

**STATE OF NEW YORK
SECURITY SERVICES UNIT**

In the Matter of the Arbitration between

**NEW YORK STATE CORRECTIONAL OFFICERS
AND POLICE BENEVOLENT ASSOCIATION, INC.**

**STIPULATION OF
SETTLEMENT**

**QER FILE NO.
98-01-391**

Grievant,

-and-

**STATE OF NEW YORK (Department of
Correctional Services - Groveland CF),**

Employer.

WHEREAS, the within contract grievance is scheduled for arbitration before Arbitrator Michael Lewandowski on December 12, 2001; and

WHEREAS, the parties are desirous of settling and resolving this grievance by execution of this stipulation; and

WHEREAS, no party to this proceeding is an infant or incompetent for whom a committee or guardian has been appointed; and

WHEREAS, the parties have been represented by counsel and do freely enter into this stipulation; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, it is hereby

STIPULATED AND AGREED by and between the Parties hereto that the within grievance is settled and resolved upon the following terms and conditions:

1. **Effective immediately, the biweekly resource pool job selection sheets at Groveland Correctional Facility shall list all work assignments, including: those due to absences created by all full-period vacations; other full-period reliefs created by long-term absences and vacant fixed post bids; and any other assignment, whether referred to as "miscellaneous", "resource" or otherwise, for which a shift and squad, but no specific post, is designated.**
2. **It is the intention of the parties that all officers in the resource pool whose resource jobs do not incorporate a fixed shift and squad are eligible to select by seniority shift and squad assignment on a bi-weekly basis. The selection process shall be conducted in one or two rounds and shall continue until all resource officers have been assigned. Those officers in the resource pool having no fixed shift and squad who fail or refuse to submit a selection sheet for a particular two-week period will have their work assignment for that period selected for them from among the positions remaining after those officers who submitted selections have been assigned on the basis of seniority.**
3. **All officers in the resource pool having no fixed shift and squad shall be eligible to select, by seniority, all of the positions listed on the job selection sheets.**
4. **The within grievance is withdrawn.**
5. **The terms and conditions herein are expressly understood by the parties to imply no guilt upon any party and shall not serve as an admission of any wrongdoing nor admission of any type by any party hereto. Further, this Stipulation shall not serve as precedent for any future grievance, applications, petitions, charges or cases in any administrative, state, federal or other forum.**

6. This Stipulation constitutes the sole, full and complete agreement of the Parties with respect to the issues addressed in this grievance.

HINMAN STRAUB, P.C.

GOVERNOR'S OFFICE OF
EMPLOYEE RELATIONS

By: William J. Sheehan
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Relations

Dated: 12/12/01

Dated: 12/13/01

NEW YORK STATE CORRECTIONAL
OFFICERS AND POLICE
BENEVOLENT ASSOC., INC.

DEPARTMENT OF
CORRECTIONAL SERVICES

By: Don Premo
Don Premo

By: Peter M. Brown
Peter M. Brown
Director of Labor Relations

Dated: December 11, 2001

Dated:

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

GRIEVANCE FORM

(Please Type or Print)

Revised: March 1, 2003



DO NOT WRITE IN THIS BOX

LOCAL Grievance Number: _____

NYSOPBA Grievance Number: CON

Facility (or Agency): Wyoming Correctional Facility

Aggrieved Employee: Correction Officer

On file

LOCAL Union Rep: _____

Phone Number/ext. _____

Date Submitted: _____

Date of Occurrence: _____

Contract Article Violation(s): Article 6, 22, 24.2, 24.3 and Any other relevant articles

STATEMENT OF FACTS:

I am one of a large group Correction Officers who have a bid shift 11pm-7am bid squad or bid shift 11pm-7am in the resource pool. I bid this assignment in accordance with article 24.3 of the Agreement, based on my seniority. This section states that "the employer shall have the right to make any job or shift assignment necessary to maintain the services of the department or agency involved." Management determined, in accordance with the job and shift assignment I later bid, to make this bid job. I was recently notified by Lt. Macniak that the bid job package I bid, in accordance with article 24.3, in which my shift was specific to 11pm to 7am that "you may be moved to any other shift as the needs of the facility dictate."

The past practice at Wyoming and the DOCS only policy dictated that these resource positions with bid squad/bid shift or bid shift would be eliminated only through attrition. This review process occurs when a bid assignment becomes vacant.

The Union strongly believes that the Agreement has been violated under both articles 6 and 24.3. Management has the right to manage under article 6 except as expressly limited by other provisions of the agreement. In this case management is limited by article 24.3 in which the employer has the right to make such assignment and shift selection (which it did) and bid based on seniority. (which it did) They now wish to unilaterally violate this article of the Agreement.

It should be noted that these shift changes will cause overtime on the 11-7am shift while lessening the amount of overtime on days. There is no need as management alleges to move these officers off their bid shift.

REMEDY SOUGHT:

1. Deem that the DOCS at Wyoming CF have violated the agreement by their actions.
2. Stop the new practice of moving bid job/bid shift officers off their assignments and place them on their bid shift.
3. Make whole any officers who were affecting financially by their change in shift.
4. That management revert to the old past practice of only eliminating jobs through attrition.
5. Any other remedy deemed appropriate.

Aggrieved Employee's Signature: _____

DETAILS OF CHARGE

1. The New York State Correctional Officers and Police Benevolent Association, Inc., ("NYSCOPBA"), is the duly certified collective bargaining agent for the security services unit of the New York State employees.
2. The New York State Department of Correctional Services ("DOCS") is a department within the executive branch of state government, established pursuant to the Correction Law with the responsibility for maintaining correctional facilities for the custody and confinement of persons under sentence of imprisonment.
3. Wyoming Correctional Facility is a facility maintained under the auspices of DOCS, which employs correction officers and correction sergeants who are members of the security services unit represented by NYSCOPBA.
4. On November 2, 2004 the Wyoming Correctional Facility management circulated a memo concerning "shift change" dated November 2, 2004. A copy of said memorandum is annexed hereto and incorporated herein as Exhibit "A".
5. The Corrections Officers were told, without any discussion or inquiry from NYSCOPBA, that the Corrections Officers will be moved to other shifts as the needs of the facility dictate.
6. The bid concerning shift 11:00pm-7:00am bid squad or bid shift 11:00pm-7:00am in the resource pool is manned by a large group of Corrections Officers at Wyoming Correctional Facility. The Corrections Officers bid on this assignment in accordance with Article 24.3 of the Collective Bargaining Agreement based on seniority. (Copy of the Collective Bargaining Agreement is attached hereto as Exhibit "B").
7. Management determined to make the 11:00pm-7:00am shift in the resource pool a bid job. Nevertheless, management has informed the members of NYSCOPBA that they may be moved to any other shift as the needs to the facility dictate.
8. The past practice at Wyoming Correctional Facility and the DOCS only policy dictated that the resource positions with bid squad/bid shift or bid shift would be eliminated only through attrition. This review process occurred when a bid assignment becomes vacant.
9. Prior to Management transferring any of the more senior Corrections Officers during the bid shift of 11:00pm-7:00am in the resource pool, they should transfer less senior officers during the morning or afternoon shifts as the needs of the facility dictate.

10. Attached hereto as Exhibit "C" is a copy of the bid application of one of the Corrections Officers adversely affected by management's violation of the Collective Bargaining Agreement.
11. NYSCOPBA strongly believes that the Collective Bargaining Agreement has been violated under both Article 6 and 24.3. Management has the right to manage under Article 6 except as expressly limited by other provisions of the agreement. In this case, management is limited by Article 24.3 in which the employer has the right to make such assignment and shift selection (which it did) and bid based on seniority. They no wish to unilaterally violate this Article of the agreement.
12. These shift changes will cause overtime on the 11:00pm-7:00am shift while lessening the amount of overtime on day shifts. There is no need as management alleges to move these officers off their bid shift.
13. No discussions between Wyoming Correctional Facility management and NYSCOPBA representatives were held prior to November 2, 2004 concerning the above referenced change.
14. This transfer of shift job members was unilaterally imposed, without negotiations with NYSCOPBA.
15. The unilateral imposition of new policies concerning the bid shift changes without negotiations with NYSCOPBA constitutes a violation of Civil Service Law §209-a(1)(d).

WHEREFORE, NYSCOPBA respectfully requests that PERB grant the following relief:

- A. Order that Respondents immediately rescind any and all new policies or practice concerning the transfer of bid job / bid shift officers off their bid assignments and place them on bid shifts and order management to revert to the past practice of only eliminating jobs through attrition;
- B. Make whole any officers who were affected financially by their change in shift;
- C. Deem that the DOCS at Wyoming Correctional Facility has violated the Collective Bargaining Agreement by their actions;
- D. Order that Respondents immediately rescind any and all new policies or practices concerning the transfer of members assigned to bid jobs; and
- E. Grant such other and further relief as may be just and proper.