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Guidelines for Investigating and Writing Grievances

The hallmark of the competent Law Enforcement Officer is the ability to record his or her statement of facts in the grievance in a clean, concise and readily understandable manner. The grievance report is the spark that fires the other components into action. It invokes due process of the contract and all New York State laws, and accordingly, should not be approached in a lax or haphazard manner.

The grievance report should be professional, clear, concise and perfectly understandable. Consequently, when you sign your name on the bottom of your grievance, you tell every person who reads it the type of person you are and the type of organization you represent. An incoherent grievance leaves the reader wondering, "What is he/she trying to tell me?". Explain by reference the "big picture".

Confused, vague or ambiguous grievances result from a failure to think through the facts and circumstances, which will ultimately make up the body of your grievance. The desired result will be lost if you cannot or will not take the time to document the grievance in a way that is clear and understandable.

Think through each portion of your grievance from beginning to end....then write. This will eliminate the need for future "translation". Strive for coherence. "Coherence" is the quality of logic and order. If the grievance lacks a logical sequence... if the events are recorded out of logical order... the reader will have the difficult, if not impossible, chore of figuring out what actually took place.

The practice of outlining a grievance before writing it invariably strengthens your report writing. It is a way to organize the information in your possession before beginning to write. You will get results by putting effort into your report and back it up with documentation: directives, contracts, NY State laws, etc. Explain how they have been violated.

Subjective writing expresses the writer's personal feelings or emotions, opinions, biases or prejudices, and does so generally without regard to verifiable facts, contractual arguments (contract) and evidence.

Objective writing records the facts and circumstances without reference to the writers personal feelings concerning the event, without emotion, and most importantly, without any implication of bias or prejudice.

Each paragraph should be limited to one idea. That central statement should either be elaborated in the beginning of the paragraph, if not the first sentence itself. Clarity and unity of thought is then achieved by relating all other details of the paragraph to the central statement.

These are the questions to ask yourself about your grievance report:

"Does this make sense? Does it report what actually happened? Is it coherent? Will someone else understand this? Does this report adequately recreate the scene? Is it capable of being misunderstood?"

Double-check the contents of the grievance with another officer or grievance coordinator.

If you follow these guidelines, the result will be a report which is more consistent, more detailed, and much more effective....a report which displays a degree of professionalism.

Updated August 18, 2011

What Makes A "Good" Grievance

A grievance is a legal document which alleges a breach of contract by an employer. It is imperative that the writer of a grievance treat the grievance with the same respect as any other LEGAL instrument. The following are some of the key components of a "good" grievance.

THE CHARGES

It is extremely important to list the correct charges on a grievance. Make absolutely sure the Articles of the Contract that are cited are appropriate for the incident described. Don't try to put a square peg in a round hole. If an Article doesn't fit the incident, don't cite it. If you're not sure, seek advice from more experienced officials. You have 20 days from the date of the occurrence to file your grievance. Spend more time on research and get it right the first time. A legitimate grievance with an incorrect charge is an instant loser!

THE FACTS

Describe the incident in such a fashion that a person who has never been in your facility will be able to visualize the events leading up to and during the incident. Describe why the actions described violate the Articles cited in the charges. Stick to the facts and don't use window dressing. If you refer to Labor/Management agreements in your report, submit a copy of those documents with the grievance. This is valuable evidence to be considered by the hearing officers. It is too late to run around and try and obtain this documentation when a grievance reaches Step 2 or Step 3. Do your homework before filing the grievance.

THE TRUTH

This is basic common sense. If you get caught exaggerating and/or lying on any part of the grievance, you might as well go home – it's all over!

TIMELINESS

Know the time limits in Article 7 and use them to your advantage. Do your research, get the supporting documentation and write a complete presentation, but do not exceed your time limits. Also, if you lose at Step 1, immediately mail the decision, along with all supporting documentation, to your Vice President or Business Agent for their review so the Grievance Department will have full use of their time limits for filing appeals when appropriate.



GRIEVANCE FORM

(Please Type or Print)

Revised: March 1, 2003

DO NOT WRITE IN THIS BOX
NYS CORBA Grievance Number: CON

LOCAL Grievance Number: _____

Facility (or Agency): _____

Aggrieved Employee: _____

LOCAL Union Rep: _____

Phone Number/ext. _____

Date Submitted: June 10, 2009

Date of Occurrence: MAY 30th

Contract Article Violation(s): BILL OF RIGHT (F)

STATEMENT OF FACTS: ON May 30th Saturday I returned my keys to the key rack at 5:15 pm on my watch. Then I went back to my post. I left the building at 5:30 pm. I was on duty until 5:30 pm, that day. Without mentioning me anything, _____ logged that I was off duty at 5:10 pm. Supervisor _____ was at the console at that time. She watched me that hang up the keys on the rack. She did not say anything at that time. After 5 days she gave verbal counseling to me in the presence of other supervisors. She claimed that I left early on Sat May 30th. As a good supervisor she should have told me immediately when I hang up the keys on the rack. She is incompetent to be a supervisor. Now I feel that she is trapping me to find some mistakes. She has done the something many times to me. Please check my previous grievances. By doing that, _____ was intimidating and harassing me, and also creating a hostile environment. She broke the law: Bill of Rights article (F)

REMEDY SOUGHT: Terminate or Transfer

RECEIVED
JUN 10 2009
CHIEF OF SECURITY
NYS ED

Aggrieved Employee's Signature: _____

Documentation Can Make or Break a Grievance

Too often, the strongest written grievances suffer the most disappointing losses due to the simple fact that the documentation needed to support the claims of the grievance is not provided or included with the grievance. Labor Relations, GOER and arbitrators view undocumented grievances as unsubstantiated claims- denying them nearly 100% of the time.

The burden of proof in the grievance process lies with the grievant and the Union, thus any claim that is made in a grievance should be able to be backed up with some form of documentation. When the Union can illustrate their claim in black and white, the employer must refute the grievant's claim with equal or greater compelling proof to support their position.

For example, simply attaching a copy of a time card or pay check to a grievance can bolster an unpaid overtime claim. Similarly, making a claim that management violated a labor management agreement means nothing, unless a copy of said labor management is included with the grievance.

Documentation establishing correspondence between management and the grievant or the Union is the most necessary and often the most omitted documentation. Likewise, when a member or the Union makes a request of management to take action on an issue, it should be put in writing, including a request for a written response from management.

Written correspondence serves three purposes: 1. It can show that the Union and the grievant have attempted to resolve an issue prior to initiating the grievance. 2. It can give insight to management's thought process regarding an issue, which may assist the Union develop a game plan for refuting management's position. 3. It can establish management's failure or unwillingness to work with the Union to resolve an issue. This is particularly helpful as the grievances progresses through the steps.

Documentation can also be used to offset timeliness issues in a grievance. For example, an Officer was not paid for overtime worked in early January, and has continued to discuss the issue with management in an attempt to get paid since early February. It is now May, and attempts to resolve the issue, although ongoing, have come to an impasse. So, a grievance is filed stating that the employer failed to pay the Officer's overtime from January.

Obviously, without documentation showing a timeline of continuous correspondence, the grievance will be deemed untimely and denied. In documenting the ongoing effort to resolve the issue, the Union can now establish that the grievance is indeed timely.

Lastly, the grievant and Union must be vigilant in their effort to make sure that the appropriate documentation accompanies the grievance through each step of the process. We must be our own advocates and ensure that we maximize every opportunity to win each grievance. Do your part by making sure the necessary documentation is provided.

**NEW YORK STATE / NYSCOPBA
OUT-OF-TITLE WORK GRIEVANCE FORM**

Date Submitted _____

Grievant(s) Name		Social Security Number
Home Address		
Grievant(s) Title		Line Number
Department/Facility	Division/Bureau/Region	Shift
Work Address		
Supervisor's Name and Title		

**STATEMENT OF FACTS
(USE ADDITIONAL SHEETS IF NECESSARY FOR QUESTIONS 1-4)**

1. Reason for Grievance:

- a. Who directed you to perform these tasks, their name and title? _____
- b. What caused this assignment, did someone get sick, go on leave, get reassigned? _____

- c. Were you filling in for your supervisor, if so how often? _____
- d. Were you performing all of the duties of your supervisor at that time? _____
- e. Who supervised you when you performed these tasks (who did you report to)? _____
- f. What title did you feel should normally be assigned these duties? _____
- g. What were the dates of the assignment, number of days or weeks? _____

2. Specific tasks performed which you believe to be out-of-title and approximate percentage of time spent on each: _____

NOTE: If the duties are appropriate to your present job title, an out-of-title work grievance is not applicable, and this grievance form should not be used

3. State the title and grade that you believe are more appropriately assigned these duties: _____

4. If relevant, list your supervisory responsibilities, along with names and titles of staff supervised by you: _____

5. Date(s) of occurrence: _____

6. Remedy sought: Compensation/Monetary Relief Cease and Desist

7. Signature of Aggrieved Employee or Union Officer and Title: _____

STEP 1 – FACILITY/REGIONAL LEVEL REVIEW

Date Grievance Received by Certified Mail	Date Decision Issued
Union File Number	Agency File Number

1. Facility/Regional Level Management Decision: _____

2. Facility/Regional Reviewer: _____

STEP 2 – AGENCY LEVEL REVIEW

Date Grievance Received by Certified Mail	Date Decision Issued
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Agency Decision _____

Agency Reviewer _____

GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS (GOER) REVIEW (STEP 3)

GOER File Number _____

All appeals to GOER must include a legible copy of the grievance form and agency opinion, and specific reasons for disagreement with step 2 decision

Date Grievance Sent by Certified Mail: _____

Signature of Aggrieved Employee or Union Officer: _____

**NEW YORK STATE
OUT-OF-TITLE WORK GRIEVANCE FORM
INSTRUCTIONS**

It is especially important for you to supply as much information as possible so that your grievance will not be delayed by a request for additional information.

You should contact your local grievance representative to assist you in filling out this form and to assist you in determining whether the particular circumstances you are grieving are appropriate to the out-of-title work grievance procedure.

You should state the specific tasks that you performed which you believe to be out of title. These are tasks not contained in the job standard or tasks not normally associated with your title.

Any attachments must be included with the grievance form at each step.

Grievance Procedure Summary: under Article 7 in the contract.

STEP I

1. Grievant files a grievance within 20 days of occurrence.
2. Grievant, Union and local management meet within 10 days.
3. Local management issues a written decision within 10 days.

STEP II

(From this point forward the Union owns the grievance)

1. Union files appeal to DOCS Labor Relations within 15 days.
2. Meeting with Labor Relations and Union within 10 days.
3. Labor Relations issues decision within 10 days.
4. NYSCOPBA evaluates whether or not to forward grievance to next step (see Grievance Appeal Procedure). NYSCOPBA may appeal Step II decision to Governor's Office of Employee Relations within 15 days. (* 15 day window extended to 60 days per MOU with GOER)

STEP III

1. Step III review scheduled every other week at GOER office (Member receives scheduling letter explaining review procedure. Member may participate by phone, upon request - to grievance department)
2. On-site review- (very rare) Meeting at worksite with Union, Management and GOER, usually within 4 months.
3. Health and safety issues may be referred to Health and Safety Committee for review.
4. Out of Title grievances referred to Civil Service Classification and Compensation for review.
5. GOER issues decision or recommends resolution. (No set time frame)

6. NYSCOPBA evaluates whether or not to forward grievance to next step (see Grievance Appeal Procedure). NYSCOPBA may appeal Step III decision to Step IV within 15 days. (* 15 day window extended to 60 days per MOU with GOER)

STEP IV

1. Appeal to Alternate Dispute Resolution Process or Arbitration may take several paths:
 - a. **Triage** - Discussion between NYSCOPBA and State legal counsel (resolution conference) to determine if grievance can be resolved or if it can be best addressed through Expedited or Full Arbitration.
 - b. **Expedited Arbitration** – NYSCOPBA and State legal counsel present verbal case summaries (no written briefs) before a Master Arbitrator. Arbitrator renders decision, usually within 7 days. **Expedited Awards are non-precedential unless the parties agree otherwise.**
 - c. **Full Arbitration** – NYSCOPBA and State legal counsel present verbal and written testimony, including written briefs, before a mutually agreed to Arbitrator. Decision is usually issued within 30 days. **Full Arbitration awards are precedential unless otherwise agreed to by the parties or expressly indicated by the arbitrator.**



New York State Correctional Officers & Police Benevolent Association

102 Hackett Blvd. - Albany, NY 12209
(518) 427-1551 www.nyscopba.org nyscopba@nyscopba.org



Grievance/Legal Assistance Committee **GRIEVANCE REVIEW POLICY** (As adopted December 12, 2007)

1. **STATEMENT OF POLICY:** Article 7 "*Grievance and Arbitration*" of the collective bargaining agreement provides that NYSCOPBA may take an appeal of a grievance that is not satisfactorily resolved. It shall be the policy of the New York State Correctional Officers & Police Benevolent Association, Inc. ("NYSCOPBA") that the determination to take any such appeal shall be made in accordance with the procedures described herein.
2. **INITIATION OF GRIEVANCES:** NYSCOPBA, or a person or persons represented by NYSCOPBA ("grievant") may submit a grievance to Step 1 as provided by Article 7 of the collective bargaining agreement.
3. **GRIEVANCES NOT SATISFACTORILY RESOLVED:** A determination by NYSCOPBA that it is not in the best interest of NYSCOPBA to appeal a grievance to the next step in the grievance process is subject to review only as provided by this policy and the procedures specified herein.
4. **REQUEST FOR REVIEW OF A DECISION OF NYSCOPBA:** If NYSCOPBA determines that a grievance not satisfactorily resolved at Steps 1 or 2 will not be appealed to the next step of the grievance procedure, the grievant or the Sector Steward representing said grievant may request a review of this determination by the Grievance/Legal Assistance Committee established pursuant to Article XI of the NYSCOPBA Constitution. The procedure for this review shall be as follows:
 - a. The grievant will be notified by NYSCOPBA in writing of this determination. A copy of this notice shall also be provided to the Vice-President and the Chief Sector Steward representing the grievant.

Members of the Committee:

Wilson Chapman (Great Meadow CF); Robert Cronin (Mt. McGregor CF); Dave Fletcher (Franklin CF);
Jeff Levy (Division of Parole); Hugh Ricenburg (Downstate CF); Don VanTassell (Fishkill CF)

Committee Chair:

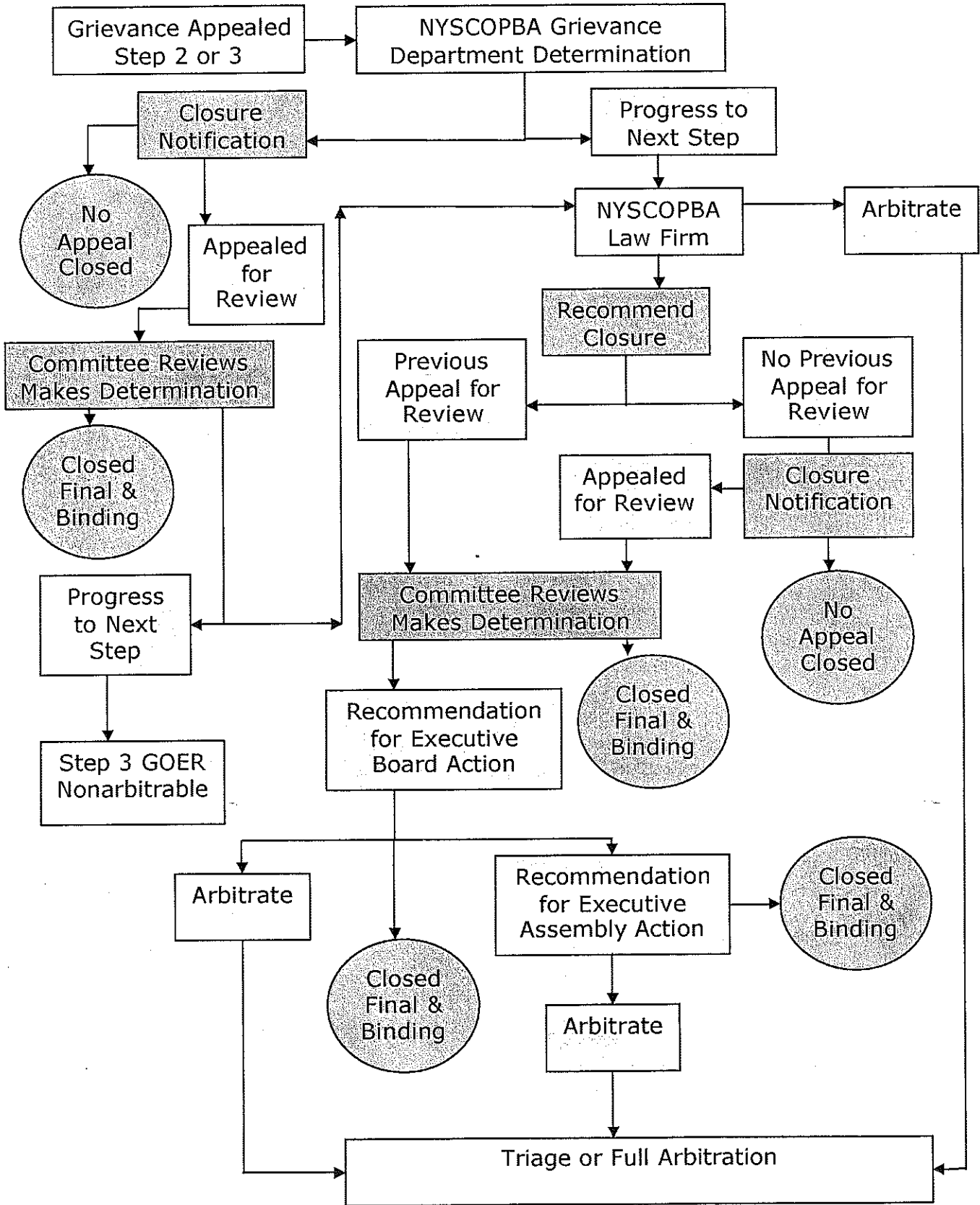
Kevin Walker (Mid-Hudson Vice President)

- b. The notice to the grievant shall include the reasons why NYSCOPBA determined that the grievance should not be appealed to the next step. This notice may include any information, which supports the decision of NYSCOPBA including past grievance decisions, arbitration decisions, etc.
 - c. The notice to the grievant shall state, "In the event you do not agree with this determination to close this grievance, you may request in writing that this determination be reviewed by the Grievance/Legal Assistance Committee. This request must be made within thirty (30) days following receipt of this notice. Your request for review must include specific relevant additional information that NYSCOPBA did not possess that might have affected the determination to close the grievance. The request for review by the Grievance/Legal Assistance Committee should be sent by email to grievance@nyscopba.org or mailed to 'NYSCOPBA Grievance Department, 102 Hackett Blvd., Albany, NY 12209-1543.' If a written request for review is not received within thirty (30) days, the grievance will be closed."
 - d. The Grievance Department will forward a request for review to the Grievance/Legal Assistance Committee. The committee will review the written submission, and may call witnesses, may consult with legal counsel and/or request additional information from any person possessing information believed to be relevant. NYSCOPBA shall notify the grievant of the date and time when the committee will consider their request for a review. The grievant may participate via a telephone conference call or may appear in person at his or her expense. Their Sector Steward or Vice-President may represent the grievant in this review. In the event a good faith effort has been made to contact the grievant and the grievant cannot be contacted, the Grievance/Legal Assistance Committee may go forward with the review and render a decision thereon.
 - e. The Grievance/Legal Assistance Committee will render a decision within thirty (30) days after the review is considered. The Grievance/Legal Assistance Committee will notify the grievant in writing that either the grievance will be closed or that the grievance will be appealed to the next step. The decision of the Grievance/Legal Assistance Committee will be final and binding and cannot be appealed.
5. GRIEVANCES NOT SATISFACTORILY RESOLVED AT STEP 3: If NYSCOPBA or Legal Counsel designated pursuant to Article XIX of the NYSCOPBA Constitution and Bylaws determines that it is not in

the best interest of NYSCOPBA to pursue a grievance beyond Step 3, the following shall occur:

- a. Only when the Grievance/Legal Assistance Committee has not previously reviewed the grievance as described in section 4 of this policy, the grievant, the Sector Steward and the Vice-President representing the grievant will be provided the opportunity for such review as provided by section 4(a) to section 4(d).
- b. If the Grievance/Legal Assistance Committee agrees with the determination that it is not in the best interest of NYSCOPBA to pursue the grievance beyond Step 3, the grievance will then be closed. This decision will be final and binding and cannot be appealed.
- c. If the Grievance/Legal Assistance Committee does not agree with the determination that it is not in the best interest of NYSCOPBA to appeal the grievance beyond Step 3, the grievance will be submitted to the Executive Board.
- d. The Executive Board shall then decide that the grievance will be pursued beyond Step 3, or the grievance will be closed, or the grievance will be referred to the Executive Assembly. This decision of the Executive Board will be final and binding and cannot be appealed.
- e. The decision of the Executive Board, or of the Executive Assembly if the grievance is referred to them by the Executive Board, that the grievance will be pursued beyond Step 3 or that the grievance will be closed will be final and binding and cannot be appealed.

**Grievance Review Policy & Procedure
Adopted by NYSCOPBA EA 12-12-07**



Contractual Aspects of Discrimination and Harassment Claims

Although allegations of discrimination and work-place harassment are often linked, many members incorrectly consider them identical topics. The treatment of these issues is separate and distinct when addressed through the Collective Bargaining Agreement (CBA), and the grievance process. Although it may be difficult to accept that such practices still occur in this day and age, the fact remains that not only does such treatment exist and it negatively affects the entire work-place environment on every level. These unacceptable practices must be addressed; but how?

First we will consider the claim of discrimination. Article 3 (Nondiscrimination) of the contract is very specific that inequitable application of the CBA because of a member's "age, race, creed, color, national origin, sex, disability, marital status and political affiliation..." or union activity is considered discrimination, and a violation of the Contract. The most common example is when the Employer denies a member's rights to a post bid award because of their gender.

An abundance of documentation and a great deal of time and effort is needed to establish differential treatment of a member under Article 3. Also, the Union is often required to prove a diminishment of a member's rights provided in, or outside of the contract, as a direct result of the differential treatment. The Union has been very successful in processing "true" discrimination grievances.

However, members often mistake a claim of work-place harassment as a discriminatory act as outlined in Article 3. Harassment claims are often made in grievances when a member feels that a supervisor has improperly issued a counseling, informal or formal; or when a supervisor appears to "ride" one particular employee more than others. Members usually claim violations of Article 8 (Unjust Discipline) Article 27 (Preservation of Benefits) and Appendix C in these instances.

While these claims may seem discriminatory in nature, they do not satisfy the specific requirements of discriminatory treatment under Article 3. Appendix C establishes that counselings are not considered as disciplinary action against the Employee under Article 8, and therefore do not inherently diminish a member's rights within or outside the contract. Appendix C only addresses the method by which counselings can be given; in private with an opportunity for the member to provide a rebuttal to counseling memos. It does not address whether or not the counseling itself is appropriately required.

Grievances claiming harassment often seek to exact discipline on another individual, often a supervisor, and even fellow union members. Some remedies seek to demand or invoke an apology from the accused individual. These remedies, although commonly sought, cannot be granted through the grievance process.

Keep in mind that the contract is negotiated between the Union (NYSCOPBA and its members as one unit) and the Employer (DOCS / New York State and its representatives acting on its behalf). The CBA governs only that discipline which is administered from

the Employer to an Employee, and does not provide remedies demanded by one individual of another. Further, the contract does not provide an avenue through which one member can seek to diminish the rights of another.

Factually, there are no articles in the contract that either address work-place harassment or which provide a remedy for the same. The proper venues to address such claims are through the Diversity Management Office, the Equal Employment Opportunity Commission or the Division of Human Rights Office. It is also suggested that the member notify and discuss these issues with the local Union, Management and the local Employee Assistance Program representative in an attempt to resolve these issues.

Points to Remember About Verbal and/or Written Formal Counseling

- Counseling Guidelines and procedures are addressed in Article 10 and Appendix C of the contract.
- Counseling sessions must be conducted in private.
- Union representation must be afforded to an employee whenever more than one supervisor is present during a counseling session.
- Appendix C defines counseling as “not disciplinary”, and therefore cannot be addressed in the grievance procedure under Article 8.
- An employee is not required to sign a counseling memo
- An Employee has the right to file a written response to a counseling memo in his/her personal history folder.
- Successful grievances address violations of the counseling procedure only (not conducted in private and not afforded appropriate Union representation).
- Grievances cannot address the content of counseling or the reason counseling is issued.
- Grievances addressing counseling often cite “harassment” as grounds to have a counseling memo expunged. The claim of harassment is often made through the grievance process; however, factually, there are no articles in the contract that address work place harassment other than discriminatory treatment based on age, race, creed, color, national origin, sex, disability, marital status or political affiliation. The proper venue to address claims of workplace harassment is through the Diversity Management office.
- Grievances addressing counseling cannot be advanced past the Alternate Dispute Resolution Process (triage) as outlined in Article 7.1 (b). In triage, both parties, Union and the Employer must agree to a resolution. History shows that the Employer will not agree to reverse the previous findings in the grievance process. Moreover, issues addressing counseling cannot be presented to a neutral Arbitrator for his/her consideration.
- As long as an Employee has not received additional counseling or notice of discipline during the time period following the issuance of a counseling memo, a written counseling memo over three years old, and any reference to the counseling, must be removed from the Employee’s personal history folder upon written request from the Employee.

- Removed counseling memos cannot be used as evidence in subsequent disciplinary arbitrations for that employee.
- Written counseling memos cannot include threats of future disciplinary action.
- Employee evaluations can not refer to counseling.

State of New York
EMPLOYEE PERFORMANCE EVALUATION APPEALS FORM
(For Employees in the Security Services Unit)

Appellant's Name _____
Agency _____ Office/Bureau: _____
Item # _____ Title _____ Evaluation
Period: From ____/____/____ To ____/____/____
Name of Supervisor _____ Name of Reviewer _____
Rating Received _____ Date Rating Received ____/____/____

If you wish to appeal your rating, you have 14 calendar days from the date you receive your rating in which to file an appeal at the first step in the process. In most cases, the first step will be an appeal to a Local (facility, region, etc.). Performance Evaluation Appeals Board (STEP 1 below). In agencies where there is no Local Board, the first step will be an appeal to the Agency Level Performance Evaluation Appeals Board (indicated on STEP 2 on the reverse side of this form).

Check one of the following:

- I wish to be represented by NYSCOPBA in the appeals process.
 I do not wish to be represented in the appeals process.

STEP 1 - LOCAL LEVEL

Instructions to Appellant:

In the space provided below, explain why our rating should be changed to the next higher level. You must cite specific reasons why your work performance should be recognized by a higher rating. NOTE: In the appeal of a rating of "Needs Improvement" or higher, the burden of proving that the rating should be raised is upon the Appellant. In an appeal of a rating of "Unsatisfactory," the burden of proof for sustaining the rating is upon the agency.

REASON FOR APPEAL:

(Attach additional sheets, if necessary.)

Appellant's Signature: _____ Date Submitted: ____/____/____

(For Local Appeals Board Use)

Date Received by Local Appeals Board: ____/____/____

Your performance rating appeal as been reviewed in accordance with prescribed procedures by the Local Performance Evaluation Appeals Board. The Board has Accepted Denied your appeal. As a result of this action, your rating for this evaluation period is _____. A brief summary statement of the Board's decision is attached.

Date Decision Issued: ____/____/____

Signed _____

STEP 2 – AGENCY LEVEL

Instructions to Appellant:

If your performance rating is "Good" or lower and your appeal has been denied by the Local Performance Evaluation Appeals Board, you have 14 calendar days from the date you received the decision of the local board to appeal to your Agency Performance Evaluation Appeals Board.

REASON FOR DISAGREEMENT WITH STEP 1 – LOCAL LEVEL DECISION:

(Attach additional sheets, if necessary.)

Appellant's Signature: _____ Date Submitted: ____/____/____

(For Agency Appeals Board Use)

Date Received by Local Appeals Board: ____/____/____

Your performance rating appeal as been reviewed in accordance with prescribed procedures by the Agency Performance Evaluation Appeals Board. The Board has Accepted Denied your appeal. As a result of this action, your rating for this evaluation period is _____. A brief summary statement of the Board's decision is attached.

Date Decision Issued: ____/____/____

Signed _____

(For the Agency Performance Evaluation Appeals Board)

STEP 3 – SECURITY SERVICES UNIT LEVEL
(For appeals from a rating of "Unsatisfactory" only)

Instructions to Appellant:

If your performance rating is "Unsatisfactory and your appeal has been denied by the Agency Performance Evaluation Appeals Board, you have 14 calendar days from the date you received the decision of the agency board to appeal to the Security Services Unit Appeals Board, c/o Governor's Office of Employee Relations, 12th Floor, Agency Building 2, Empire State Plaza, Albany, New York, 12223.

REASON FOR DISAGREEMENT WITH STEP 2 – AGENCY LEVEL DECISION:

(Attach additional sheets, if necessary.)

Appellant's Signature: _____ Date Submitted: ____/____/____

(For Security Services Unit Appeals Board Use)

Date Received by Security Services Unit Appeals Board: ____/____/____

Your performance rating appeal as been reviewed in accordance with prescribed procedures by the Local Performance Evaluation Appeals Board. The Board has Accepted Denied your appeal. As a result of this action, your rating for this evaluation period is _____. A brief summary statement of the Board's decision is attached.

Date Decision Issued: ____/____/____

Signed _____

(For the Security Services Unit Appeals Board)

Notice of Discipline Process

1. When a member is issued an NOD, they will receive 2 copies and the agency will generate a copy to NYSCOPBA headquarters, attention the President.
2. When NYSCOPBA receives an NOD from the agency, a disciplinary grievance is automatically filed on behalf of the member, so the agency who issued it cannot impose the penalty they are seeking. A copy of the NOD and the grievance is simultaneously sent to the regional representatives and the member. The Chief Sector Steward is **not** sent a copy of the NOD due to possible confidentiality issues surrounding the charge. **(The member owns the NOD and the grievance, NOT the UNION. The member has the choice with whom to share the NOD and grievance information.)**
3. The regional representative will schedule an agency Level hearing, unless the member desires to waive the agency hearing and proceed to arbitration. If the NOD cannot be resolved at the above mentioned hearing, the Grievance Department, upon receipt of the Agency Level denial, will forward the NOD to NYSCOPBA legal counsel so they can file a demand for arbitration with the NYS Public Employment Relations Board (PERB).
4. Throughout the disciplinary process, the regional representative may be able to negotiate a settlement (only with the full consent of the grievant) with the agency and bring resolution to the NOD. If a settlement is not possible, the NOD will proceed before an independent arbitrator who will issue a decision that is final and binding.
5. The member can choose to have either NYSCOPBA's legal counsel represent them for the NOD arbitration at no cost, or they can choose to have private legal counsel **at their own expense, including half of the arbitration cost.**



Disciplinary Grievance Form

New York State Correctional Officers & Police Benevolent Association, Inc.
Security Services Unit
102 Hackett Blvd. • Albany NY, 12209 • (518) 427-1551
www.nyscopba.org • nyscopba@nyscopba.org

Instructions to Employee and Agency: This form must be used by employees to start a disciplinary grievance according to Article 8 of the Agreement. Employees must be given a chance to obtain representation (either New York State Correctional Officers and Police Benevolent Association (NYSCOPBA), or an attorney of the employee's choice) in proceedings brought under Article 8 and before executing any settlement of a disciplinary grievance. In the event that any employee against whom disciplinary charges are brought by the Employer elects to be represented by any party other than the Union, such employee shall be individually responsible for all expenses which are incurred in connection with such disciplinary proceeding. No employee can be represented in such a disciplinary proceeding by any officer, executive board member, delegate, representative or employee of any actual or claimed employee organization or affiliate thereof other than NYSCOPBA.

PLEASE PRINT OR TYPE

AGENCY _____ WORK LOCATION _____ SHIFT ASSIGNMENT _____ DATE _____

EMPLOYEE'S NAME _____ HOME PHONE _____

HOME ADDRESS _____ ZIP CODE _____

EMPLOYEE'S REPRESENTATIVE: NYSCOPBA NAME _____
 ATTORNEY ADDRESS _____
TELEPHONE _____

I wish to grieve the Notice of Discipline issued to me on _____ pursuant to Article 8 of the Agreement. (Employee may use this space to support this grievance.)

Remedy sought: **Dismissal of all charges and penalty sought.**

Aggrieved Employee's Signature

Instructions to Employee: To be considered, this form must be filed with your Department or agency head or designee within 14 days* following the date of the Notice of Discipline.

Date received _____ By _____
Agency Representative

**AGENCY DECISION
(SEE ATTACHED)**

Date received _____ By _____
Agency Representative

* Days shall mean calendar days

SETTLEMENT AND CERTIFICATION OF OFFER OF RIGHT TO REPRESENTATION (IF APPLICABLE)

Instructions: This form may be used to record settlements of disciplinary grievances as provided for in the Agreement, Article 8.3, Settlements. A disciplinary grievance may be settled at any time following the service of a notice of discipline. The terms of the settlement shall be reduced to writing. An employee offered such a settlement shall be offered a reasonable opportunity to have his attorney or a Union representative present before he is required to execute it. The Union grievance representative at the appropriate level shall be provided with a copy of any settlement within 24 hours of its execution.

THIS SETTLEMENT HAS BEEN MADE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 8 OF THE AGREEMENT. WE CERTIFY THAT THE REQUIRED OPPORTUNITY FOR REPRESENTATION WAS OFFERED AND THAT NO THREATS OF REPRISAL OR PROMISES OF SPECIAL CONSIDERATION WERE MADE BY AGENCY REPRESENTATIVES AS AN INDUCEMENT TO EXECUTE THIS SETTLEMENT, THE FULL TERMS OF WHICH ARE INCLUDED ABOVE.

Employee

Employee's Representative

Agency Representative

Date

SECURITY SERVICES UNIT

APPEAL TO DISCIPLINARY ARBITRATION

(Do not complete if you have executed a settlement on the reverse side)

Instructions to Employee or Representative: To appeal the agency decision to disciplinary arbitration, the employee or the President of the union must submit a copy of this form with this section filled out to the New York State Public Employment Relations Board and to the agency representative who signed the agency decision within 14 days of the service of the agency decision.

I wish to appeal this matter to disciplinary arbitration according to the provisions of Article 8 of the Agreement.

I will be represented in the arbitration by: NYSCOPBA Attorney Personal Attorney

Name of Union Representative or Attorney _____

Address _____

Telephone Number (____) _____

THE HEARING OF THIS MATTER WILL BE HELD IN THE LOCATION BELOW WHICH IS CLOSEST TO THE EMPLOYEE'S WORK STATION.

This proceeding should be held in (indicate one of the following):

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> ALBANY | <input type="checkbox"/> NEW YORK CITY |
| <input type="checkbox"/> BINGHAMTON | <input type="checkbox"/> PLATTSBURGH |
| <input type="checkbox"/> BUFFALO | <input type="checkbox"/> POUGHKEEPSIE |
| <input type="checkbox"/> CANTON | <input type="checkbox"/> ROCHESTER |
| <input type="checkbox"/> ELMIRA | <input type="checkbox"/> SYRACUSE |
| <input type="checkbox"/> HAUPPAUGE | <input type="checkbox"/> WATERTOWN |
| <input type="checkbox"/> MIDDLETOWN | <input type="checkbox"/> UTICA |

A copy of this appeal to arbitration has been sent to the agency representative shown on the front side of this form.

Employee Representative (optional) Employee's Signature

Date

Date received by PERB PERB Representative


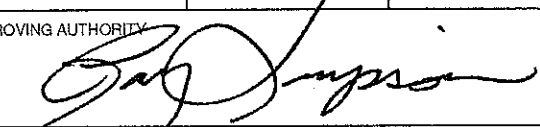
Local IG Q & A Notes: Highlights

1. Employee rights under Bill Of Rights in CBA.
2. Rights are also preserved under Directive 0102.
3. Do not submit to questioning without a Union representative.
4. 24-hour notice must be given to the employee. (It is not mandatory for Union to be notified by IG or management)
5. Ask for questioning to be rescheduled if Union representation is not available.
6. Employee should remove all papers, notes, calendar books etc.... as this information can be used in questioning if on your person.
7. Pace is important. Do not rush answers. Do not anticipate what the IG question will be. Let investigator finish question; think and then answer.
8. Breaks can be requested and granted upon completion of a line of questioning.
9. Only answer what is asked – Don't elaborate.
10. Questions should only be asked once. Once an answer is given to a question, it should not be asked again.
11. Answers should be as short as possible.
12. Don't answer hand gestures – make them ask a question.
13. Ask for clarification of any question you don't understand.
14. Ask investigator to repeat.
15. You can not speculate why another Officer, Supervisor, Civilian or inmate said something or performed some action – you are not them.
16. You are not a doctor – don't make medical determinations.
17. When asked if there is anything you would like to add in this statement, take a time out and discuss privately with Union representative. Usually there is nothing to add, but certain circumstances may warrant otherwise.
18. DO NOT SIGN INVESTIGATOR NOTES – The investigator will likely read his / her notes and will ask you if you feel they are accurate; then want you to sign them. You are not the investigator.

Bill of Rights

To insure that individual rights of employees in the Security Services Unit are not violated, the following shall represent the Employees' Bill of Rights:

- A. An employee shall be entitled to Union representation at each and every step of the grievance procedure set forth in this Agreement.
- B. An employee shall be entitled to Union representation at each stage of a disciplinary proceeding instituted pursuant to Article 8 of this Agreement.
- C. No employee shall be requested to sign a statement of an admission of guilt to be used in a disciplinary proceeding under Article 8 without having Union representation.
- D. No recording devices of any kind shall be used during any disciplinary proceedings except as provided for in Article 8, unless agreed to by all parties and each party receives a copy of the tape.
- E. In all disciplinary hearing proceedings under Article 8, the burden of proof shall rest with the Employer.
- F. An employee shall not be coerced or intimidated or suffer any reprisal either directly or indirectly that may adversely affect his hours, wages or working conditions as the result of the exercise of his rights under this Agreement.
- G. An employee shall be entitled to Union representation at an interrogation if it is contemplated that such employee will be served a notice of discipline pursuant to Article 8 of this Agreement. Such employee shall not be required to sign any statement arising out of such interrogation.
- H. Except as provided below, any statements or admissions made by an employee during such an interrogation without the opportunity to have Union representation may not be subsequently used in a disciplinary proceeding against that employee.
- I. If representation is requested by the employee and if such representation is not provided by the Union within a reasonable period of time, the Employer may proceed with the interrogation.
- J. The Employer shall not infringe upon the right of an employee to be accompanied by counsel as provided by Section 73 of the Civil Rights Law, when said employee is summoned to appear before any "hearing" or before any "agency", as such terms are defined in Section 73 of the Civil Rights Law.
- K. Any employee who is subject to questioning by his/her Department's Inspector General's Office shall, whenever the nature of the investigation permits, be notified at least 24 hours prior to the interview.
- L. Any employee who was notified that there was an investigation pending against him or her by their Department's Inspector General's Office shall be notified by the Employer of the closure of the investigation within two weeks of a written request made by the employee.
- M. The Employer shall keep confidential all employee medical records.

 <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p style="text-align: center;">DIRECTIVE</p>	TITLE		NO. 0102
	Rights of Departmental Employees		DATE 4/14/2010
SUPERSEDES DIR# 0102 Dtd. 4/24/08	DISTRIBUTION A	PAGES PAGE 1 OF 1	DATE LAST REVISED
REFERENCES (Include but are not limited to)	APPROVING AUTHORITY 		

I. **DESCRIPTION:** This Directive sets forth the rights of Department personnel relating to investigations by the Department of Correctional Services.

II. **INVESTIGATIONS BY THE DEPARTMENT**

A. References:

The U.S. Supreme Court in Garrity v. New Jersey, 385 U.S. 493 (1967) and Gardner v. Broderick, 392 U.S. 273 (1968) held that a refusal to answer questions specifically directed and narrowly related to official duties may result in disciplinary action against an employee.

The New York Court of Appeals in December 1987 in Matt v. LaRocca, 71 NY2d 154 held that "...when a public employee is compelled to answer questions or face removal upon refusing to do so, the responses are cloaked with immunity automatically, and neither the compelled statements nor their fruits may thereafter be used against the employee in a subsequent criminal prosecution..."

B. Procedures

The Department requires that all employees be accorded the full protections of our legal system and their union contract.

When an employee is questioned about a violation of Departmental rules, the following shall apply:

1. The employee shall be notified that personal counsel or union representatives may be present at all times during the interrogation if so requested by the employee.
2. The employee shall be notified that a postponement may be granted until 10:00 a.m. the following day to provide the employee the opportunity to retain counsel or union representation.
3. The interrogation shall be conducted at reasonable hours. For the purposes of this directive, the term "interrogation" is defined by the applicable collective bargaining agreement or Article 75 of the Civil Service Law for M/C employees.
4. No threats or offensive language will be used.
5. The length of the questioning period shall not be excessive and shall include breaks for meals and personal necessities.
6. If an employee is the subject of a criminal investigation or there is likelihood that criminal charges may result from the investigation, the following warnings shall be given to the individual concerned prior to the commencement of the interrogation:
 - a. You are being questioned as part of an official investigation by the Department of Correctional Services. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of the investigation.
 - b. If you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to departmental charges which could result in your dismissal from the Department of Correctional Services. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.



**New York State Correctional Officers
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2

Date of Decision- December 30, 2002

Opinion and Award: CON99-0537
Article 3 Nondiscrimination, Article 24 Bid Assignment, Article 27
Benefits

Issue/Subject Matter: Did the State of New York (Department of Correctional Service Wyoming CF) violate Articles 3.1, 24, and 27 of the 1999-2003 Agreement when it denied a female officer a bid position of draft processor? Greivant submitted a bid form on October of 1999 seeking a position in the Draft Processing Unit of the facility. The position as originally posted contained no gender qualifier. By memorandum dated October 7, 1999 the 20 year employee was advised that her bid for the draft processing post was determined to be unacceptable and as the post requires frisk searches of male inmates, which by directive must be performed by officers of the same sex. By virtue of your gender and the directive you may not perform the function of this post. The bid position was ultimately awarded to a male officer with less seniority. The Union's position is that Wyoming CF's actions diminished the grievants benefit/privilege of working in an environment free of sexual discrimination as provided by title VII, 42 U.S.C. 2000(e) and section 296 (1) (a) of the New York State Executive Law. The Union also argues that Article 3.1 provides that the provisions of the Agreement shall be applied equally to all employees. Although Article 24.3 gives employees the right to bid assignments, the grievant was denied access to the terms of that provision because she is a female.

Opinion: I find that Article 27 is not sustainable in the instant matter. Article 27 contains clear language that limits the actions of the State with respect to matters not covered by this Agreement. This dispute is over the State's administration of Article 24.3 and the straight forward claim that the State illegally discriminated against the grievant as it made its determination, as it administered procedures squarely covered under Article 24.3. I find that Article 3.1 is clearly controlling in this matter. I also find that the evidence before me shows that the grievant was discriminated against. The evidence presented by State witnesses was simply that it would be inconvenient to use a male officer to do the strip frisk task. I have held in past decisions that Article 3.1 cannot be found violated unless there is a finding that another article of the Agreement is also violated. Here Article 24.3 is linked to Article 3.1. The facts are clearly established by the evidence as presented that a Bona-fide Occupational Qualification does not exist. I find that the application of Article 24.3 was violated because her seniority was not considered as she bid for the post. I accept the Union's assertion that that simply because an article (24.3) is not arbitrable does not mean it cannot be violated.

Award:

1. The State violated Article 3.1 of the Agreement.
2. The proper remedy in this matter is to direct the State to reconsider the grievants original bid for the draft processing post. The bid id to be accepted and considered without using gender as a reason for setting the bid aside. On the assumption that the grievant is found otherwise to qualified and the senior bidder, she is to be awarded the post.



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Date of Decision- April 8, 2003

Opinion and Award: CON01-0995
Article 24.2 Seniority (Selection of Pass Days)

Issue/Subject Matter: Did the State of New York (DOCS Southport) violate Article 24.2 when, on or about August 9, 2001, it did not afford those vacation relief officers not actually assigned a Vacation Relief Slot an opportunity to select their pass days on the basis of seniority? On or about February 2000, Southport Superintendent Michael McGuinness advised the Union that Vacation relief Officers without a vacation slot would henceforth be made various/various and assigned a shift and squad by the planning Lieutenant. The reason given was to reduced overtime.

Opinion: Prior to and following the change implemented by the Superintendent, Vacation relief officers, who are considered part of the Resource pool, were allowed to select their vacation coverage and hence their pass days on the basis of seniority. Considering the evidence in its entirety, the Arbitrator finds the grievance should be sustained. First, Article 24.2 does unequivocally state that seniority shall be the basis by which employees shall select pass days. Clearly for those VRO's without a vacation to cover and thus relegated to various/various, an assignment by the Planning Lieutenant has not allowed them to exercise this bargained seniority right.

Award:

1. The grievance is sustained.
2. The State violated Article 24.2 when it did not afford those Vacation relief Officers not actually assigned a vacation relief slot an opportunity to select their pass days on the basis of seniority.
3. As a remedy, the matter is remanded to local labor management process where the parties can determine the details and procedures governing the actual bidding process for those officers classified as various/various.
4. The Arbitrator will retain jurisdiction for ninety (90) days following the date of this award.