if* custodians and cleaners performed the same work.[68] The district court granted the school district's motion for summary judgment and Ms. Aldrich appealed to the Second Circuit.

56. On appeal, the Second Circuit determined that the district court had improperly dismissed the case and held that the employer bore the burden of showing that the "factor other than sex" defense was a "bona fide business-related reason" for the resulting wage differential.[69] The Court noted that "[w]ithout a job-relatedness requirement, the factor-other-than-

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[64] Aldrich 963 F.2d at 522-23. She also sued under Title VII but that is not relevant to this case.
[65] Id. at 522.
[66] Id.
[67] Id.
[68] Id. at 524.
[69] Id. at 526-27.

sex defense would *provide a gaping loophole in the [EPA] through which many pretexts for discrimination would be sanctioned.*"[70] The Court also stated that "Once she [Ms. Aldrich] shows that she is being paid less than men for doing the same work, the employer can rely on an exam to justify that wage differential *only if the employer proves that the exam is job-related.*"[71] Furthermore, in reviewing the legislative history of the EPA, the Second Circuit wrote: "After tracing the evolution of the EPA through the legislative process, we believe that Congress specifically rejected blanket assertions of facially-neutral job classification systems as valid factor-other-than-sex defenses to EPA claims."[72]

57. In the Vermont District Court case Knight v. G.W. Plastics, the court also considered the "any other factor than sex" defense.[73] The court rejected the employer's motion to dismiss because there were sufficient factual disputes to send the case to a jury for consideration rather than granting the employer's request for dismissal. The court took issue with several of the employer's arguments, including the claim that the higher wages for the new male workers who were hired to fill the plaintiff's position after she retired were acceptable because the plaintiff female had been hired some twenty years earlier.[74]

5. **Summary: Implications of *Ryduchowski, Aldrich, Knight and Hooper* to Ms. Silloway's case**

58. The Second Circuit clearly put a premium on producing evidence that procedures are followed and proof that those procedures result in systematic fairness. The Second Circuit did not see the "any factor other than sex" defense as a green light for the employer to do what it wants to do when it

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[70] Id. at 525. (emphasis added).
[71] Id. (emphasis added).
[72] Id. at 524.
[73] Knight, 903 F. Supp. at 678.
[74] Id.

results in pay inequity. The VLRB decision in Hooper also placed an imperative on employers to follow policies, laws and contractual provisions in hiring and the Vermont district court recognized that the roots of pay inequities based on sex may reach far back in time in comparison to when they are actually discovered. Collectively, these four cases support the proposition that DOC and AHS/HRU violated the EPA by failing to comply with the following specific provisions §12.2 and 3 V.S.A. § 327(a):

1. Lack of production of the identification of the internal candidate and proof they were considered (this violates 3 V.S.A. § 327(a), the union contract and the policy manual and the findings of the VLRB in Hooper);

2. Lack of proof that the position of Food Service Supervisor was unique enough to hire Mr. Doe at step 13 when no other DOC employee had been hired above step 8 from 2000-2010.

3. Insufficient proof that Mr. Doe had "exceptional and outstanding qualifications that exceed[ed] those of other applicants...to such an extent that not hiring that particular employee will be detrimental to the State" when there were two candidates with only slightly lower scores and an unidentified internal candidate who should have had preference.

4. Evidence that DOC and AHS/HRU failed to consider how hiring Mr. Doe into-range might affect current Food Services Supervisors who had more seniority and experience than Mr. Doe);

5. Insufficient proof that DOC and AHS/HRU considered the impact of hiring Mr. Doe into-range on future co-workers (both future FSS's and other future co-workers such as Ms. Silloway).

RECOMMENDATION

DOC and AHS/HRU failed to follow state policy §12.2 and 3 V.S.A. §327(a). Their failure to follow law and policy contradicts the principles of a fair and equitable state compensation system for both men and women. The consequences of this failure resulted in a significant salary differential between Ms. Silloway and Mr. Doe, despite Ms. Silloway's greater seniority and experience in the position they both hold.

The State has failed to **produce** evidence of or to **prove** any of the four affirmative defenses recognized under the EPA and Vermont's equal pay provision of the Vermont Fair Employment Practices Act. As a result, this investigation recommends that the Human Rights Commission find **reasonable grounds** to believe that **both** AHS and DOC violated the equal pay provision of the Vermont Fair Employment Practices Act, Title 21 V.S.A. §495(8)(A).

5/2/11

Nelson M. Campbell
Investigator

5/2/12

Robert Appel
Executive Director

ATTACHMENT A

HIRE-INTO-RANGE

Number 12.2

Effective Date: March 1, 1996

Subject: **HIRE-INTO-RANGE**

Applicable To: All classified employees, as well as temporary and exempt, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The purpose of this policy is to provide for exceptions to the compensation plan for the initial hiring of certain individuals. The State's classified pay plan provides internal equity by establishing a common set of salary ranges for each position. Entry level rates, maximum rates and the systematic method for employees to move within the salary range are uniform and applied consistently for all employees governed by the compensation plan. At times there may be a compelling reason to make an exception to the basic principle that employees are hired at the entry rate established for the job.

PHILOSOPHY OF HIRE-INTO-RANGE

The minimum rate of pay for a class is step 1 in the salary range. Step 1 is also the normal hiring rate established for most positions, and is the salary usually offered to applicants when they apply for positions in State Government. In rare circumstances a special exception can be approved for an applicant. These exceptions can only be offered if prior approval is granted by the Department of Personnel for reasons as follows:

- There is a shortage of qualified applicants for the position;
- an applicant who has special qualifications, training, or experience that while are not necessarily a requirement of the job, have some unique value to the organization;
- the candidate possesses exceptional and outstanding qualifications that exceed those of other applicants and to such an extent that not hiring that particular employee will be detrimental to the State.

A hire-into-range does not apply to applicants who are already classified employees who have completed their original probationary period.

The Department of Personnel will not consider a request to hire an employee above the minimum rate until the recruitment, examination, certification, and interview process is completed.

The Department of Personnel must approve a request in advance of any salary offer to an applicant. Several factors are considered:

- ☐ the recruitment and retention experience for the position;
- ☐ the salary market for the particular type of expertise;
- ☐ the impact of the vacancy on program service;
- ☐ the impact on current incumbents with similar qualifications;
- ☐ the candidate's current rate of compensation.

GUIDELINES FOR HIRE-INTO-RANGE REQUESTS

The Department of Personnel has the responsibility to ensure appointing authorities maintain practices that preserve internal equity and adhere to the principles of the classified pay plan.

This procedure applies to the hiring of candidates into classified, temporary, part-time, and exempt positions at any rate above the minimum pay grade or salary range (unless a permanent adjusted hiring rate (See 12.3, Market Factor Analysis) has been approved).

Agencies or departments must submit a request to the Department of Personnel, Compensation Unit which includes the following information:

1. Candidate and Job Information:

   - The candidate's name, the salary rate or step being requested, and the position number, class, and pay grade of the job for which the candidate is being considered.

   - The candidate's qualifications including their *Standard State of Vermont Employment Application* and resume.

   - A narrative describing the following: qualifications of other applicants; qualifications of staff serving in the same class as the prospective candidate; and a candidate profile (e.g. length of service, salary, position, and performance history).

- Explain in particular how this candidate merits the proposed rate and how the request meets the regulatory standards under which the salary exception may be granted.
- List the candidate's annual compensation in his or her current or most recent position.

2. **Hiring Process**:

- A summary of recruitment efforts and results, including the following information: type and dates of advertising (newspapers, journals, etc.); number of applicants; number of applicants found eligible; number of applicants interviewed; and a copy of the hiring certificate (with applications and resumes attached).

- Consideration given to State employees on the hiring certificate.

- Provide turnover/vacancy data for the position class over the last two (2) years.

3. **Implications**:

- List other employees or classes that will potentially be affected by this hire-into-range request. Include information regarding recent hires in the same or similar class and any other factors which should be considered.

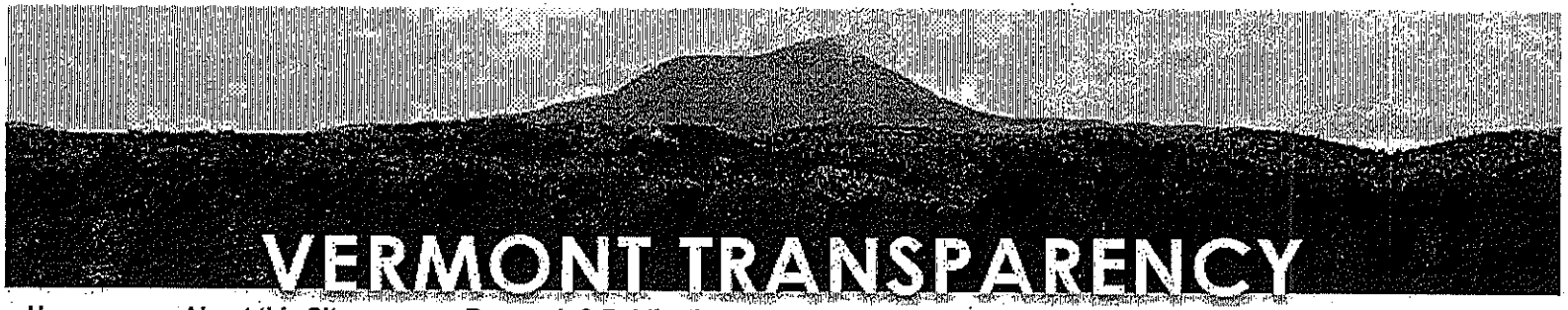
MISCELLANEOUS

No salary offer should be discussed with a candidate until hire-into-range approval has been granted by the Department of Personnel. Any offer or commitment made by an appointing authority without advanced approval from the Department of Personnel is unauthorized and not binding on the State.

The Department of Personnel will review the request and will generally respond within five (5) workdays or less.

Hire-into-range does not apply to current employees; or those employees formerly on leave from classified service employed in an "exempt" capacity and returning to a classified position; or those employees who are returning within two (2) years of a break in service. The rate of pay would be determined by the salary compensation method outlined in the current contract in effect when the employee returns from the leave.

An employee hired-into-range shall not be eligible for an end-of-probation increase.



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State Employee Salaries Fiscal Year 2012

To review the pay and benefits for ***House and Senate*** members, click **here.**

Search by **Name:**
And/Or by **Salary** Range: all
And/Or by **Department:** Corrections, Department of
And/Or by **Title** Administrative Srvcs Cord III Search

You can also filter by partial position titles such as **'commissioner'** or **'agency secretary'**: commissioner filter

Results: 7 - page 1 (100 per page)			
Name	**Job Title**	**Department**	**Salary**
Benjamin, Meroa S	Administrative Srvcs Cord III	Corrections, Department of	$58,531 (Annual)
Vigneault, Debra D	Administrative Srvcs Cord III	Corrections, Department of	$58,531 (Annual)
MR. Doe	Administrative Srvcs Cord III	Corrections, Department of	$58,531 (Annual)
Bertrand, Mary I	Administrative Srvcs Cord III	Corrections, Department of	$52,146 (Annual)
DeBlois, Lisa A	Administrative Srvcs Cord III	Corrections, Department of	$48,755 (Annual)
Silloway, Lynne A	Administrative Srvcs Cord III	Corrections, Department of	$48,755 (Annual)
Howard, Tina L	Administrative Srvcs Cord III	Corrections, Department of	$47,237 (Annual)
page 1 (7 total)			

Salaries shown on this page for fiscal 2012 are annualized calculations based on a pay period from *Oct 2011*. Salaries will be updated for fiscal 2013 after the start of the fiscal year on July 1. To view actual income rather than projections based on one pay period, visit the **'actual state employee compensation page'**.

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ATTACHMENT B

ATTACHMENT C

STEP MOVEMENT

Number 12.1

Effective Date: March 1, 1996

Subject: **STEP MOVEMENT**

Applicable To: All classified employees, as well as Exempt employees assigned to the classified pay plan, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

Step movement to the next higher pay rate within the salary range for a particular pay grade is a function of the length of time spent at the previous rate of pay rather than on overall length of State service. Step advancement is contingent upon satisfactory performance.

The purpose of this policy is to outline the manner in which employees may advance to the next higher step rate within their pay grade.

DEFINITIONS

STEP - an interval that separates one level of salary from another within a pay grade.

STEP DATE - The day, month, and year that employees are eligible for advancement to the next higher rate of pay (step) within their pay grade. Assuming no changes in an employee's pay grade, it represents the amount of time required at one rate of pay before becoming automatically eligible for the next rate of pay within the range.

GENERAL GUIDELINES

The State classified pay plan consists of twenty-eight (28) pay grades. Positions are assigned to a pay grade according to the criteria outlined in the classification plan and the point factor system for position evaluation.

Each pay grade contains fifteen (15) rates of pay (steps). Steps 1 and 15 are the minimum and the maximum rates for the salary range. All employees in positions covered by the classified pay plan are assigned to a step in accordance with the current

contract. Usually, the salary for newly hired employees is step 1 (the probationary rate). The next step is known as the end-of-probation rate (EOP).

The Salaries and Wages Article of the current Agreements between the State of Vermont and the Vermont State Employees' Association, Inc. (VSEA) must be adhered to when implementing this policy.

The Appendices to the contract contain the rates of pay for each of the fifteen (15) steps within each of the twenty-eight (28) pay grades.

REQUIRED TIME ON STEP

Eligibility for advancement within the pay grade (step date) is contained in and governed by the terms of the contract. The current schedule is as follows:

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

* Employees who are in job classes with probationary periods that are longer than (6) months may be eligible for step movement at the end of six (6) months without regard to their probationary status.

Employees who are hired-into-range (See Number 12.2, Hire-Into-Range) above step 1, do not qualify for advancement upon completion of probation.

ADVANCEMENT

Step Date - After completing the required time on a step, the employee advances to the next higher step in the pay grade.

Though step dates can occur in the middle of a pay period, an employee's pay can change **only** at the beginning of the next full pay period. The employee's new step date is calculated by adding the requisite time requirement for the new step (one, two or

three years) to the old step date. The new step date identifies when the employee is eligible for advancement to the next higher rate.

The effective date of a step increase for an employee whose step date is the first day of a pay period shall be the beginning of that pay period.

Changing Step Dates - Changes in step dates occur whenever there is a change in pay resulting from reclassification, reassignment of pay grade, promotion, or demotion. Step dates are calculated and adjusted based on the effective date of such changes in pay or status.

When employees move to another pay grade on a temporary assignment, the step date also changes. However, when employees are returned to their previous pay or status, the previous step date is reinstated.

ANNUAL PERFORMANCE EVALUATION CRITERIA

Satisfactory or Higher Rating - Movement to a higher step is contingent upon satisfactory performance and the required time specified in the contract.

Unsatisfactory Rating - Employees who fail to achieve at least a satisfactory rating on their annual performance evaluation will lose credit for that year's service, and will have one (1) year added to their step date.

Extension of Original Probation - Employees whose original probationary period is extended will have their step date adjusted to correspond to the length of the extension of probation.

Warning Period - Employees whose step date falls during a performance warning period will not move to a higher step until they receive an overall performance rating of at least satisfactory. An employee's next step date will not change as a result of this delay in step movement.

FACILITY FOOD SERVICE SUPERVISOR

Job Code: 711800

Salary Plan: Classified

ATTACHMENT D

Pay Grade: 18

Occupational Category:

Food Services

Effective Date: 4/23/1999 Active: ☑

Class Definition:

Large scale food preparation and service for the Department of Corrections within correctional facilities. Supervision is exercised over food service workers, other staff, and inmates. Duties include planning meals, purchasing food and facility supply items, tracking and managing inventory, budget planning, equipment care and purchasing, and exercising security controls. Duties are performed under the direction of an administrative supervisor, but with need for significant interaction with other division or department staff, and outside service providers.

Examples of Work:

Assigns, supervises, and inspects the food menu and preparation on a daily basis. Tracks menu requirements for offenders who have been placed on special diets by medical staff. Initiates orders for personal care, household and food items, and supervises the delivery, storage, and distribution of supplies for the facility. Responsible for food services budget, including development, change recommendations and monitoring. Maintains records and prepares reports as requested by an administrative superior. Maintains an inventory of kitchen and dining equipment, and deals directly with vendors for repairs. Makes recommendations for replacement of equipment and handles the purchasing once approved. Develops and conducts in-service training programs for both staff and inmate workers, as well as State-wide training programs for other food service personnel. Establishes workload and performance standards for employees and inmate workers. Responsible for hiring, maintaining records of performance, and submitting payroll on inmates working in the food service work program. Trains, supervises, and evaluates Correctional Officers or Cooks working in food services. Establishes and maintains a Food Service Procedure Manual. Performs basic security practices, conducts shakedowns and grievance investigations related to food services. Performs related duties as required.

Environmental Factors:

Work is performed in a correctional facility kitchen during an assigned shift. Incumbents must be able to operate cutters and slicers, handle knives, lift weights of up to 60 lbs., and work under conditions of high heat and humidity. Duties include supervision of inmates in work situations.

Minimum Qualifications:

Current

ATT D

Appendix II (Effective July 13, 2003 - July 10, 2004) (CLS Pay Plan)

Pay Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15
5	7.65	7.97	8.25	8.49	8.76	9.02	9.30	9.55	9.86	10.12	10.37	10.67	10.93	11.23	11.51
6	7.96	8.29	8.56	8.84	9.07	9.38	9.64	9.95	10.23	10.52	10.78	11.09	11.40	11.68	11.99
7	8.27	8.62	8.92	9.16	9.45	9.72	10.06	10.34	10.68	10.95	11.24	11.54	11.86	12.18	12.53
8	8.59	9.00	9.30	9.55	9.86	10.15	10.45	10.78	11.13	11.45	11.72	12.05	12.34	12.69	13.04
9	9.00	9.38	9.68	9.98	10.29	10.62	10.93	11.27	11.60	11.93	12.25	12.60	12.92	13.29	13.64
10	9.37	9.72	10.09	10.38	10.71	11.04	11.41	11.75	12.12	12.46	12.75	13.11	13.46	13.83	14.22
11	9.76	10.19	10.56	10.88	11.22	11.55	11.93	12.28	12.67	13.03	13.37	13.73	14.12	14.49	14.88
12	10.21	10.67	11.02	11.39	11.71	12.10	12.50	12.88	13.29	13.65	14.00	14.40	14.77	15.18	15.60
13	10.68	11.14	11.54	11.92	12.27	12.66	13.07	13.46	13.91	14.32	14.70	15.09	15.50	15.92	16.36
14	11.18	11.68	12.11	12.51	12.89	13.31	13.71	14.14	14.59	15.00	15.41	15.81	16.28	16.75	17.18
15	11.72	12.25	12.69	13.09	13.51	13.96	14.40	14.84	15.33	15.76	16.22	16.64	17.09	17.56	18.08
16	12.28	12.87	13.32	13.73	14.16	14.63	15.11	15.59	16.08	16.53	17.01	17.49	17.96	18.46	18.98
17	12.93	13.51	14.00	14.44	14.92	15.40	15.87	16.37	16.91	17.42	17.88	18.41	18.92	19.48	20.01
18	13.65	14.25	14.76	15.24	15.74	16.26	16.79	17.30	17.87	18.40	18.89	19.43	19.94	20.52	21.10
19	14.37	15.03	15.57	16.07	16.61	17.14	17.70	18.26	18.86	19.38	19.92	20.48	21.05	21.65	22.27
20	15.14	15.81	16.40	16.93	17.52	18.09	18.67	19.29	19.91	20.46	21.03	21.64	22.26	22.90	23.54
21	16.00	16.75	17.33	17.89	18.49	19.10	19.72	20.36	21.03	21.64	22.26	22.90	23.54	24.21	24.90
22	16.89	17.70	18.34	18.94	19.57	20.23	20.88	21.59	22.27	22.91	23.55	24.23	24.93	25.63	26.37
23	17.88	18.74	19.45	20.07	20.72	21.39	22.11	22.87	23.60	24.28	24.97	25.67	26.41	27.17	27.94
24	18.96	19.86	20.60	21.27	21.98	22.72	23.45	24.25	25.06	25.77	26.50	27.24	28.03	28.84	29.66
25	20.12	21.05	21.87	22.59	23.33	24.09	24.90	25.76	26.60	27.34	28.14	28.92	29.75	30.62	31.51
26	21.37	22.36	23.23	24.00	24.79	25.62	26.46	27.34	28.26	29.05	29.92	30.76	31.64	32.56	33.51
27	22.74	23.79	24.73	25.55	26.38	27.26	28.17	29.11	30.07	30.94	31.82	32.75	33.68	34.66	35.66
28	24.12	25.29	26.28	27.14	28.09	28.99	29.96	30.97	32.00	32.94	33.89	34.84	35.89	36.94	38.01
29	25.79	27.02	28.06	28.98	29.95	30.96	31.99	33.08	34.18	35.17	36.19	37.23	38.31	39.39	40.54
30	27.48	28.80	29.89	30.90	31.92	33.00	34.13	35.26	36.44	37.51	38.58	39.72	40.86	42.05	43.29
31	29.36	30.74	31.92	33.00	34.13	35.26	36.44	37.69	38.96	40.10	41.25	42.47	43.71	44.95	46.27
32	31.37	32.87	34.14	35.27	36.48	37.71	38.98	40.32	41.69	42.88	44.12	45.42	46.75	48.12	49.53

ATTACHMENT D1

Department of Human Resources

ATTACHMENT E

Agency of Administration

Job Specifications

ADMINISTRATIVE SERVICES COORDINATOR III

Job Code: 089240

Pay Plan: Classified

Pay Grade: 23

Occupational Category: Administrative Services, HR & Fiscal Operations

Effective Date: 02/14/2010

Class Definition:

Coordinates the administration of a variety of functions of amajor division, or moderately sizedoffice or department.Evaluates anduses information to make recommendations; provide guidance on applying administrative requirements to varying situations; recommend changes to office procedures to adopt management decisions and policies; and identify problems in administrative workflow, evaluate and recommend alternative administrative processes.Supervision is exercised overclerical and/or administrative subordinates.Work is performed under the general supervision of an administrative superior.

Examples of Work:

Coordinates support and office functions. Supervises clerical or administrative staff including participatingin the interviewing and hiring process.Assists in the formulation andrecommendation ofpoliciesrelative to management; may assist in the implementation of policiesupon approval; and may assist in evaluating effectiveness. Interpretsrules, regulations and policies to all employees assigned to the office. Prepares and keeps complete inventory of all items purchased by an office. Prepares personnel documents, or may be responsible for personnel administration. Serves as liaison with administrative staff concerning office, fiscal and personnel matters. Addresses all situations and resolves problems relating to the operation of the office. Resolves personnel problems in the office. Represents office at meetings and seminars. Keeps time and attendance records. Maintains ledger of budgeted expenditures and makes recommendations and requests regarding needs. Prepares and maintains office records and reports of moderate to difficult complexity. May be responsible for budget development, analysis or ongoing monitoring to ensure compliance with budget limits. Answerscorrespondence as required. Performs related duties as required.

Environmental Factors:

Work is performed in a standard office setting.

Minimum Qualifications

Knowledge, Skills and Abilities: Considerable knowledge of administrative principles and practices, including supervisory techniques.

Considerableknowledge of accounting and budgeting practices.

Considerable knowledge of modern office management methods including the application of automated data processing systems to office management problems.

Considerableknowledge of the principles and practices of personnel administration including employee relations.

Considerableknowledge of computer technology and its application to automated systems.

Ability to exercise judgment and discretion in applying and interpreting departmental policies, rules and regulations.

Ability to exercise effective administrative control over a large organization.

Ability to communicate effectively, both orally and in writing.

Ability to establish and maintain effective working relationships.

Education and Experience:

High school graduation or equivalent andfour years of experience providing administrative-level support to a business or organization with at least one year of which must be in accounting or budgeting function and include experience as a supervisor of clerical or administrative staff; OR

College level study in accounting, business or public administration, office administration or a related field will substitute for the experience requirement on a year for year basis. One year of full-time study is defined as 30 semester hours or 45 quarter hours; OR

One year as an Administrative Services Coordinator II with the State of Vermont.

NOTE: Only administrativework experience isqualifying. Administrative supportincludes those functions which keep the organization running or provide the resources for others to provide the programmatic work (e.g., accounting, budget management, grant administration, finance, human resources, payroll, purchasing, or space management).

Special Requirements:

For some positions experience working with the VISION system (VISION is the State of Vermont PeopleSoft financial management system) may be required.

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Lynne Silloway Charging Party	)	
v.	)	HRC Charge No. E11-0002
VT Dept of Corrections & VT Agency Of Human Services Responding Parties	)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

1. The following vote was taken on a motion to find that there are **reasonable grounds** to believe that the Vermont Department of Corrections and the Vermont Agency of Human Services, the Respondents, illegally discriminated against Lynne Silloway, the Charging Party, in violation of Vermont's Fair Employment Practices Act on the grounds of sex.

Mary Marzec-Gerrior, Chair	For ✓	Against __	Absent__	Recused __
Nathan Besio	For ✓	Against __	Absent __	Recused __
Mary Brodsky	For ✓	Against __	Absent __	Recused __
Mercedes Mack	For ✓	Against __	Absent __	Recused __
Donald Vickers	For ✓	Against __	Absent __	Recused __

Entry: ✓ Reasonable Grounds __ Motion failed

This Post-Determination Conciliation Agreement is hereby approved and the Human Rights Commission will take no further action regarding Human Rights Commission Charge No. HV11-0020, and U. S. Office of Housing and Urban Development Charge No. 01-11-0106-8 except to enforce the terms of this agreement.

Dated at Winooski, Vermont, this 11th of June, 2012.

By: Mary C Marzec-Gerrior

Mary Marzec-Gerrior, Chair

Nathan Besio, Commissioner

Mary Brodsky, Commissioner

Mercedes Mack, Commissioner

Donald R. Vickers

Donald Vickers, Commissioner