



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

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



President
Donn Rowe

Executive Vice President
Chris Hickey

Recording Secretary
Vinny Blasio

Treasurer
John Telisky

Vice President,
Northern Region
Randy Page

Vice President,
Mid-Hudson Region
Michael Mazzella

Vice President,
Law Enforcement
John Harmon, Jr.

Vice President,
Central Region
John Gavin

Vice President,
Western Region
Al Mothershed

Vice President,
Southern Region
Willie Perez

October 25, 2011

NYSCOPBA DOCCS Members,

On October 18, 2011 the Commission of Correction met to address DOCCS request for 184 double bunking variance extensions within the State's prison system.

In an opposition letter submitted by NYSCOPBA, we raised issue to DOCCS' failure to justify or substantiate the requested one-year extension of the various double-bunk variances scheduled to expire on November 1, 2011, as required by the Commission's variance regulations. As a result, the Commission limited the variance to a 90 day extension to avoid potential disruption to the affected facilities, and directed DOCCS to substantiate their application within 45 days to enable NYSCOPBA and any other interested parties to review and submit comment. The Commission also shared our concern regarding the lack of specifics. Our letter exposed DOCCS non-compliance with the regulations and their apparent willingness to submit variance requests to the Commission for approval without the necessary facts and justification required.

We will continue to oppose double bunking in the State's prison system and will keep you apprised of any further developments.

In Unity,

Donn Rowe
President



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

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



President
Donn Rowe

Executive Vice President
Chris Hickey

Recording Secretary
Vinny Blasio

Treasurer
John Telisky

Vice President,
Northern Region
Randy Page

Vice President,
Mid-Hudson Region
Michael Mazzella

Vice President,
Law Enforcement
John Harmon, Jr.

Vice President,
Central Region
John Gavin

Vice President,
Western Region
Al Mothershed

Vice President,
Southern Region
Willie Perez

October 18, 2011

Hon. Thomas A. Beilein, Chairman
Hon. Phyllis Harrison-Ross, MD, Commissioner
State Commission of Correction
80 Wolf Road, 4th Floor
Albany, New York 12205-2670

Re: October 18, 2011 Commission Meeting
Department of Corrections and Community Supervision
Double-Bunk Variance Requests

Dear Chairman Beilein and Commissioner Harrison-Ross:

As President of the New York State Correction Officers & Police Benevolent Association (NYSCOPBA), I respectfully submit this letter for your consideration regarding the request made by the Department of Corrections and Community Supervision for a one year extension to the double-bunk variances for the following Correctional Facilities: Bayview CF; Clinton CF; Gowanda CF; Lakeview CF; and Wallkill CF.

As you are well aware, the State Commission of Correction is an independent state agency charged with the responsibility to promulgate regulations establishing minimum standards for the care and custody of inmates confined in State correctional facilities (NY Constitution, Article XVII, §5; Correction Law § 45[6]). Pursuant to the enabling legislation, the Commission adopted regulations set forth at 9 NYCRR Part 7603 to provide for a variance mechanism when "situations exist or arise that would prevent or alter" the Department's ability to meet the minimum standards and regulations for the management of State correctional facilities, including maximum facility capacity and minimum requirements for individual, double and multiple occupancy housing units, provided that same "will not jeopardize the safety, security or good order of a correctional facility" (9 NYCRR § 7603.1). To obtain a variance, the Department must submit a written application to the Commission whenever: compliance with a specific rule or regulation cannot be achieved by its effective date or due to a temporary condition or situation; or, compliance is to be achieved in a manner other than that provided by such rule or regulation (9 NYCRR § 7603.2).

Among other things, the application must provide the following, as well as any additional information which may subsequently be requested by the Commission: (1) the specific regulation for which the variance is sought; (2) specific reasons and facts supporting the belief that compliance cannot be achieved; (3) specific plans, provisions and timetables for achieving full compliance, and the time period for which the variance is requested; and (4) the specific plans which fully explain and support alternative methods of compliance when compliance is to be achieved in a manner other than that which is specified in the regulations (9 NYCRR § 7603.3). Upon receipt of the application, the Commission must review and issue a written determination. Upon granting a variance, the determination must specify: (1) the time period for which the variance is granted; and (2) any special requirements or conditions imposed as a condition of the variance.

A review of the double-bunk variance request submitted by the Department dated September 2, 2011 (copy attached), simply requests a one (1) year extension of the variances previously granted by the Commission, and lacks much of the specific information required by the regulations, such as the specific reasons and facts supporting the belief that compliance cannot be achieved, and specific plans, provisions and timetables for achieving full compliance (see 9 NYCRR §7603.2). While the Commission may well have conducted site visits and inspections at each facility prior to granting such variances and other approvals for double-bunking, these records have not been made available to us pursuant to FOIL.

Without the ability to review the records and specifics contemplated by the Commission's regulations regarding such variance applications, NYSCOPBA is left without any meaningful opportunity to present relevant and material information from the Correctional Officers, Sergeants and other members involved in the daily supervision, care and custody of inmates at these correctional facilities and are instrumental in the providing for the safety, security and good order of a correctional facility. Towards this end, in an attempt to assist the Commission in its deliberative process, NYSCOPBA would respectfully request an opportunity to work cooperatively with the Commission to obtain relevant records and provide comments as may be deemed appropriate for the Commission's consideration.

While NYSCOPBA recognizes that the total number of double-bunk beds granted by Commission variance has decreased historically, and that certain conditions have been imposed, there is nevertheless a concern that the Department's failure to address specific reasons and facts supporting the belief that compliance cannot be achieved or specific plans, provisions and timetables for achieving full compliance, do not justify the automatic one-year extension of the requested variances, particularly when there appears to be sufficient unoccupied inmate housing available to accommodate the inmate population without the continuation of double-bunking variances. Moreover, there appears to be no rationale submitted by the Department to justify the continuation of such variance as required under the Commission's regulations.

Based upon the above, NYSCOPBA respectfully submits that the Commission should deny the above-referenced variance applications, or request further information from the Department regarding its inability to comply with the Commission's regulations and its specific plans, provisions and timetables for achieving full compliance, prior to the Commission's determination thereon.

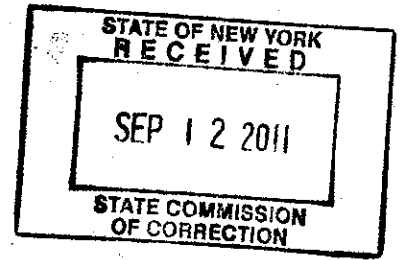
Thank you for your consideration.

Respectfully yours,

Donn Rowe, President



STATE OF NEW YORK
**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050



BRIAN FISCHER
COMMISSIONER

September 2, 2011

Honorable Thomas Beilein
Chairman and Commissioner
State Commission of Correction
Executive Park Tower
Stuyvesant Plaza
Albany, NY 12203-1764

Dear Chairman Beilein:

The purpose of this letter is both to request a one-year extension of the double-bunk variance beds that are still needed and otherwise scheduled to expire on November 1, 2011, and to also officially adjust the maximum facility capacities on file with the Commission for those facilities that have already closed, as well as the six facilities which will officially close on October 1, 2011. As you are also aware, Arthur Kill Correctional Facility will officially close on December 1, 2011, and therefore, at that time, we will send a separate request regarding that facility's maximum facility capacity.

The Department is again requesting the extension of the variances that were last approved by the Commission with one exception. Since Mid-Orange is one of the closure facilities, it is no longer included on this list. Accordingly, set forth below are the specific variances proposed for extension at the five concerned facilities.

<u>Facility</u>	<u>Historical Variance #</u>	<u>Total Beds</u>
Bayview CF	90-V-43, 91V-01	10
Clinton CF	95-V-11	44
Gowanda CF	99-V-05	18
Lakeview CF	92-V-26	40
Wallkill CF	98-V-21	72
Total =		184

The Department is again requesting that the Commission approve these variances for an additional one-year period and upon the same conditions that the Commission previously required. In particular, the listed conditions should apply to each correctional facility except that, the enhanced staffing and reporting requirements should not be made applicable to the variance beds at Bayview Correctional Facility, which are occupied by work release inmates.

Honorable Thomas Beilein
September 2, 2011
Page 2

With respect to the Commission's records on maximum facility capacities for the Department, the correctional facilities which have been closed and have no further correctional use consist of the following: Camp Pharsalia, Camp Gabriels, and Lyon Mountain. Please adjust your records accordingly.

The six correctional facilities which will officially close on October 1, 2011, consist of the following: Oneida, Mid-Orange, Camp Georgetown, Fulton, Summit Shock and Buffalo. Therefore, as of October 1, 2011, please adjust your records accordingly.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Fischer". The signature is written in a cursive style with a large initial "B".

Brian Fischer
Commissioner