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MEMORANDUM

TO: NYSCOPBA Executive Assembly
FROM: Sheehan Greene Carraway Golderman & Jacques LLP
DATE: February 12, 2009
SUBJECT: Legal Report

This report is to update you on some of the major cases SGCGJ is handling for NYSCOPBA and its members.

NEGOTIATIONS

The hearing is proceeding. February 9 will be our fifth day of testimony, and we hope to complete our portion of the case by the end of the day. Our experts, Amy McCarthy on salary comparability, and Kevin Decker on ability to pay, have already testified. Future hearing dates are February 25 and 26, and March 4, 12 and 16.

IMPROPER PRACTICE CHARGES

U-28205 – (Auburn C.F) Denial of Union Representation to Probationer

A 2007 amendment to the Taylor Law expressly provides that a public employee is entitled to union representation, upon request, when he or she is questioned about matters which might result in discipline. (The rights provided under this legislation are sometimes referred to as “Weingarten” rights.) We filed an improper practice on behalf of a probationary member from Auburn C.F. after an investigator from the Department’s Inspector General’s Office denied his request for union representation during an interrogation about an off-duty incident. A pre-hearing conference was held with the assigned Administrative Law Judge on April 30, 2008. The hearing was held on October 31, 2008. The submission of written briefs is scheduled for March 6, 2009.

U-28160 – (Great Meadow C.F.) Denial of Union Representation to Probationer

Members of DOCS' Inspector General's Office went to Great Meadow C.F. to question staff about a suicide attempt and the subsequent death of an inmate. A probationary correctional officer, one of the targets of the investigation, was denied his request for union representation during the interrogation. On February 8, 2008, we filed an improper practice charge challenging the denial of union representation. We appeared at a conference with a PERB Administrative Law Judge on April 24, 2008.

On August 14, 2008, a hearing was held before Administrative Law Judge Susan Comenzo. We filed our briefs with PERB on November 21, 2008. We are waiting for a decision from Judge Comenzo.

U-28176 – (Sing Sing C.F.) Denial of Union Representation to Probationer

We filed an improper practice on behalf of another probationary member, from Sing Sing C.F., who was denied union representation during an interrogation. A hearing at PERB was held on August 28, 2008. The parties have submitted written closing briefs and are awaiting the decision of the Administrative Law Judge.

U-28271 – (Coxsackie C.F.) Denial of Union Representation to Probationer

This is yet another case in which a probationary officer was denied representation during an IG Investigation. A hearing at PERB was held on November 14, 2008. Briefs are due on March 6, 2009.

U-28625 – (Great Meadow C.F.) Denial of Union Representation to Probationer

We filed an improper practice charge on September 23, 2008 on behalf of a member who, at the time he was questioned by the Inspector General's Office, was a probationary employee and was therefore denied representation. Subsequently, the officer successfully completed his probationary period. On September 8, 2008, the officer received a Notice of Discipline. We appeared at a conference at PERB on January 22, 2009. The parties were unable to resolve this issue and a hearing has been scheduled for May 14, 2009.

U-28883 – (Greene C.F.) Denial of Union Representation to Probationer

We filed an improper practice charge on behalf of another probationary member from Greene Correctional Facility who was denied representation during an interrogation. We are waiting for a response from PERB regarding the scheduling of the matter.

U-28910 – (Great Meadow C.F.) Denial of Union Representation to Probationer

We filed an improper practice charge on January 30, 2009, involving another officer at Great Meadow C.F. The member was ordered to answer questions without union

representation. Subsequently, the member's employment was terminated. A conference has been scheduled for April 28, 2009.

U-27199 and U-26978 (Statewide) – Change in Practice – Medical Documentation

When DOCS issued a fully revised version of Directive 2202 subsequent to the interest arbitration, two new changes were imposed with regard to members' obligations regarding medical documentation. Specifically, Directive 2202 now requires that medical documentation for all pre-approved sick leave, regardless of duration, provide the start time, completion time and the location of the medical appointments. The prior practice of the parties has been to only require information regarding the time and place of medical appointments for absences of "more than four hours." Accordingly, the revised directive increases the amount of information to be included on medical documentation for pre-approved absences of four hours or less, without negotiations with NYSCOPBA. Further, the Revised Directive 2202 now requires that medical documentation for long term absences be submitted every two weeks. The prior practice of the parties has been to require medical documentation in connection with long term absences on a monthly basis. Three pre-hearing conferences were held before the PERB Administrative Law Judge. We filed factual and legal offers of proof, along with written legal arguments as to what extent the interest arbitration award impacts upon the violations we have alleged. A November 5, 2008 hearing was scheduled. At the hearing, the parties again discussed potential resolutions to these issues. It was agreed to refer the issue of what medical documentation should be required for pre-approved absences of four hours or less back to the interest arbitration panel. We are conferring with NYSCOPBA's panel member to schedule further proceedings.

U-26979 (Statewide) – Change in Non-Occupational Light Duty Assignments

An internal memorandum was issued by DOCS limiting members to one 60-day light duty assignment for non-work related injuries to. While there was limited Central Office oversight over non-work related light duty assignments for many years, DOCS has taken steps to create uniform policies for the administration of non-work related light duty assignments. While the past practice has been for DOCS to exercise discretion over the extension of light duty assignments, the prior policy did not limit members to one light duty assignment. The new policy prohibits any extensions, regardless of the circumstances. We filed an improper practice charge challenging this statewide change in policy. We have appeared at three settlement conferences regarding these matters, and we have been discussing possible settlement of this case.

The conceptual settlement currently being discussed would be to revise the policy to remove the prohibition against extensions of light duty assignments and to provide for no more than one sixty day extension of the light duty assignment, at management's discretion. This would allow members to request and, depending on the circumstances, allow management to grant one extension of a member's light duty assignment. While this in no way guarantees an extension to any member, any denial could be reviewed by NYSCOPBA and challenged either in a grievance or an Article 78 proceeding if

NYSCOPBA determined that the denial was in bad faith, arbitrary or capricious. (See memorandum regarding Light Duty Improper Practice).

U-26780 – (Division of Parole – Warrant Officers) Change in Past Practice

This improper practice case involves changes to the Division's practice regarding the use of home fax machines. Pre-hearing conferences were held and the matter has been assigned to a hearing ALJ. By Stipulation of Settlement, the Division has agreed to pay members an additional one-half hour of compensation for each scheduled return which results in a facsimile transmission to their home to compensate members for their time and inconvenience in utilizing home-based fax machines. We are in the process of finalizing settlement language.

U-26066 – (Division of Parole) Change in Past Practice – Off-Duty Firearms

When the Division changed its off-duty firearm policy, we filed an improper practice charge alleging a unilateral change in a mandatorily negotiable subject. The charge was conditionally dismissed by PERB, based on a pending contract grievance. As the arbitrator in that grievance proceeding found the change was not subject to arbitration, we filed a motion to reopen the improper practice charge. By Stipulation of Settlement, the Division has agreed to pay the costs of obtaining pistol permits for any member who was required to obtain a permit as a result of the Division's change in policy. We are negotiating with GOER regarding the settlement language.

U-28498 and U-28480 – (Statewide) Interest Arbitration

We filed an Improper Practice Charge to challenge several issues the State seeks to place before the Interest Arbitration Panel assigned to hear and determine those issues "directly relating to compensation." The State filed its own charge challenging several of our proposals as non-arbitrable. A conference at PERB was held on September 4, 2008. We have now resolved the outstanding issues in both charges and a Stipulation of Settlement has been signed resolving all issues.

U-28403 – (Division of Parole) Warrant and Transfer Officer Unit Work Charge

PEF filed an improper practice charge against the Division of Parole alleging a violation of § 209-a.1(d) (refusal to negotiate in good faith), specifically, alleging that the Division of Parole transferred unit work from parole officers (PEF) to warrant and transfer officers (NYSCOPBA). NYSCOPBA filed a motion to intervene, with an affidavit outlining NYSCOPBA's interest in the matter. The ALJ granted NYSCOPBA's motion to intervene and NYSCOPBA submitted an answer to the charge on August 20, 2008. A conference before the ALJ was held on September 2, 2008. A hearing has been scheduled in this matter for April 14, 2009.

U-28562 – (Eastern C.F.) Retaliation for Union Activities

We filed this charge on August 21, 2008 on behalf of a correction sergeant who, in his capacity as a steward, incurred the wrath of a captain when he got the superintendent to order the return of a television set to the sergeant's office over the objection of the captain. The captain then retaliated by changing the sergeant's job duties. After the sergeant grieved the changes, the facility further altered his job by changing the sergeant's pass days from weekends off to rotating days off. A pre-hearing conference was held on October 30, 2008. Settlement discussions have been unproductive, so it appears we will be proceeding to a hearing. No date is scheduled.

U-28615 – (Odessa Hunter – Duty of Fair Representation)

This member has filed a claim against NYSCOPBA to the effect that her grievance was not properly processed. The member then filed an amended charge, further alleging that NYSCOPBA did not represent her fully with respect to her termination pursuant to a Disciplinary Evaluation Period. We filed an answer to both the original charge and the amended charge. On January 8, 2009, a conference was held before PERB ALJ Doerr. At the conclusion of the conference, ALJ Doerr directed the charging party (Ms. Hunter) to provide a written offer of proof. Once the offer of proof is submitted, ALJ Doerr will determine if the charge will be processed further or dismissed.

U-28735 – (Collins C.F.) Change in Past Practice – Medical Documentation

This charge was filed after Collins changed its long-standing practice and began requiring officers scheduled to work a swap double to provide medical documentation for a one-day absence. A conference at PERB is scheduled for February 18, 2009.

No Number Assigned – (Summit Shock C.F.) Retaliation for Union Activities

We filed this charge on February 9, 2009 on behalf of a correction officer who was threatened with formal counselings against him and other employees if he did not withdraw two contract grievances. Specifically, at a Step 1 meeting for the two grievances, the Captain told the officer and the Chief Sector Steward that counseling and/or other disciplinary action for two incidents would occur if the grievances were not withdrawn. The charge has just been filed and will be processed by PERB.

DISCIPLINARY MATTERS

Mid-Hudson FPC

Based on the events surrounding an escort and restraint of a patient, OMH issued Notices of Discipline against three members; one who was a Senior SHTA at the time of the incident and the other two against two SHTA's. As a result of the events, the Senior SHTA, who was probationary, was demoted. His NOD contained five (5) charges all relative to alleged violations of policies and procedures for escorts and restraints and his

supervisory role. OMH sought termination and offered no settlement, so the case proceeded to arbitration. Two days of hearing were held where both sides presented numerous witnesses and documentary evidence, including a videotape of most of the events. At the start of the second day of hearings, OMH withdrew one of the charges. At the conclusion of the hearing, the arbitrator held that the SHTA (former Senior SHTA) was guilty of three out of four of the remaining charges, but found that termination was not appropriate and issued a penalty of a four week suspension. In his decision, the arbitrator held that although the SHTA's actions were "understandable" under the circumstances, they were nonetheless violations of policy. Regarding the penalty, the arbitrator held that due to the SHTA's impeccable records, the violent nature of the patient, and the circumstances surrounding the events, that a four week penalty was appropriate. Following the decision, the SHTA was immediately returned to work and he is owed substantial back pay and accruals.

Regarding the two other SHTA's who were issued Notices of Discipline (with only two charges) based on the same events; these NOD's were withdrawn by OMH following the hearing discussed above. These NOD's and all reference to them will be removed from the two SHTA's personal history folder.

Downstate Correctional Facility

A member was issued a Notice of Discipline for allegedly leaving a post without authorization or proper relief. The Department was seeking termination. A hearing was scheduled before Arbitrator Lobel. At the beginning of the hearing, settlement discussions occurred and the member agreed to a settlement and the arbitrator issued a consent award. Pursuant to the consent award issued by the arbitrator, the member is to pay a \$1000 fine and serve a two year disciplinary evaluation period.

Fishkill Correctional Facility

A member was issued a Notice of Discipline for allegedly making inappropriate comments to co-workers and making false and misleading statements to the Inspector General's Office. The Department was seeking termination. One day of hearing was held before Arbitrator Seiler and at the start of the second day of the hearing the matter was resolved and a consent award was issued by the arbitrator.

CONTRACT ENFORCEMENT

Expedited Arbitrations

Two transportation officers from **Greene Correctional Facility** filed contract grievances when they had their shifts changed without forty-eight (48) hours notice and were not afforded the opportunity to work their regular shifts. The arbitrator analyzed the practice of notifying transportation officers of their shift at Greene C.F. and determined that one officer was notified in a timely manner of a shift change, but the other was not. The grievance was sustained as to one officer, but denied as to the other officer. The

arbitrator ordered that the officer whose shift was changed in violation of the contract and facility practice receive two (2) hours of overtime compensation.

Resolution Conferences

Since mid-October, grievances have been resolved at three (3) Resolution Conference hearings. The more significant resolutions are as follows:

Three (3) Awards were signed in which the State agrees to pay the grievants their contractual Workers' Compensation benefits for the injury that gave rise to the grievance upon a determination by the New York State Workers' Compensation Board that the grievants are eligible to receive Workers' Compensation benefits for the injuries and upon the Board's issuance of a credit to New York State.

A member from **Cape Vincent C.F.** filed a grievance when he was not allowed to charge four half-day medical appointments to his Workers' Compensation leave contractual benefit because his Workers' Compensation claim was being administered by the Workers Compensation Special Fund. The Arbitrator ordered that the total of sixteen (16) hours be charged to Workers' Compensation leave without charge to accruals and that the officer be returned the sixteen (16) hours of sick leave he used to cover the absences.

LITIGATION

Charles Decker, et al. v. New York State Department of Correctional Services, et al.

This case is pending in the United District Court for the Northern District of New York. It is an action by NYSCOPBA and Officer Charles Decker against the Department of Correctional Services generally as well as various individual defendants, GLENN GOORD, RICHARD ROY, HAROLD GRAHAM, JOSEPH BELLNIER and VINCENT LUME, each sued in their individual capacity. The suit alleges that Officer Decker was detained by Defendants Lume, Bellnier and Graham at the direction of Defendant Roy without any reasonable suspicion or probable cause, in violation of Officer Decker's constitutional rights. The suit also alleges that Defendants Goord and Roy promulgated a policy permitting such detention and that all of the Defendants acted with deliberate indifference and/or callous disregard for Officer Decker's rights. Currently the parties are in the discovery stage of the litigation which involves document review as well as depositions. Initial depositions have occurred and more depositions will be scheduled shortly.

NYSCOPBA and John Gillen v. New York State Department of Correctional Services

Officer Gillen was on Workers' Compensation leave for an injury he sustained while on duty at Arthur Kill Correctional Facility when he received a letter dated May 12, 2008 indicating that his employment would be terminated effective June 12, 2008 due to his absence having exceeded one year, pursuant to *Civil Service*

Law §71. Subsequent to this notification, Officer Gillen submitted medical documentation stating he was fit for full duty, he was examined by Employee Health Services and ultimately found fit for full and unrestricted duties. Despite being cleared to return to work, Officer Gillen's employment was terminated. An Article 78 proceeding was filed, arguing that the Department's termination of Officer Gillen's employment was arbitrary, capricious and contrary to *Civil Service Law §71* and *Civil Service Rules and Regulations* Section 5.9. The petition seeks to have Officer Gillen's employment restored with full back pay and benefits, retroactive to his date of termination (June 12, 2008).

The Judge issued his decision on January 14, 2009, dismissing the Petition. The Judge held that the Department's determination was not arbitrary and capricious under the circumstances. The Judge particularly relied on the fact that Officer Gillen's own physician stated that he was unable to work, and rejecting our explanation that these medical notes were submitted simply because Officer Gillen was directed to submit them by a supervisor, under threat of discipline.

H.R. 218

We previously sent to Commissioner Fischer letters signed by four retired members, requesting that they be certified under H.R. 218. We also sent a letter to DCJS asking if the policy adopted under Governor Spitzer whereby DCJS declined to implement H.R. 218 was still in effect under Governor Paterson; they responded that it was. Commissioner Fischer has now responded, denying the request. We are drafting our lawsuit, which we expect to file shortly.

Terrence Jamison v. New York State Correctional Officers & Police Benevolent Association, Inc.

This case is pending in the United District Court for the Northern District of New York. It is an action by Terrence Jamison, a former SHTA, at the Central New York Psychiatric Center, against NYSCOPBA, alleging that NYSCOPBA failed to properly represent Mr. Jamison because he is an African American. We filed a Summary Judgment Motion seeking dismissal of Jamison's complaint. The motion has been adjourned to February 27, 2009.

Terrence Jamison v. Keith Zulko, Eric Jones and others

This case was commenced in the United States District Court for the Northern District of New York on August 8, 2008 and involves the same allegations as *Jamison v. NYSCOPBA*. In this case, Jamison is suing 9 employees of OMH and Keith Zulko and Eric Jones alleging that they conspired to intentionally discriminate against him, because he is an African-American. All allegations against Zulko and Jones were made against them as Vice President and Business Agent, respectively. More specifically, Jamison contends that Zulko and Jones refused to process his grievance because he was African-American. We have filed a motion seeking to dismiss the complaint on the basis that it

does not set forth specific factual allegations necessary to plead a conspiracy. The motion has been adjourned to February 11, 2009. Ullico is paying for defense, but reserving on indemnification since discrimination is an intentional act.

Meirowitz, et al. v. NYSCOPBA and the State of New York

This action was pending in Supreme Court of the State of New York, County of Nassau. This is a breach of duty of fair representation case commenced by a group of seasonal lifeguards contending that NYSCOPBA breached its duty by failing to negotiate a contract for them after the interest arbitration decision. We obtained summary judgment dismissing the Complaint. The lifeguards have appealed this matter to the Supreme Court of the State of New York, Appellate Division, Second Department. The Plaintiffs have not filed their Record and Brief with the Appellate Division. This case has been settled and the lifeguards will be represented by the United University Professions.

NYSCOPBA and Victor Carlson Jr. vs. New York State Department of Correctional Services and the State of New York

Officer Carlson was injured while at the Training Academy and went out on Workers' Compensation leave. He submitted a return to work note stating he was fit for full and unrestricted duties. The Department did not contest his fitness to return to duty, but refused to return him to duty or the payroll, stating that there was no Academy in session to return him to. An Article 78 proceeding was filed, arguing that the Department's failure to return Officer Carlson Jr. to work when he was deemed fit for full duties is arbitrary, capricious, and contrary to *Civil Service Rules and Regulations* Section 5.9. The petition seeks to have Officer Carlson Jr. restored to full and unrestricted duty, retroactive to the date he was deemed fit for duty and restoration of Officer Carlson Jr.'s lost benefits. The petition has been filed and served, the State submitted an answer, and we submitted a reply to the State's answer along with further affidavits. Now that the matter is fully submitted, we are waiting for the Judge's decision.

NYSCOPBA and Mary Jones. vs. New York State Department of Correctional Services, the Governors' Office of Employee Relations, and the State of New York

Officer Jones received an Award in a contract grievance, but there are some questions as to whether she was paid the proper amount she was owed under the Award. After numerous conversations with the State which did not lead to affirmative answers that Officer Jones was paid appropriately, an Article 75 petition was filed in Supreme Court in order to confirm the Award. Once the petition was filed, the State provided our office with a contact at the Comptroller's Office to review Officer Jones' payroll records to determine if she has received all the money she is entitled to. The parties have mutually agreed to adjourn the case while we communicate directly with the Comptroller's Office in an attempt to settle this matter without further pursuing the litigation. We met with the Comptroller's Office, which provided a written explanation of how and when Officer Jones was paid. That explanation has been presented to Officer Jones. The litigation has been resolved by the State acknowledging, in writing, that Mary Jones is entitled to a longevity step pursuant to the award, but that the State has fully paid the amount owed.

The State also agreed, in writing, to provide any continued explanation regarding confirmation of how and when Ms. Jones was paid.

New York State Correctional Officers and Police Benevolent Association, Inc., Donn Rowe, President v. New York State Department of Civil Service, et al.

As of January 1, 2009, the State implemented a new insurer and third party administrator for the mental health and substance abuse coverage provided through the parties' collective bargaining agreement. The change means that approximately 16,000 union members and their families could experience diminution or interruption in their mental health and substance abuse coverage, as a result of a change in the insurer and third party administrator because not all providers under the prior insurer and administrator would be participating providers with the new insurer and administrator. The State made this change insurer and third party administrator for the mental health and substance abuse coverage without the consent of the State/NYSCOPBA Joint Committee on Health and Dental benefits. Because the State neither sought, nor attained, the consent of the State/NYSCOPBA Joint Committee on Health and Dental benefits, we filed a contract grievance, which was immediately sent to full arbitration and we are awaiting a date for a hearing.

On December 29, 2009, we appeared before Judge Michael Lynch, seeking to maintain the *status quo* with regard to such benefits, *via* a temporary restraining order and an injunction in aid of the arbitrator's authority, until such time as a contract grievance challenging such changes has been resolved. When we appeared before Judge Lynch, we learned from Respondents that there was going to be a "90 day grace period", during which members in treatment with participating providers before December 31, 2008 would be allowed to continue in such treatment and receive participating provider benefits, even if those providers and facilities are not signed on with the new insurer and administrator as participating providers. Based primarily on this "90 day grace period", Judge Lynch declined to issue the temporary restraining order, but did sign the order to show cause with a short return date in order to be heard on the request for injunctive relief.

Subsequent to this, we also filed an amended petition because the grace period provided a basis to modify the initial relief sought in the petition. In the amended petition, we added as an alternative relief the continuation of the grace period, until such a time when an arbitrator rules on the merits of the contract grievance. Because an amended petition was filed, the Respondents sought, and did receive from the Judge, a short adjournment on the return date of the order to show cause. Answer papers from all of the Respondents are due to us on February 6, 2009 and we will appear before the Judge to present our case for an injunction on February 13, 2009.

CIVIL SERVICE LAW SECTIONS 71 AND 72

Fishkill Correctional Facility

An officers employment was terminated by the Department, pursuant to §71 of the *Civil Service Law*, by letter dated July 3, 2008. The officer had applied for reinstatement. EHS found that the officer was not fit for duty. The Department attempted to terminate the officer's employment without advising her of her right to a hearing or providing to her a copy of her EHS examination. The Department has rescinded its termination of the officer's employment. DOCS' Counsel's Office agreed to have the officer re-examined and she has been returned to duty.

Mid-Hudson FPC

Mid-Hudson FPC placed a Secure Hospital Treatment Aide (SHTA) on involuntary leave in June, 2008, stating that there was a question as to his fitness for duty. The SHTA was held out of work while a determination was made by EHS regarding his fitness for duty. The SHTA was seen by EHS and the EHS doctor made a determination that he was unfit for duty. The SHTA appealed the agency's determination that he was unfit for duty. A hearing was held on October 27, 2008. The SHTA's own health care provider testified at the hearing that SHTA Jerminario was, and still is, fit for duty. The hearing was completed and closing briefs were submitted on November 26, 2008. We are currently awaiting the hearing officer's report and recommendation. In the meantime, the SHTA asked to be re-examined and has now returned to duty.

Auburn Correctional Facility

In this *Civil Service Law* §72 Appeal, a State Supreme Court Judge ordered the Department to issue a final determination. We received a final determination denying the member's appeal. We filed an appeal of that determination with the New York State Department of Civil Service. All of the papers have been submitted and we will be scheduled to appear before the Commission shortly.

Bedford Hills Correctional Facility

In this *Civil Service Rule* 5.9 Appeal, the hearing officer issued a recommendation in favor of the member, recommending that she be reinstated to full duty and made whole for any lost pay, accruals and benefits. We received a final determination from DOCS accepting the hearing officer's recommendation. DOCS has restored the member's accruals and paid her back pay due her as recommended by the hearing officer.

Wende Correctional Facility

In this *Civil Service Law* §72 appeal, NYSCOPBA and the Department agreed that this matter would proceed to hearing some time ago. Excessive delays in scheduling this matter on the part of DOCS have caused us to request a meeting with the agency's counsel. Counsel's office reviewed this and other files which we have identified as being

excessively delayed. DOCS has agreed to schedule the hearing. A hearing officer has been selected and we are attempting to schedule the hearing.

Mohawk Correctional Facility

This is a *Civil Service Rule 5.9* Appeal. We have provided the Department with our selections for the hearing officer and are attempting to schedule this matter for hearing. We are in the process of scheduling a hearing.

Gouverneur Correctional Facility

In this *Civil Service Law §72* appeal, the member's request to return to duty was denied based on an Employee Health Service examination. The member has appealed this denial and we have provided the Executive Board with a summary of this case. We advised DOCS that we will be representing the member and have demanded a hearing.

Mid-State Correctional Facility

An officer was denied return to full duty from Section 72 leave. This is his appeal of that determination. Hearing adjourned pending the determination of his disability retirement application.

Butler Correctional Facility

An officer was denied return to full duty from Section 72 leave. This is his appeal of that determination. He was subsequently returned to duty without back pay after an EHS exam. The parties were discussing how to settle the back pay issue. A hearing needs to be scheduled to resolve the back pay issue.

MISCELLANEOUS

Interrogations by Inspector General's Office at Albany

Since the last report, we have represented approximately forty (40) officers at interrogations at DOCS Building 2.

Disability Retirement Cases

There are currently eighteen (19) disability retirement cases at various stages pending before the Retirement System. We are representing members in disability retirement cases from the following facilities: Great Meadow C.F., Washington C.F., Cape Vincent C.F., Clinton C.F., Sullivan C.F., Sing Sing C.F., Shawangunk C.F., Taconic C.F., Albion C.F., Eastern C.F., Riverview C.F., Oneida C.F., Franklin C.F., Marcy C.F., Gouverneur C.F., Greene C.F., Lakeview Shock C.F., and Ulster C.F.

UPCOMING SCHEDULE

Disciplinary Arbitrations

February 11, 2009 – Coxsackie Correctional Facility
February 11 and 12, 2009 – Mid-State Correctional Facility
February 18, 2009 – Summit Shock Correctional Facility
February 27, 2009 – Fishkill Correctional Facility
March 6, 2009 – OMRDD Valley Ridge (tentative)
March 10, 2009 – Fishkill Correctional Facility
March 11, 2009 – Mid-Hudson FPC
March 13, 2009 – Shawangunk Correctional Facility
March 25, 2009 – Oneida Correctional Facility
March 27, 2009 – OMRDD Valley Ridge (tentative)
March 30, 2009 – Mid-Hudson FPC

Expedited Arbitrations

February 20, 2009 – Upstate Correctional Facility
February 27, 2009 – Mid-State Correctional Facility
March 6, 2009 – Lakeview Shock
March 13, 2009 – Willard DTC
March 27, 2009 – Taconic Correctional Facility

Full Arbitrations

March 20, 2009 – Statewide

This grievance involves changing various/various officer's pass days to avoid the payment of overtime once the pass days were set (i.e. within the planning period). A hearing will be held before Arbitrator Zonderman.

March 18, 2009 – Greene Correctional Facility

This grievance involves overtime and mileage for travel. A hearing will be held before Arbitrator Pohl.

SGCGJ Welcomes Lawrence H. Schaefer

We welcome Lawrence H. Schaefer (Larry) to our legal team. Larry received his bachelor's degree, *magna cum laude*, from the University at Albany in 1987 and his Juris Doctor, *cum laude*, from Syracuse University in 1991. He is admitted to practice before the state courts of New York and Massachusetts, as well as the U.S. District Courts in Northern and Western New York.

After graduation from law school, Larry received a direct commission in the U.S. Air

Force as a Judge Advocate. In 1998, he returned to Albany to practice law with Hinman Straub where he represented labor unions (including NYSCOPBA) and individuals before arbitrators, mediators, administrative agencies, and in New York's state and federal courts. In 2004, Larry left Hinman Straub to become the Counsel and later Executive Officer at the Watervliet Arsenal.

Larry is also a member of the New York Air National Guard, serving as the Staff Judge Advocate for the 105th Airlift Wing at Stewart ANGB, Newburgh, New York. In 2004, he deployed to Baghdad, Iraq, where he served with the Coalitional Provisional Authority. In 2007, he deployed to Al Udeid AB, in Qatar to be the deputy staff judge advocate of the 379th Air Expeditionary Wing.

Please do not hesitate to contact our office if you have any questions regarding any of the cases or issues discussed in this report.