



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

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



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Fellow NYSCOPBA Members:

I am happy to report that the New York State Public Employment Relations Board (PERB) issued a very favorable decision dated September 21, 2010, regarding the representation of probationary employees during employer questioning. For years, NYSCOPBA and the State have battled over probationary employees' representational rights. NYSCOPBA has always taken the position that the 2007 amendment to the *Taylor Law* clearly provided probationary employees with the right to union representation during interrogations. This is the Board's first decision on this subject matter since the enactment of the new section of the *Taylor Law* in 2007. Because more members will receive NYSCOPBA representation at some of their most vulnerable times, and in circumstances when they were previously denied union representation, this is a landmark decision.

## Background of the Law

As reported previously in *The Independent*, the *Taylor Law* (also known as the *Public Employees Fair Employment Act*) was amended as of July 18, 2007, to provide representational rights to public sector employees whenever one is questioned by his or her employer under circumstances where it reasonably appears that the employee may be subject to potential disciplinary action. These rights are sometimes referred to as *Weingarten* rights. In 2007, the Legislature, with NYSCOPBA's support, amended the *Taylor Law* and created a new improper practice, found at *Civil Service Law (CSL)* Section 209-a.1(g).

## The Recent Decision

The decision involves one of numerous improper practice charges NYSCOPBA filed with the PERB disputing DOCS' application of the *Taylor Law*. The Board, while dismissing the § 209-a.1(a) violation, ordered the State, among other things, to, "permit, upon the employee's demand, representation for a DOCS probationary employee in the NYSCOPBA represented unit when at the time of questioning it reasonably appears that he or she may be the subject or target of potential disciplinary action." This decision and order affirmed the Assistant Director's decision, in part, finding that the State (DOCS) violated § 209-a.1(g) of the *Taylor Law* when it refused to allow a NYSCOPBA representative to be present when investigators from the Department of Correctional Services (DOCS), Office of the Inspector General (IG), questioned a probationary correction officer on January 28, 2008. Investigators from DOCS, IG, went to Great Meadow Correctional Facility following an inmate's suicide attempt to question staff about the suicide attempt and the subsequent death of the inmate. DOCS denied the request of the probationary correction officer, the only officer on the inmate's unit at the time, for NYSCOPBA representation during the interrogation. In finding that the State violated the law, the Board held, in part, that, "**[W]e conclude that § 209-a.1(g) of the Act was intended to grant representational rights and the improper practice procedure to all public employees covered under the Act including those holding probationary, provisional and temporary appointment under the Civil Service Law.**"

The State has 30 days to appeal the PERB Board's decision by filing an Article 78 Proceeding. We will keep you abreast regarding their determination.

Years of litigation have led us to this milestone: the allowance of members in their probationary status to have union representation in situations where DOCS had previously and consistently refused to afford it to them. The Board's decision affirms the representational benefit to all NYSCOPBA members. I have attached a copy of this decision for your review.

In Unity,

Donn Rowe

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Donn Rowe

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