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July 18, 2005

Sandra M. Nathan
Assistant Counsel for Litigation
State of New York
Public Employment Relations Board
80 Wolf Road
Albany, NY 12205-2604

Re: PERB Case No. U-24704 (NYSCOPBA and NYS DOCS)

Dear Ms. Nathan:

I am writing to you regarding case number U-24704 (NYSCOPBA and DOCS). As you know, the Board issued a decision in this case on March 16, 2005 affirming the Administrative Law Judge's ("ALJ") December 16, 2004 decision (See enclosed decisions). It is NYSCOPBA's position that DOCS is not complying with the Board's decision and order.

The order specifically states:

IT IS, THEREFORE, ORDERED that DOCS will:

1. Forthwith rescind its restrictions on the size and number of lunch containers which employees in NYSCOPBA's bargaining unit may bring to their workstations, and restore the *status quo ante*;
2. Make affected unit employees whole for losses suffered, if any, as a result of complying with the restrictions on the size and number of their lunch containers, with interest at the maximum legal rate;
3. Rescind any adverse employment-related consequences for employees' failure to comply with restrictions as to the size and number of lunch containers from the date the restrictions were imposed until such time as they were rescinded.

After the decision was rendered, it is my understanding that DOCS issued a memorandum to all facilities continuing the restriction on duffle/gym bags, backpacks, etc. (See enclosed memorandum). Some individual facilities also issued their own memoranda regarding the prohibition on back packs, etc. (See enclosed memoranda from Lakeview). This directly contradicts the order of both the Board and the ALJ which states that, "DOCS will forthwith rescind its restrictions on the size and number of lunch containers which employees in NYSCOPBA's bargaining unit may bring to their workstations, and restore the *status quo ante*."

It appears that DOCS reads the Board's decision with the language "rescind its restrictions on the size and number of *lunch containers*" as continuing a prohibition on duffle/gym bags, backpacks or other "non-traditional lunch carriers." However, the Board's decision does not state this. The Board, using the words "lunch containers", could not have meant that other containers which are not considered traditional lunch containers are prohibited. This is evidenced by the fact that the Board stated, "the ALJ correctly held that an employee's ability to bring permissible items to the workplace is a mandatorily negotiable subject because it directly affects the employee's comfort and convenience while on the job."

DOCS' literal interpretation also completely ignores the language in the Board's decision which states that DOCS must restore the "*status quo ante*." It was clearly established at the hearing that there was no restriction on the size, number or type of bag which officers could bring to their workstations prior to the September 4, 2003 restrictions.¹ Thus, a return to the *status quo ante* would necessarily mean that officers would be permitted to carry duffle/gym bags, backpacks, etc.

Moreover, at least one officer requested reimbursement for purchasing a new bag as a result of the September 4, 2003 policy. (See enclosed documentation). This request was denied. The Board's order states, "make affected unit employees whole for losses suffered, if any, as a result of complying with the restrictions on the size and number of their lunch containers, with interest at the maximum legal rate." It is NYSCOPBA's position that this language requires DOCS to reimburse officers who purchased new containers to comply with the September 2003 policy. DOCS' failure to reimburse officers for these purchases also violates the Board's order.

Finally, the Board's order clearly states that the "NOTICE TO ALL EMPLOYEES" must be signed and posted at all locations customarily used to post communications to employees represented by NYSCOPBA. It is my understanding that this notice has not been posted at any DOCS facility. Additionally, there has been at least one instance where a local union

¹ Aside from an interpretation argument, as a practical matter, officers use duffle/gym bags or backpacks to carry food to their workstations. By denying officers the ability to carry their lunch to their work site in a duffle bag, DOCS is violating the Board's order.

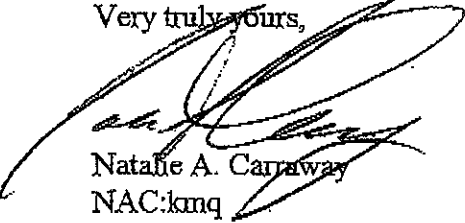
representative attempted to post the notice and was ordered to remove it. As such, DOCS has not complied with this portion of the Board's order.

I contacted Maureen Seidel at GOER about these issues. It is my understanding that Ms. Seidel spoke to DOCS representatives and it is their position that they are complying with the Board's decision and order.

Accordingly, I write to respectfully request that this matter be addressed in a manner you deem appropriate. Please feel free to contact me if you have any questions, or if I can provide you any additional information.

Thank you for your consideration.

Very truly yours,



Natalie A. Carraway
NAC:kmq

cc: Maureen Seidel, GOER



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July 20, 2005

Maureen Seidel, Esq.
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NYS GOER
2 Empire State Plaza, Suite 1201
Albany, NY 12223-1250

Re: New York State (Department of Correctional Services)
PERB Case No. ENF 0010 (U-24704)

Dear Ms. Seidel:

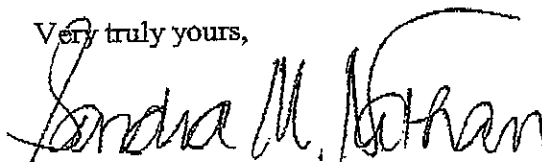
We have received a letter dated July 18, 2005, written on behalf of the New York State Correctional Officers and Police Benevolent Association, Inc., (copy attached), which states that the State of New York Department of Correctional Services, Inc., has failed to comply fully with PERB's order in case no. U-24704. We enclose a copy of that decision for your convenience.

I would appreciate getting your view of the situation in writing, by August 12, 2005, in order to make a determination whether enforcement proceedings will be necessary. In particular, I would appreciate your responding to each of the separate respects in which it is claimed that the Department of Correctional Services has not complied with PERB's order.

I am also available to discuss with both parties any dispute you may have about what the order requires.

Thank you for your attention to this matter.

Very truly yours,


Sandra M. Nathan

SMN:gmc
enclosures

cc: Natalie A. Carraway, Esq.
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