



**DECEMBER 2020 LEGAL REPORT
TO THE EXECUTIVE ASSEMBLY**

This is our December 2020 Legal Report to the Executive Assembly regarding recent developments in some of the cases and legal matters we are handling for NYSCOPBA. For the matters cited, we have described activity occurring since the last report and scheduled future activity.

**** COVID-19 RESPONSE ****

Over the course of the past nine months, the COVID-19 pandemic has presented unique challenges to NYSCOPBA and its membership, with new and significant labor relations issues arising on a daily and weekly basis requiring legal review and analysis. Below is a summary of various action items which NYSCOPBA undertook during the pendency of the COVID-19 pandemic and the phased statewide reopening:

- Letter to DOCCS during the very early stages of the COVID-19 pandemic to discontinue visitation, and to take other immediate action to protect employees in the wake of the COVID-19 pandemic;
- Held twice weekly meetings between OMH and NYSCOPBA to address various COVID-19 related issues, including admissions, the discontinuance of visitation at adult facilities, the provision of masks and other PPE, and the establishment of safety protocols. We continue to hold weekly meetings to this day;
- Disseminated protocol to members, and uploaded to NYSCOPBA's website, on what steps to take and what forms to file if exposed to Coronavirus, including if the exposure occurred at work;
- Negotiated agreements with GOER to extend time to 1) file contract grievances, 2) file for arbitration on disciplines, and 3) use personal leave;
- Letter to the NYS Justice Center Administrative Appeals Unit requesting additional time to submit Requests for Amendment;
- Coordinated with Chief Sector Stewards statewide to evaluate and address questions and concerns at individual facilities;
- Prepared questionnaire and instructional cover sheet for dissemination to Chief Sector Stewards to obtain data regarding PPE and safety issues in the early stages of the COVID-19 pandemic and, subsequently, reviewed and analyzed the data obtained from the Chiefs for

consideration of Public Employer Safety and Health (PESH) complaint(s) to the Department of Labor (DOL);

- Filed statewide PESH complaints against DOCCS and OMH alleging various violations of health and safety standards during the pandemic as predicate for lawsuit against both;
- Communicated with the Division of Safety and Health (DOSH) and DOL to address PPE and safety issues;
- Prepared lawsuits against DOCCS and OMH alleging violation of New York Labor Law § 27-a, specifically that DOCCS and OMH failed to provide places of employment which were free from recognized hazards that are causing or are likely to cause death or serious physical harm to our members. Ultimately, the threat of litigation resulted in both agencies providing better PPE (masks and hand sanitizer, etc.) and establishing best practices for members during the pandemic;
- Communicated with DOCCS, OMH, and GOER regarding the numerous inconsistencies pertaining to leave with pay for precautionary and mandatory quarantines and leave with pay for those sick with COVID-19;
- Letters to the Commissioners of DOCCS and OMH requesting that Civil Service Law §§ 71 and 73 be held in abeyance during the state of emergency caused by the COVID-19 pandemic;
- Demand letters on behalf of individual members for terminations pursuant to Civil Service Law §§ 71 and 73 to be held in abeyance due to non-essential medical procedures and examinations being delayed by the pandemic;
- Legal review and analysis of issues surrounding Emergency Paid Sick Leave (FEPSLA) and Emergency Expanded Family and Medical Leave (EFMLA) following the passage of the federal Families First Coronavirus Relief Act (FFCRA), and the subsequent Policy Bulletin issued by New York Civil Service;
- Drafted form grievances for members who were not placed in the appropriate leave with pay status during a qualifying mandatory or precautionary COVID-19 quarantine period;
- Held discussions with the Department of Labor, and DOCCS' Director of Personnel, regarding COVID-19 paid leave legislation and the position being taken that it is capped at 14 days (single block of paid leave);
- Filed improper practice charge with PERB regarding the cancellation of swaps at Marcy Correctional Facility;
- Filed statewide improper practice charge contesting the COVID-19 screening procedures (screening questionnaire and taking temperatures) as outlined in memoranda by DOCCS Chief Medical Officer, Dr. John Morley;

- Provided guidelines for members sent home due to COVID-19 screening procedures and attempting to return to work;
- Prepared and submitted FOIL request (currently pending) to obtain data and statistics from OMH on the number of employees and patients who have, or had, the COVID-19 virus;
- Developed and negotiated protocols for telephonic interviews conducted by OSI during the COVID-19 pandemic emergency (expired on May 31, 2020), and arranged for and negotiated facility interview notifications which did not exist previously;
- Pocket guides for members and union stewards for OSI phone interviews;
- Letter to DOCCS objecting to refusal by correctional facilities to accept Employee Accident/Injury Reports from members with suspected or confirmed COVID-19 infections;
- Letter, in conjunction with NYSCOPBA's Retirement Department, to Chief Sector Stewards regarding power of attorney and death benefits;
- Ongoing discussions with GOER regarding video conferencing for disciplinary arbitrations, and potential protocols to be put in place regarding same;
- Addressed possible legal responses in the event that DOCCS (or any other agency) implemented 12-hour shifts at its facilities as a result of staff absences and shortages brought about by COVID-19;
- Agreement with GOER regarding extension of expiration date of certain compensatory time off for hours worked between 37.5 and 40 hours, which affects some members of the Security Services Unit represented by NYSCOPBA;
- Joint Committee on Workers' Compensation proposed a COVID-19 light duty program to GOER for members recovering from the virus;
- Letter to Department of Health (DOH) Commissioner objecting to guidance issued for employees returning to work from quarantine or isolation;
- Review and analysis of Executive Order mandating mask use and related-DOH guidelines;
- Addressed NYS DOL Coronavirus complaint form on NYSCOPBA website, i.e. where member believes employer is engaged in misconduct and/or violating a law or policy related to the COVID-19 pandemic;
- Legal review and analysis on an ongoing basis regarding changing executive orders promulgated by Governor Cuomo;
- Submitted a post-pandemic proposal for reopening visitation at DOCCS;

- Ongoing monitoring of New York Register and emergency rulemaking for updates affecting our members; and,
- Communicated with the Justice Center to object to their conducting interviews and interrogations via telephone of NYSCOPBA members. The Justice Center advised us that at this point, the questioning of members for interviews and interrogations should only be in person.
- On July 23, 2020, we attended a conference call, along with then-Executive Vice President Tammy Sawchuk and Dana Betts of NYSCOPBA, with Associate Industrial Hygienist from the New York State Department of Labor, Priya D. Desai to discuss DOCCS' response. In anticipation of visitation resuming at DOCCS' facilities, the conversation centered on the necessary precautions and safety provisions that NYSCOPBA would like to see in place. Ms. Desai indicated that she planned to continue investigating the matter, including potentially requesting inspection photographs from some facilities to examine the visitation areas. We also discussed safety considerations at the parole offices, including issues with the Plexiglas barriers, among other issues.

**** MONTHLY SPOTLIGHT ****
[March through December 2020]

Litigation:

- **[Member] v. NYS DOCCS:** In the face of a lawsuit from NYSCOPBA, DOCCS has agreed to allow all of its employees to display political banners supporting a specific candidate, of any size, affixed to their personal vehicles in DOCCS employee parking lots. The lawsuit was filed on behalf of NYSCOPBA and a member out of Downstate Correctional Facility. The lawsuit alleges that DOCCS violated the member's Constitutional rights, including his right to free speech, when it prevented him from displaying a political banner ("Keep America Great Trump 2020") on his personal vehicle while parked in the employee parking lot. The lawsuit sought a preliminary injunction and temporary restraining order against DOCCS. Once DOCCS was put on notice of the lawsuit, they offered to resolve this matter – specifically, they stipulated that they will allow the Trump banner, and any political banner, for that matter, supporting a specific candidate for office. Accordingly, NYSCOPBA members will not be treated unfairly depending on what candidate they support in the 2020 Presidential election. DOCCS still has the authority to make policy about political displays on employee vehicles. However, they have agreed not to issue a policy before this election period ends. And, after the 2020 election, if DOCCS issues a policy that violates the rights of members, we will challenge it.
- **[Member] v. NYS DOCCS:** This is a declaratory judgment action that was commenced as a result of DOCCS' refusal to reinstate a former correction officer pursuant to Section 71 of the Civil Service Law. The member was found medically fit to perform his duties, but DOCCS required him to undergo the psychological evaluation required of new recruits. DOCCS then found the member to not be psychologically suited to be a correction officer trainee. DOCCS refused to provide us with the factual basis for its determination and refused to provide any of

the documents considered in reaching its determination. Our position is that a former officer, seeking reinstatement pursuant to Section 71, has a constitutionally protected property interest in his or her right to reinstatement. We argued that it is a due process violation for DOCCS to depart from the plain language of Section 71 and use Correction Law § 8 to evaluate candidates for reinstatement. We also argued that it is a due process violation for DOCCS to refuse to provide the test results to a candidate for reinstatement. DOCCS has moved to dismiss our Complaint, or, in the alternative, convert the declaratory judgment action into an Article 78 Proceeding. The motion is returnable on November 12, 2020. We filed our opposition to the motion to dismiss on October 7, 2020.

- **[Member] v. NYSCOPBA and Michael Powers (U.S. District Court, Northern District of New York).** During December, 2017, the Plaintiff, a correction officer at Riverview Correctional Facility, commenced this action alleging a number of constitution claims based on allegations that overtime was not distributed in a fair and non-discriminatory manner. After significant motion practice, all of the Plaintiff's Federal Claims against NYSCOPBA were dismissed and the Court declined to exercise jurisdiction as to Plaintiff's State Law claims. Subsequently, on April 23, 2019, NYSCOPBA was served with Summons and Complaint in State court commenced by the Plaintiff. We filed a Motion to Dismiss the Complaint. We appeared in St. Lawrence County Supreme Court for oral argument. On May 14, 2020, we received a written decision from the State Court. Since Plaintiff's Federal Claims had previously been litigated and dismissed on the merits, all of the Federal Claims against the NYSCOPBA Defendants and the State Defendants were dismissed on the grounds of res judicata or collateral estoppel. The Court dismissed Plaintiff's breach of contract causes of action because he was not a party to the CBA. His Taylor Law claims were also dismissed as untimely.

Discipline:

- **Auburn Correctional Facility:** The NODs allege that the members failed to adequately conduct their security rounds/counts and, in so doing, failed to promptly detect the presence of an inmate who committed suicide on Tour 1. The Department suspended the members and sought their termination. Each member has under two (2) years on the job. These matters were submitted for expedited arbitration and NYSCOPBA's Western Region/Local Representatives and the law firm immediately pressured the Department through numerous additional evidentiary demands plus an investigatory trip to C Block at Auburn CF. Thereafter, it became apparent that the Department's case hinged upon the time of death of the inmate. Additional requests for documentation containing a potential time of death, which yielded no such documentation, proved that there was no time of death recorded or even speculated on by responding security staff, responding emergency medical staff, or the medical examiner. Varying accounts of whether rigor mortis had or had not set in also proved to be a potential weakness for the case. NYSCOPBA and this office also began to formulate a plan that, if the members wanted to consolidate the cases, two attorneys from the law firm would represent the members at the consolidated hearing and each would have the opportunity to separately cross examine each witness in front of the Arbitrator. Shortly after the site visit and the latest round of targeted document demands, this office received a phone call from the attorney from the Department's Bureau of Labor Relations who was prosecuting the cases. The Department relayed that they did not feel as though they could prove the cases

against our members because they did not have a time of death. The Department withdrew the charges, reinstated the members to duty, and returned their lost pay. This is the best possible outcome for these members, who will continue to have unblemished records early on in their careers.

- **Bedford Hills Correctional Facility:** The NOD alleged that this member engaged in an excessive use of force, when, after having a boot thrown at her by an inmate at a tier hearing, she struck the inmate with a closed fist ten (10) times while the inmate was shackled to a restart chair. This matter went to arbitration before Arbitrator Trachtenberg on March 4-5, 2020. We argued that the use of force was authorized and appropriate pursuant to the directive for self-defense and to protect a civilian hearing officer that was in the room. The inmate was being considered for a close monitoring case and had a history of staff assaults and getting loose from shackles and boasting about it. Arbitrator Trachtenberg decided that termination was not appropriate. He awarded a four-month suspension without pay. The member has since returned to work.
- **Central New York Psychiatric Center:** In this case, OMH sought dismissal from service for two (2) Security Hospital Treatment Assistants (SHTAs) at the Central New York Psychiatric Center (CNYPC). The case began almost 4 years ago, when a patient without any provocation, violently assaulted another SHTA. The patient struck the SHTA so hard that his facial bones were exposed. After the initial strike, the patient did not surrender, but violently fought back against three (3) responding SHTAs. During the ensuing struggle, the patient was injured. The New York State Police assumed that the two SHTAs were responsible for the patient's injuries and commenced an investigation. The matter was presented to an Oneida County Grand Jury, and after a thorough Grand Jury investigation, the matter was 'no-billed' (no criminal charges). Following a lower court order to release the Grand Jury proceedings, the New York State Appellate Division, Fourth Department upheld findings and sealed the record. No criminal charges were ever filed, and no criminal charges are presently pending against the members.

Almost 3 years after the incident, the Justice Center commenced an administrative investigation. The Justice Center investigation found that one member kicked the patient in the head immediately following the restraint and the other member used a garbage can to strike the patient in the head after he was placed in the side room. Prior to the hearing, we moved to dismiss because of the delay in serving the Notices of Discipline beyond the nine (9) month requirement in the contract. The Arbitrator denied our motion, so hearings were held on June 23, 24 and 25, 2020. On October 5, 2020, we received a decision from the arbitrator finding the members not guilty of all charges and reinstating them with back pay.

First, the "victim/patient" did not testify. Regarding that fact, the arbitrator stated, "[t]he union's case was substantially prejudiced by the lack of testimony from this key witness in the instant matter." Second, the arbitrator found the key witness against one of the members to be "questionable" because: 1) she never made any effort to stop the alleged kicking; 2) she never reported the alleged kicking; 3) she did not report the kicking to anyone; other than another nurse (the other nurse did not confirm her testimony); and 4) her testimony was inconsistent. Third, regarding the other member's alleged use of the garbage can, the arbitrator found, "it is extremely difficult to comprehend how the State would allege that Grievant ... struck [the

patient] in the head with a trashcan when the evidence of such an act is either lacking or severely circumstantial.” Accordingly, based upon his complete discussion, the arbitrator found both members not guilty and awarded back pay.

- **Clinton Correctional Facility:** The NOD in this case alleged that the member harassed a female civilian staff member and provided false statements in an OSI interrogation. The NOD in this case sought termination. The member agreed to settle this matter for a suspension of approximately 3 months and a 6-month disciplinary evaluation period.
- **Fishkill Correctional Facility:** The NOD in this case alleged that the member used excessive force on an inmate and failed to document that excessive force in his Use of Force Report. The NOD in this case sought termination. The member agreed to settle this matter for a suspension of approximately 48 days and a one-year disciplinary evaluation period.
- **Great Meadow Correctional Facility:** The member received a NOD for on duty personal cell phone use. This included use at both his personal vehicle and while working as an outside inmate transport officer, including a date on which it is alleged he sent/received over 450 texts. The NOD also contained allegations of inaccurate time records and that the member contacted an inmate’s family member. DOCCS sought dismissal. In advance of the hearing, the member agreed to settle the matter for a suspension-to-date (six and ½ months) and a 1-year disciplinary evaluation period, limited to the NOD allegations regarding cell phone use and contact with an inmate’s family member.
- **Greene Correctional Facility:** The NOD alleges that the member inappropriately slapped the buttocks of a civilian staff member at Albany Medical Center (“AMC”) while on duty and in uniform at AMC and lied and/or provided false information regarding same. Prior to hearing, this matter was settled and the member is scheduled to return to work.
- **Ogdensburg Correctional Facility:** The NOD alleges that the member was allegedly driving a motor vehicle under the influence of a drug, as well as being arrested. He is also charged with being unfit for duty, in violation of DOCCS regulations. An arbitration hearing was held before Arbitrator Timothy Taylor on September 16, 2020. After opening statements, Arbitrator Taylor conferred with the parties and the Notice of Discipline was withdrawn. As a result, the Notice of Discipline and any related documents are to be immediately removed from the member’s folder at the Facility and Central Office. Because the member was sick at the time of the incident, the Arbitrator encouraged the parties to treat him as if he was sick and not discipline him. Therefore, in addition to the Notice of Discipline being withdrawn, the member will use sick leave accruals and any necessary alternate accruals for August 23, 2019. He will be placed on sick leave without pay, effective August 24, 2019 through October 7, 2019. He will be restored to the payroll effective October 8, 2019, beginning of business. The member is to receive full back pay and all benefits restored for the period of October 8, 2019 through February 16, 2020, when he was returned to duty.
- **Sing Sing Correctional Facility:** The member in this NOD is accused of having significant and numerous items of contraband in his Tower Post at Sing Sing CF, including a cellular telephone, air mattress and pump, homemade log book stamp, speed loader, among other

items. Arbitrator Lande presided over the hearing on February 19, 2020. The member had been suspended without pay since August 20, 2019. Despite finding the member guilty of possessing eleven out of the fifteen items of contraband listed in the NOD, Arbitrator Lande decided that the suspension imposed was not for cause pursuant to the CBA and that termination was not the appropriate penalty. He imposed a forty-five (45) day suspension and awarded reimbursement of lost wages and accruals (minus the suspension period).

- **Washington Correctional Facility.** The member received a Notice of Discipline for shoplifting. The expedited disciplinary arbitration was completed on July 29, 2020. Closing Briefs were submitted on August 5, 2020. On August 17, 2020, we received the Arbitration Award. The member received a ninety-day suspension and will be returned to duty.

Suspension Review:

- **New York State Education Department/New York State Museum:** A Security Officer at the State Museum was issued a Notice of Discipline alleging that he improperly used his personal cell phone while on duty on multiple occasions, committed insubordination and sexually harassed a female coworker. He was suspended without pay and the case was submitted for suspension review. We were successful in arguing that NYSED failed to meet the probable cause standard in its suspension of the member. He was restored to the payroll and will have his leave credits restored retroactive to the date of suspension.
- **Kirby Forensic Psychiatric Center:** A Safety and Security Officer works at Kirby Forensic Psychiatric Center and was issued a Notice of Discipline alleging that he accrued eight-nine (89) unauthorized absences between April 8, 2020 and August 10, 2020. He was suspended without pay and the case was submitted for suspension review. We were successful in arguing that OMH failed to meet the probable cause standard in its suspension of the member. As a result of this decision, the member was restored to the payroll and will have his leave credits restored retroactive to the date of suspension.

Justice Center:

- **Mid-Hudson Forensic Psychiatric Center:** The Justice Center report of substantiated finding alleged that the member (SHTA) engaged in physical abuse of a service recipient by shoving him into a chair and slamming a door on his fingers causing injury. There were two (2) Category 3 charges. The Justice Center hearing was held via videoconference on August 18, 2020. The incident was by all accounts an accident and the member was able to consistently and credibly testify about the Service Recipient's demeanor, as well as the events immediately preceding his fingers being caught in the door. The judge determined that the Justice Center did not meet its burden of proving that the member committed physical abuse by a preponderance of the evidence. Thus, his request that the substantiated report be amended and sealed was granted.
- **Mid-Hudson Forensic Psychiatric Center:** An SHTA at Mid-Hudson Forensic Psychiatric Center received a substantiated Category 2 charge. Two substantiated Category 2 cases within three years will result in placement on the exclusion list, preventing the employee from working with special needs people. In this case, it was alleged that the member failed to

properly supervise a service recipient and failed to lock a bathroom/shower room door, therefore permitting the service recipient an opportunity to harm himself. The Justice Center alleged that the SHTA had an obligation to observe the bathroom area and that he failed to observe the bathroom area, which allowed the incident to occur. A hearing was set for December 1, 2020. Prior to the hearing, the Justice Center amended the charge to a Category 3 and settled the case.

Contract Grievances:

- **CON20-0222 – Statewide Class Action – (Deferral of Contractual Raises):** NYSCOPBA filed this statewide class action grievance when New York State notified the Union that across the board 2% salary raises effective April 1, 2020, would be deferred due to the impact of COVID-19 on State Finances. This grievance also covers each time the raises are deferred, currently deferred until January 2021. NYSCOPBA and GOER agreed that the grievance should be filed directly to Step 3 on April 7, 2020. GOER advised that no answer would be issued, so the Grievance was Auto Progressed per article 7.4 to Step 4 on August 21, 2020. The grievance was introduced to the Alternate Dispute Resolution Process of Arbitration on October 2, 2020, and all parties agreed that the grievance should be advanced to a full arbitration hearing. The selection process for an arbitrator has commenced and a hearing date will be established once the arbitrator is selected.

Civil Service Cases:

- **Rochester Psychiatric Center:** The member was out of work since July 4, 2019 under Section 71 of the Civil Service Law. He intervened during a patient assault on staff to perform a manual body hold and was injured. The member was scheduled to be terminated on July 5, 2020. On May 29, 2020, our office objected to his upcoming termination arguing that he is entitled to two years of leave under the statute because this was a patient assault. We also requested that his termination be held in abeyance as his treatment for his Workers' Compensation injury was delayed due to the halting of non-essential medical appointments and procedures. By letter dated June 18, 2020, OMH granted our request to amend the member's Section 71 leave and extended it to two (2) years.

Improper Practice Charges:

- ***“Clear Bag” Improper Practice Charge Against DOCCS:*** In January 2020, we wrote to DOCCS with respect to the clear bag matter. At that time, DOCCS was insisting on just one set alternative clear bag, with a specific model number and vendor. NYSCOPBA asserted that this insistence was simply unreasonable and that DOCCS was not acting in good faith with respect to these bags. In discussions, NYSCOPBA raised very practical and very real concerns regarding language which limits the alternative bag to just one model number and one vendor. In summary NYSCOPBA contended that it was not practical, and frankly quite unreasonable, to insist on one set bag with a specific model number and vendor. NYSCOPBA proposed language which describes the limitations of an alternative clear bag in a manner which provides specific detail so as to provide standardization. This language provided for a standard type of bag (lunch bag style, one strap, must be black zipper and strap), up to a very specific maximum size. The letter concluded by stating that NYSCOPBA has been very reasonable in addressing the clear bags. “We have addressed each and every concern raised

by DOCCS regarding our proposal. The clear nature of the bag, the uniformity in style, and the maximum size provide the necessary safety and security benefits for the facilities. By insisting on one set bag, DOCCS is simply being unreasonable and not acting in good faith to resolve this matter.” On March 27, 2020, NYSCOPBA received a letter from DOCCS indicating that NYSCOPBA’s proposal was accepted. On April 3, 2020, this matter was settled, allowing for NYSCOPBA to provide represented employees with the referenced additional lunch-style clear bag. The IP is now withdrawn.

General:

- Repeal of 50-a (Statewide Letters to Agencies): Letters were sent to the State agencies that employ NYSCOPBA members as peace officers (DOCCS, OMH, OPWDD, DOH, OPRHP, Lake George Park Commission) explaining NYSCOPBA’s reading of Public Officers Law Section 86 and requesting more information about each agency’s intentions for responding to FOIL requests since the repeal of Civil Rights Law Section 50-a. Thereafter, we forwarded each agency a newly released Committee on Open Government advisory opinion indicating that the law does not require a law enforcement agency to disclose (1) unsubstantiated and unfounded complaints against an officer and (2) allegations or charges of misconduct that have not yet been determined or did not result in disciplinary action. We are following up with these agencies.

Litigation

NYSCOPBA v. NYS DOH and Edmund J. Coletti, as Chief Executive Officer of Helen Hayes Hospital: On August 31, 2020, we filed an Article 78 proceeding to compel DOH and Helen Hayes Hospital to provide to us documents which we requested through FOIL. New York Presbyterian Hospital has been employing safety and security personnel to work at Helen Hayes Hospital. We requested a copy of the Affiliation Agreement between Helen Hayes and New York Presbyterian Hospital and any agreements relating to the hiring of these safety personnel. This proceeding is returnable on October 2, 2020. It appears that OMH is going to comply with our FOIL request.

Statewide – Retiree Health Insurance Litigation (NYSCOPBA v. State, et al.): On November 7, 2020, we received a decision from the Second Circuit Court of Appeals in *CSEA v. New York* regarding the Retiree Healthcare Insurance Litigation. NYSCOPBA has its own litigation with respect to this issue and we expect a decision consistent with the CSEA decision. Briefly, the Second Circuit ***reversed the grant of summary judgment*** to the State of New York and referred the case to the New York State Court of Appeals for its opinion on the issues.

In *CSEA v. New York*, the Court of Appeals reviewed the District Court’s grant of summary judgment for the Defendant. The question at hand was whether New York State either breached its contractual obligation to CSEA retirees by decreasing its contribution to healthcare premiums or by passing legislation, which reduced the State’s contribution to retirees’ healthcare premiums. Rather than reaching a conclusion, the Second Circuit Court of Appeals chose to reverse the grant of summary judgment and certify several questions of law for the New York Court of Appeals to consider. In doing so, the Court stated that the State of New York should be afforded the opportunity to make several of its own determinations regarding the State’s

obligations going forward. The specific questions the Court certified to the New York Court of Appeals for review are:

- 1) Under New York state law, do the CBAs between CSEA and the State create a vested right in retired employees to have the State's rate of contribution to health-insurance premiums remain unchanged during their lifetimes, or if a vested right does not exist from the contract, whether there is sufficient ambiguity on the issue to permit consideration of extrinsic evidence as to whether they create such a vested right?
- 2) If the CBA does create a vested right (whether facially or through extrinsic evidence) in retired employees to have the State's rates of contribution remain unchanged for the duration of their lives, does New York's statutory and regulatory reduction of its contribution rates for retirees' premiums negate such a vested right as to preclude a remedy under state law for breach of contract?

The Court felt it was appropriate to certify these questions because all four of the factors typically considered weighed in favor of certification. Specifically, the Court considered the following factors: (1) whether the New York Court of Appeals has addressed the issue when other New York court decisions are insufficient to predict how the Court of Appeals would rule; (2) whether the plain language of the statute/CBA indicates an answer; (3) a decision on the merits requires value judgments and important public policy decisions better left to the Court of Appeals; and (4) the certified questions will control the outcome of the case. The Court found that all four factors weighed in favor of certification. Therefore, the New York Court of Appeals will answer these questions in a manner it sees fit.

In 2011, NYSCOPBA, along with other unions, filed an action in federal court alleging that New York State unilaterally increased the percentage of contributions that retired employees are required to pay for health insurance benefits in retirement. The complaint alleged that the State violated the Contracts Clause and Due Process Clause of the United States Constitution, impaired Plaintiffs' contractual rights under the terms of their Collective Bargaining Agreement and violated state law. Specifically, section 12.8(a) of the 2007-09 CBA provided: "[t]he State agrees to pay 90 percent of the cost of individual coverage and 75 percent of the cost of dependent coverage, provided under the Empire Plan." The CBAs between NYSCOPBA and New York from 1982 to 2007, contained substantially the same provision regarding payment of healthcare insurance. In the complaint, we alleged:

- 1) that the increase in the percentage of the health insurance premium contribution paid by retirees violated the Contracts Clause of Article I, § 10 of the United States Constitution;
- 2) that the retirees' premium contribution increase violated Plaintiffs' right to due process under the State and Federal Constitutions, respectively.

- 3) that New York State's action to increase contributions was a prohibited act since it was unauthorized pursuant to *Civil Service Law* § 167(8).
- 4) that the increase in the percentage of the health insurance premium contribution paid by retirees breached Plaintiffs' contractual rights under the 2007-09 CBA.

On September 24, 2018, the lower court dismissed the complaint, holding that the retirees' premium rate did not exceed the life of the CBA and that there is not a substantial impairment which violated the Contracts clause. The lower court applied ordinary principles of contract interpretation to conclude that the CBA guaranteed a perpetually fixed premium contribution rate into retirement. See *M & G Polymers USA, LLC v. Hobert Freel Tackett*, 135 S. Ct. 926, 937 (2015) (holding that, while a CBA may explicitly provide that certain terms continue after the agreement's expiration, when a contract fails to address the duration of retiree benefits, "a court may not infer that the parties intended those benefits to vest for life"). While the CBA provides that retirees have the right to continue receiving health insurance through the NYSHIP, it was silent as to the premium contribution rate to be paid by retirees. As to due process claims and violation of *Civil Service Law*, the lower court found that neither the CBA nor *Civil Service Law* § 167 created a property interest in fixed premium contribution rates in retirement. Finally, regarding breach of contract, the Court found that the provisions regarding health insurance premiums do not extend beyond the life of the CBA and do not create a vested right to perpetually fixed premium contributions. We appealed the lower court's ruling on these claims.

Statewide - Civil Service Promotional Exam Fees: The Appellate Division, Third Department, confirmed PERB's decision that the Department of Civil Service violated § 209-a.1 (d) of the Act when it unilaterally began requiring employees to pay a fee for promotional/transitional examinations. The Court also granted PERB a judgment to enforce its order that the State make whole employees for any fees paid. By way of background, NYSCOPBA, along with other unions, filed an IP alleging that the State unilaterally changed its policy and procedure with respect to the fees charged for promotional civil service examinations. This IP went to a PERB hearing before an ALJ, to the full Board, back to the ALJ, to the Board for exceptions and now to the Appellate Division, Third Department. The decision means that the State can no longer charge a fee to NYSCOPBA members to take promotional/transitional exams, and that a number of NYSCOPBA members are entitled to reimbursement for past examination fees already paid. The State has the affirmative obligation to make the affected members whole. We will be following up with GOER to find out how they plan to do this. The State was served with a copy of the Decision with Notice of Entry and now the State has thirty days, until the end of December, to move for leave to appeal to the Court of Appeals. If the State moves for leave to appeal to the Court of Appeals, this appeal is not automatic, it is discretionary.

Attica Correctional Facility: On June 30, 2020, we filed a Verified Petition to confirm the Arbitration Award of a member out of Attica Correctional Facility. The member was suspended for sixty (60) days but DOCCS did not implement the penalty. The member wanted to be suspended for closure of his case. We filed and served the Notice of Petition, Verified Petition and Memorandum of Law. The case was assigned to the Hon. David A. Weinstein. On July 6, 2020, we were notified by Western Region Vice President Mark DeBurgomaster that the member was suspended, which is the relief he wanted. After an Assistant Attorney General is assigned to this matter and we are assured that the relief requested is fully granted, we will be withdrawing

this matter. On August 6, 2020, we notified Judge Weinstein that DOCCS is complying with the Arbitration Award of Timothy Taylor and the proceeding is moot.

[Member] v. DOCCS: We filed an Article 78 proceeding on August 26, 2020, on behalf of a member, who was injured during a use of force at Sing Sing C.F. on June 1, 2018. On that date, the member responded to an emergency wherein an inmate had struck another correction officer with a “wet floor” sign. The member pulled the inmate off of the correction officer and restrained him, as the inmate struggled and refused to give up his hands. During the course of the restraint, the member injured his low back. The inmate assaulted the member under both criminal and civil definitions of assault. DOCCS terminated the member’s employment on May 27, 2020, after only one year of cumulative workers’ compensation leave. The Article 78 petition challenges DOCCS’ definition of ‘assault’ and requests that the court give the member a two-year leave of absence because he sustained injury as a result of an inmate assault. We received the State’s responding papers. We await a decision.

[Member] v. NYSCOPBA and Michael Powers: During December, 2017, the member, a correction officer at Riverview Correction Facility, commenced this action alleging a number of constitution claims based on allegations that overtime was not distributed in a fair and non-discriminatory manner. Our Motion to dismiss was filed in January, 2018. The member opposed the Motion and moved for leave to file an Amended Complaint. We opposed the motion to amend on the grounds that the proposed amendments were futile. On March 22, 2019, the Court issued its Decision and Order which granted the Plaintiff’s motion to amend. The Court then proceeded to dismiss the Plaintiff’s Amended Complaint. All of the Plaintiff’s Federal Claims against NYSCOPBA have been dismissed and the Court has declined to exercise jurisdiction as to Plaintiff’s State Law claims. Unless Plaintiff files a Notice of Appeal, this litigation is at an end.

On April 22, 2019, we received a Notice of Judicial Assignment which means that the member filed a Request for Judicial Intervention (“RJ”) in St. Lawrence County. On April 23, 2019, NYSCOPBA was served with Summons and Complaint in State court action commenced by the member. The Complaint had to be answered or moved against by May 13, 2019. We filed a Motion to Dismiss the Complaint which was returnable on June 7, 2019. We appeared in St. Lawrence County Supreme Court for oral argument. On May 14, 2020, we received a written decision from the State Court. The member’s State Court Complaint again set forth his alleged Federal Claims. The Federal Claims had previously been litigated and dismissed on the merits. For that reason, all of the Federal Claims against the NYSCOPBA Defendants and the State Defendants were dismissed on the grounds of res judicata or collateral estoppel.

As to the member’s breach of contract causes of action against NYSCOPBA, the court dismissed these claims, because the member was not a party to the Collective Bargaining Agreement. The court noted that, generally, a person may not assert a breach of contract claim against a person or entity with which he or she is not in privity. The court noted that the member was not a contracting party. “As a result, ‘he lack[s] privity and may not assert contractual claims directly against the State [of New York] based upon the collective bargaining agreement.’” As to NYSCOPBA, the court held that a union member has no cause of action for breach of contract against his union for breach of the collective bargaining agreement. The court also rejected the member’s argument that he was a third-party beneficiary of the collective bargaining agreement. The member’s Taylor

Law Claims against the NYSCOPBA Defendants were dismissed as untimely. CPLR 217(2)(a) contains a four-month statute of limitations for breach of the duty of fair representation. The member filed a Notice of Appeal and has six months to file the Record and his Brief. The member has filed a Motion in the Appellate Division, returnable on November 9, 2020, seeking an extension of time to file his Record and Brief and seeking an order to the effect that the Federal Court Decision by Judge Hurd not be included in the Appellate Division Record. The member's Motion was denied by the Appellate Division and his Record and Brief are due on December 15, 2020.

On October 9, 2020, the member filed a Notice of Appeal in the U. S. District Court of the Northern District of New York. This was an appeal of Judge Hurd's Decision dated March 22, 2019. On October 30, 2020, the NDNY issued a Certificate to the effect that the appeal was untimely. We anticipate the Second Circuit Court of Appeals will dismiss this appeal.

[Member] and NYSCOPBA v. NYS DOH and NYS Department of Civil Service: We prepared an Article 78 Proceeding challenging the use of temporary SSA1s by OMH. OMH has several vacant SSA1 and SSO1 permanent positions and is using temporary SSA1s to perform these duties. The temporary positions exceed the time limits on such appointments found in Civil Service Law Section 64 and violate the merit and fitness requirements of Civil Service Law Section 61 and Article V, Section 6, of the New York State constitution. The Petition was filed on October 23, 2019, with a return date of December 6, 2019. At the request of the Attorney General's Office this matter was adjourned to January 24, 2020. On January 21, 2020, we received the State's Motion to Dismiss the Petition. On January 22, 2020, we filed our Memorandum in Opposition to the Motion to Dismiss. On May 19, 2020, we received a Decision on the State's motion to dismiss the Petition. The court denied the State's motion to dismiss the Petition. The court held that the member had standing, and the court denied the State's motion to dismiss for failure to exhaust administrative remedies on the grounds that the Petition alleged statutory violations, not contract violations. DOCCS has thirty days from service of the Order to address the merits of the Petition. We were finally able to serve the Order with Notice of Entry on the State on July 9, 2020. The State's Answer is due on September 25, 2020. This case was adjourned to November 24, 2020. On November 30, 2020, we received the State's Answering Papers. None of the SSAs whose employment we challenged are employed, at this time, by Helen Hayes. Pursuant to a statewide contract entered into by NYS OGS, in November, 2019, with Simaren Corp. for the provision of security guard services, Helen Hayes is now contracting with Simaren Corp. for security guards. This type of contracting out is permitted by Section 25.8 of our CBA and is a carry-over from the Council 82 agreement. Because the Security Guards are not State employees, they are not subject to requirements of the Civil Service Law. Our litigation is moot. All of the illegally retained temporary SSAs, whose employment we sought to terminate, are no longer employed. There is no relief that the court can afford to NYSCOPBA.

[Member] and NYSCOPBA v. NYS DOCCS: This is an Article 78 Proceeding involving DOCCS' termination of the employment of a member pursuant to Section 71 of the Civil Service Law. The member was injured during the restraint of an inmate who had refused to be escorted to keeplock and who punched another officer in the face. Once again, DOCCS determined that this was not an assault and only gave the member a one-year leave. We contend that the member was assaulted and is entitled to a two-year leave. This Proceeding was commenced on May 7, 2019, and was

returnable on June 21, 2019. On September 9, 2019, we received a decision from the Supreme Court dismissing our Petition. On September 30, 2019, we filed a Notice of Appeal. Our Record and Brief were filed on December 10, 2019. State's Brief was filed on March 16, 2020. On April 27, 2020, we filed a motion to stay all proceedings pending the decision of the Court of Appeals in *Matter of Froehlich*. The decision in *Froehlich* should control a number of the Section 71 cases. On May 29, 2020, we received an Order from the Appellate Division, Third Department, staying all proceedings until a determination of the Court of Appeals in *Matter of Froehlich*. On November 12, 2020, the court issued a decision dismissing the Petition based on the *Froehlich* decision.

[Member] v. DOCCS: We filed an Article 78 proceeding on May 27, 2020, on behalf of a member, who was injured during a use of force at Elmira CF on February 8, 2019. On that date, the member responded to an emergency wherein an inmate had destroyed State property inside his cell and barricaded himself inside of his cell. The Superintendent authorized a cell extraction using chemical agents and the member was directed by his supervisor to deploy the chemical agents, and when they failed, to enter the inmate's cell, restrain him and remove him from the cell. During the course of the restraint, the member injured his left knee. The inmate assaulted the member under both criminal and civil definitions of assault. DOCCS terminated the member's employment on March 5, 2020, after only one year of cumulative workers' compensation leave. The Article 78 petition challenges DOCCS' definition of 'assault' and requests that the court give the member a two-year leave of absence because he sustained injury as a result of an inmate assault. We have received the State's responding papers. We await a decision from the Court.

[Member] v. DOCCS/[Member] v. DOCCS: These are two separate Article 78 proceedings challenging each member's termination after one year of workers' compensation leave. These petitions allege that each member's workers' compensation leave was due to an assault by an inmate, therefore they should each be entitled to two years of leave under Civil Service Law Section 71. We have received decisions in each of these cases dismissing the petitions. The Judge in each case held that DOCCS' determination that the individuals were not "assaulted" as the term is used in Civil Service Law Section 71, was not arbitrary and capricious. The Judge did not agree with our arguments that the penal law definition of assault should apply. The Notice of Appeal in both the cases were filed to protect the right to perfect the appeal. The appeals have both been perfected as of August 5, 2020. In the first case, we await a potential reply brief from DOCCS. In the second case, we received the State's Respondent's brief and we await a decision from the Court.

[Member] v. DOCCS: This is another Article 78 Proceeding challenging DOCCS giving the member a one-year, as opposed to a two-year, leave pursuant to Section 71 of the Civil Service Law, when he was injured in an inmate restraint. On April 4, 2019, the Supreme Court dismissed our Petition. We appealed the dismissal. The Record and Brief was filed in the Appellate Division, Third Department, on December 9, 2019. The State filed its Brief on February 24, 2020. The matter was scheduled for the May, 2020, Term of the Appellate Division. On May 29, 2020, we received an Order from the Appellate Division, Third Department, which granted our Motion to Stay all further proceedings until the determination of the court of Appeals in *Matter of Froehlich*.

On November 19, 2020, the Appellate Division issued a decision dismissing our Petition on the basis of *Matter of Froehlich*.

[Member] v. DOCCS: On November 1, 2019, we filed an Article 78 proceeding in Albany County Supreme Court challenging the termination of the member. This member was terminated after one year of workers' compensation leave, when we argue he is entitled to two years due to an assault. We will file a notice of appeal.

[Member] v. NYS DOCCS: This is a declaratory judgment action that was commenced as a result of DOCCS' refusal to reinstate former member pursuant to Section 71 of the Civil Service Law. The member was found medically fit perform his duties, but DOCCS required the member to undergo the psychological evaluation required of new recruits. DOCCS then found the member to not be psychologically suited to be a correction officer trainee. DOCCS refused to provide us with the factual basis for its determination and refused to provide any of the documents considered in reaching its determination. Our position is that a former officer, seeking reinstatement pursuant to Section 71, has a constitutionally protected property interest in his or her right to reinstatement. We argued that it is a due process violation for DOCCS to depart from the plain language of Section 71 and use Correction Law § 8 to evaluate candidates for reinstatement. We also argued that it is a due process violation for DOCCS to refuse to provide the test results to a candidate for reinstatement. DOCCS has moved to dismiss our Complaint, or, in the alternative, convert the declaratory judgment action into an Article 78 Proceeding. The motion is returnable on November 12, 2020. We filed our opposition papers to the Motion on October 7, 2020.

[Member] v. DOCCS: This is another Article 78 Proceeding arising out of the termination of a member's employment, by DOCCS, because he was out of work for a period in excess of one year. The member was injured restraining a parolee/inmate who was attempting to swallow contraband. We contend that the member should have been given a two-year leave pursuant to Section 71 of the Civil Service Law. This proceeding is also based upon the definition of Assault in the Second Degree contained in Sections 120.05 (3) and 120.5 (6) of the Penal Law. Our Article 78 was returnable on October 26, 2018, but, at the request of the State, was adjourned to November 23, 2018. Our Reply Memorandum was filed on November 21, 2018. On December 19, 2018, we received a Decision dismissing our Petition. We filed a Notice of Appeal on January 11, 2019. On April 9, 2019, our Record and Brief was filed in the Appellate Division, Third Department. The State's Brief was filed on June 10, 2019. We filed our Reply Brief on June 18, 2019. Oral argument went forward on November 15, 2019. On January 30, 2020, we received a Decision from the Appellate division, Third Department. The court rejected our argument that the Penal Law definitions of assault should be applied by DOCCS. This was a three-to-two decision by the Court. The two dissenting Justices reached the conclusion that, using DOCCS' definition of assault, the determination that the member was not assaulted lacked a rational basis and was arbitrary and capricious. Because there were two dissents, we have an appeal by right to the Court of Appeals. We filed a Notice of Appeal on February 6, 2020. The Court has decided to handle this appeal in the alternative manner, i.e. to decide the case based on the appellate division record and briefs, supplemented by letter briefs from the parties. Our submissions were filed prior to March 27, 2020. The State filed its submissions on May 4, 2020. On June 25, 2020, we received a Decision which dismissed our Appeal. The Court of Appeals concluded that the two dissenting Justices at the Appellate Division dissented on a question of fact, not a matter of law, and,

therefore, the Court of Appeals did not have jurisdiction. It appears that the Court concluded that the issue of whether an inmate's conduct rises to the level of an assault is question of fact.

Elmira Correctional Facility (DOCCS Violation of IP Settlement): NYSCOPBA and DOCCS settled the underlying improper practice charge by agreeing that DOCCS will provide NYSCOPBA notice and details regarding certain planned changes to posts at Elmira Correctional Facility so that NYSCOPBA could provide meaningful insight into the practical effects of the changes and NYSCOPBA acknowledged that it could not prevent those staff-related changes. DOCCS proceeded to violate the terms of the settlement by failing to provide NYSCOPBA with sufficient notice to allow it to provide such input. This office filed a summons and complaint in Supreme Court, Chemung County, alleging breach of contract for violating the settlement. This matter proceeded to the discovery phase until the parties entered into settlement discussions. Since then, the settlement discussions have stalled and we planned to continue discovery. Based on the threat of discovery, the State has proposed terms of settlement, which are currently being vetted.

[Member] v. DOCCS: This is an Article 78 Proceeding that we filed in the Supreme Court of the State of New York, County of Albany, on November 21, 2019. The member sustained injuries restraining a combative inmate who was in possession of a weapon. DOCCS determined that the member was not injured in an assault and terminated his employment after a one-year leave. We contend that the member was assaulted and is entitled to a two-year leave pursuant to Section 71 of the Civil Service Law. At the State's request, this matter was adjourned to January 31, 2020. On August 3, 2020, we received a Decision/Judgment dismissing the Petition. This decision was based on the Court of Appeals decision in *Matter of Froehich* in which the Appellate division, Third Department, found DOCCS' definition of assault to be wholly rational.

Trump Flag Litigation (NYSCOPBA and [Member] v. DOCCS): On October 7, 2020, we filed a summons and complaint, order to show cause seeking a temporary restraining order and preliminary injunction, supporting affidavits and a memorandum of law alleging that DOCCS violated the member's Constitutional rights, including his right to free speech, when it directed him to remove a "Keep America Great Trump 2020" banner from his personal vehicle in the employee parking lot of Downstate Correctional Facility. Just prior to appearing before a Judge, DOCCS signed an agreement allowing all NYSCOPBA members to affix any size political banner, supporting a specific candidate for office, to their personal vehicles in employee parking lots at all DOCCS facilities.

Discipline

Interrogations: For the months of April to November 2020, we represented one hundred twenty-eight (128) members who were interrogated by DOCCS.

Suspension Review Process: Since March 12, 2019, we have reviewed each suspension NOD to determine a) if it qualifies under the suspension review program and b) if it is a viable case to take to the Master Arbitrator to argue that on the face of the NOD, the grounds for the suspension have not been met. As of December 4, 2020, of the suspension cases for which we have requested

review, the Master Arbitrator overturned sixteen (16) suspensions and upheld twenty-one (21) suspensions. Twenty-eight (28) cases were settled.

Auburn Correctional Facility: The NODs allege that the member, and another officer, failed to adequately conduct security rounds/counts and, in so doing, failed to promptly detect the presence of an inmate who committed suicide on Tour 1. The Department suspended the member and sought termination. This matter was submitted for expedited arbitration and NYSCOPBA's Western Region/Local Representatives and the law firm immediately pressured the Department through numerous additional evidentiary demands plus an investigatory trip to C Block at Auburn CF. Shortly after the site visit and the latest round of targeted document demands, this office received a phone call from the attorney from the Department's Bureau of Labor Relations who was prosecuting the case. The Department relayed that they did not feel as though they could prove the cases against our members because they did not have a time of death. The Department withdrew the charges and reinstated the member to duty with back pay.

Auburn Correctional Facility: The NODs allege that the member failed to adequately conduct security rounds/counts and, in so doing, failed to promptly detect the presence of an inmate who committed suicide on Tour 1. The Department suspended the member and sought termination. The member has just over one (1) year on the job. An additional member was suspended and received an NOD for the same inmate suicide. This matter was submitted for expedited arbitration and NYSCOPBA's Western Region/Local Representatives and the law firm immediately pressured the Department through numerous additional evidentiary demands plus an investigatory trip to C Block at Auburn CF. Shortly after the site visit and the latest round of targeted document demands, this office received a phone call from the attorney from the Department's Bureau of Labor Relations who was prosecuting the case. The Department relayed that they did not feel as though they could prove the cases against our members because they did not have a time of death. The Department withdrew the charges, reinstated the members to duty, and returned their lost pay.

Bedford Hills Correctional Facility: The NOD alleged that this member engaged in an excessive use of force. By way of background, an inmate who had recently bitten the member during a prior use of force, called her as a witness for a tier hearing. The member refused to attend originally but ultimately was given a direct order by her supervisor. Specifically, her concerns that this inmate was setting her up went all the way up to a captain, yet she was still forced to go, despite there being a directive allowing witness testimony outside the presence of an inmate under certain circumstances. No security staff aside from her were present for the hearing. At the conclusion of the tier hearing, the inmate (who was in a restart chair) was able to remove her boot, stand up and throw the boot at the member. This was all captured on video. The video shows the member immediately run over to the inmate and strike her with a closed fist ten (10) times while the inmate was shackled to the restart chair. This matter went to arbitration before Arbitrator Trachtenberg on March 4-5th, 2020. We argued that the use of force was authorized and appropriate pursuant to the directive for self-defense and to protect a civilian hearing officer that was in the room. The inmate was being considered for a close monitoring case and had a history of staff assaults and getting loose from shackles and boasting about it. Arbitrator Trachtenberg decided that termination was not appropriate. He awarded a four-month suspension without pay. The member has since returned to work

Bedford Hills Correctional Facility: The NOD alleges that the member was insubordinate towards a supervisor while on her post. The matter was scheduled for a hearing on July 23, 2019, before Arbitrator Timothy Taylor, but was postponed due the unavailability of a key witness for health-related reasons. The matter has since been adjourned without a date due to the member's concerns over contracting COVID-19 during a hearing in close proximity to others. The matter was rescheduled for a hearing on August 6 and 7, 2020. The matter settled prior to the hearing.

Bedford Hills Correctional Facility: The member received a Notice of Discipline for an inappropriate relationship with a former inmate. This matter was scheduled for arbitration on October 13, 2020, before Arbitrator Elena Cacavas. The matter is now settled.

Cape Vincent Correctional Facility: The member is charged with going to an outside pub while on duty without authorization and driving another officer's personal vehicle to his or her home residence after consuming alcohol and then reporting to the facility to sign out. A hearing was scheduled before Arbitrator Edward Battisti on March 31, 2020. This case is now settled.

Cape Vincent Correctional Facility: The member was charged with consuming alcoholic beverages and driving a facility vehicle. A conference call between the parties and the arbitrator was held on March 15, 2020 and the matter was resolved.

Central New York Psychiatric Center: The member (SHTA) received a Notice of Discipline for filing false documents with AFLAC. His arbitration was scheduled for March 4, 2020. This matter was settled.

Central New York Psychiatric Center: In this case, OMH sought dismissal from service for two (2) Security Hospital Treatment Assistants (SHTAs) at the Central New York Psychiatric Center (CNYPC). The case began almost 4 years ago, when a patient without any provocation, violently assaulted another SHTA. The patient struck the SHTA so hard that his facial bones were exposed. After the initial strike, the patient did not surrender, but violently fought back against three (3) responding SHTAs. During the ensuing struggle, the patient was injured. The New York State Police assumed that the two SHTAs were responsible for the patient's injuries and commenced an investigation. The matter was presented to an Oneida County Grand Jury, and after a thorough Grand Jury investigation, the matter was 'no-billed' (no criminal charges). Following a lower court order to release the Grand Jury proceedings, the New York State Appellate Division, Fourth Department upheld findings and sealed the record. No criminal charges were ever filed and no criminal charges are presently pending against the members.

Almost 3 years after the incident, the Justice Center commenced an administrative investigation. The Justice Center investigation found that one member kicked the patient in the head immediately following the restraint and the other member used a garbage can to strike the patient in the head after he was placed in the side room. Prior to the hearing, we moved to dismiss because of the delay in serving the Notices of Discipline beyond the nine (9) month requirement in the contract. The Arbitrator denied our motion, so hearings were held on June 23, 24 and 25, 2020. On October 5, 2020, we received a decision from the arbitrator finding the members not guilty of all charges and reinstating them with back pay.

First, the “victim/patient” did not testify. Regarding that fact, the arbitrator stated, “[t]he union’s case was substantially prejudiced by the lack of testimony from this key witness in the instant matter.” Second, the arbitrator found the key witness against one of the members to be “questionable” because 1) she never made any effort to stop the alleged kicking, 2) she never reported the alleged kicking, 3) she did not report the kicking to anyone, other than another nurse (the other nurse did not confirm her testimony) and, 4) her testimony was inconsistent. Third, regarding the other member’s alleged use of the garbage can, the arbitrator found, “it is extremely difficult to comprehend how the State would allege that Grievant ... struck [the patient] in the head with a trashcan when the evidence of such an act is either lacking or severely circumstantial.” Accordingly, based upon his complete discussion, the arbitrator found both members not guilty and awarded back pay.

Clinton Correctional Facility: The NOD in this case alleged that the member harassed a female civilian staff member and provided false statements in an OSI interrogation. The NOD in this case sought termination. The member agreed to settle this matter for a suspension of approximately 3 months and a 6-month disciplinary evaluation period.

Clinton Correctional Facility: The member is charged with misconduct for allegedly touching an inmate in a playful manner. Additionally, she is charged with reaching her hands towards the pocket of the inmate and other charges relating to the same incident. This matter has been assigned before Arbitrator Timothy Taylor who has tentatively scheduled this matter for February 16-17, 2021.

Coxsackie Correctional Facility: The NOD alleges that the member, while off-duty, impersonated a police officer when he allegedly used a privately installed bubble light in his personal vehicle to pull over an off-duty NYS Trooper and for lying to OSI at two (2) interrogations about the circumstances surrounding the incident. Arbitrator Edward Battisti was assigned to this matter and the matter was scheduled for a hearing on April 2, 2020. Prior to the hearing, the member accepted a settlement offer and returned to duty.

Coxsackie Correctional Facility: The member received a Notice of Discipline for calling in a false COVID positive test result. This matter was heard at expedited arbitration on December 3, 2020. Closing Briefs are due on December 10, 2020.

Coxsackie Correctional Facility: This member was charged with reporting to duty in an unfit manner on October 19, 2020. The matter was filed for expedited arbitration and a hearing date was scheduled for December 3, 2020 before Arbitrator J. Roger Rice. By Settlement Agreement dated November 13, 2020, the parties agreed to resolve this matter where the member will serve a suspension without pay for the period of October 19, 2020 through and including November 15, 2020. He has agreed to a 24-month same or similar disciplinary evaluation period, as well as attending mandatory counseling relating to issues which led up to the Notice of Discipline. The member has also agreed to random drug testing at the discretion of the Bureau for Labor Relations for a 2-year period to commence upon the signing of the Agreement.

Downstate Correctional Facility: The NOD alleges that the member was insubordinate in that she failed to comply with an order to provide a memorandum to her supervisor regarding why she was not in compliance with the Uniform/Equipment/Appearance directive due to her fingernails being painted; that the member was insubordinate in that she left the supervisor's office despite a direct order for her not to leave; and that the member was insubordinate in that she failed to speak to the Watch Commander on the telephone at her supervisor's direction. The NOD seeks a fifteen-day suspension without pay. This matter has been scheduled for a hearing on January 7, 2021, before Arbitrator Ed Battisti.

Downstate Correctional Facility: The member received a NOD on October 8, 2019, following an incident that occurred on September 9, 2019. On that date, she operated a motor vehicle under the influence of alcohol during which time she struck a motorcyclist causing personal injuries and then left the scene of the accident. She has received various criminal charges, most notably felony charges for vehicular assault in the 2nd degree and leaving the scene of a serious physical injury accident. DOCCS is seeking dismissal. The member is currently suspended without pay. This matter has not been appealed to arbitration since there has been no agency level decision as of yet. The matter will not be scheduled for a hearing until the underlying criminal charges are resolved, which may lead to automatic dismissal from service by operation of law upon a felony conviction. The member's criminal matter remains unresolved at this point as the courts in Dutchess County were closed due to COVID-19.

Eastern Correctional Facility: The member received a NOD dated November 7, 2019, alleging that he made a false statement in an official investigation regarding a lost firearm. He was also suspended without pay. He was arrested and charged with a misdemeanor for "Making a Punishable False Written Instrument" on November 1, 2019. The NOD also contains an allegation that the member lost or could not locate the subject firearm between December 2018 and January 2019. DOCCS sought dismissal. This matter is now settled.

Eastern Correctional Facility: The NOD alleges that on January 7, 2020, while on duty, the member failed to properly perform his duties, exceeded his authority and duties, and jeopardized the safety of staff; singled out the female staff and created a gender discriminatory environment; and while at the Training Academy and in an official interrogation with OSI, provided false statements. The member agreed to a settlement of a suspension without pay from February 4, 2020, through and including March 26, 2020, returning to the payroll effective March 27, 2020. He received two weeks (ten days) of previously used accruals and will serve a 12-month Disciplinary Evaluation Period.

Edgecombe Correctional Facility: The NOD alleges that the member engaged in an inappropriate sexual relationship with an inmate and had inappropriate and/or unauthorized contact with an inmate via telephone calls and text messages. It is also alleged that the member failed to report another inmate that had a romantic interest in him and that he provided false/misleading information at his interrogation by OSI on March 3, 2020. He was suspended without pay effective March 31, 2020. This has been appealed to arbitration. Arbitrator Jay Siegel is assigned. The hearing is scheduled for February 10th, 2020.

Fishkill Correctional Facility: The NOD alleges that on August 30, 2019, while off duty, the member punched and/or kicked an individual upon her face and/or body and was arrested. The member agreed to a settlement of a period of unpaid suspension from September 3, 2019 through March 19, 2020, and will serve a one-year Disciplinary Evaluation Period.

Fishkill Correctional Facility: The NOD alleges that the member pushed and/or struck an inmate in the head and/or chest area and provided false documentation/testimony regarding same. The hearing was held before Arbitrator Tim Taylor on the following dates: September 3, October 19, October 23, 2020, and November 24, 2020. After the final day of hearing, the parties rested and agreed upon a briefing schedule whereby the closing briefs shall be submitted to the Arbitrator by end of day on December 23, 2020. The Arbitrator will then have thirty (30) days to render and submit his decision.

Fishkill Correctional Facility: This member is charged with making false and/or inaccurate reports regarding a use of force. The Notice of Discipline is dated September 18, 2019. The matter has been assigned to Arbitrator Samuel Butto. Arbitrator Butto has offered the dates of January 13 and 14, 2021 to hear this matter. Subsequently Arbitrator Butto advised that he is not available as he is taking a personal leave from the Disciplinary Arbitration Panel. A new date needs to be scheduled.

Fishkill Correctional Facility: The NOD alleges that on July 26, 2018, while on duty, the member submitted a false and/or misleading official document regarding a Use of Force with an inmate. We have been advised that the member has retired.

Fishkill Correctional Facility: The NOD alleges that on July 26, 2018, while on duty, the member submitted a false and/or misleading official document regarding a Use of Force with an inmate. The matter was assigned to Arbitrator Timothy Taylor and is scheduled for hearing on January 20, 2021.

Fishkill Correctional Facility: The NOD in this case alleged that the member used excessive force on an inmate and failed to document that excessive force in his Use of Force Report. The NOD in this case sought termination. The member agreed to settle this matter for a suspension of approximately 48 days and a one-year disciplinary evaluation period.

Fishkill Correctional Facility: The NOD alleges that the member unlawfully discharged a firearm and shot a raccoon while the member was off duty at his residence and was arrested and charged with violating NYS Penal Law § 120.20 (reckless endangerment 2°), a Class A Misdemeanor, and NYS Agriculture and Markets Law § 353-a, Article 26 (aggravated cruelty to animals), a Felony, and seeks dismissal from State service. The member agreed to settle this matter for a suspension without pay from September 26, 2018 through April 1, 2020, and a 12-month Disciplinary Evaluation Period.

Fishkill Correctional Facility: The member received a NOD dated May 9, 2019 for an alleged incident occurring on April 10, 2019 wherein he backed a state van into a loading dock but did not immediately report it. DOCCS is seeking a 30-day suspension without pay. Arbitrator Campagna

was assigned. The hearing was scheduled for March 26, 2020. However, the member retired prior to the hearing.

Fishkill Correctional Facility: The NOD, dated November 1, 2019, alleges that the member was AWOL thirty-seven (37) times between August 10, 2019 and October 19, 2019. DOCCS is seeking a \$2000 fine, loss of ten (10) days accruals, and loss of swaps. This matter was appealed to arbitration. In the interim, the matter was settled. The settlement documents are currently pending.

Franklin Correctional Facility: The NOD in this case alleges that the member filed a fraudulent insurance claim, was charged with Insurance Fraud in the 2nd Degree, trespassed, was charged with Criminal Trespass in the 3rd Degree, hid assets from his creditors to avoid repossession, and made a false written statement to the NYS Police. The NOD seeks termination. A hearing in this matter had been scheduled for July 8, 2020, before Arbitrator Butto. Due to the Arbitrator's unwillingness to conduct the hearing in person, and DOCCS' unwillingness to conduct the hearing by videoconference, the Arbitrator recused himself. Arbitrator Taylor was subsequently assigned, and the hearing went forward on August 25, 2020. Briefs were submitted in October. Arbitrator Taylor issued his decision in November 2020 and decided to termination Officer Chambers.

Franklin Correctional Facility: The NOD alleges that the member illegally purchased and possessed a controlled substance, which led to his arrest for same. The criminal charge has since been dismissed. The matter was scheduled for a hearing on August 13, 2020, before Arbitrator Timothy Taylor. The member resigned in advance of the hearing.

Franklin Correctional Facility: The NOD alleges that the member posted a racist comment on a Facebook friend's post. It is alleged that a screen shot of this comment was posted on DOCCS' Facebook page. The NOD further alleges that the member provided false and/or misleading information at his OSI interrogation when he stated the comment was made two years ago. The member was suspended without pay. We filed for expedited arbitration on his behalf. Arbitration was scheduled for September 30, 2020 before Arbitrator Butto. This matter settled in advance of hearing.

Gouverneur Correctional Facility: The member received a NOD for making a racially insensitive post on his Facebook page and for lying at his interrogation. The arbitration was held on July 12, 2019. Closing Briefs were filed on September 6, 2019. On September 16, 2019, we received the Award from Arbitrator Babiskin who found the member guilty and gave him the opportunity to resign or be terminated. On October 1, 2019, DOCCS refused the member's resignation and terminated his employment. We commenced a special proceeding to confirm the arbitration award and compel DOCCS to accept the resignation. The return date is November 12, 2019. The AAG assigned to the case has requested a one-month adjournment until December 17, 2019. The State filed a cross-motion to vacate the arbitration award which was returnable on December 30, 2019. On December 23, 2019, we filed our opposition to the cross-motion. On March 17, 2020, we received a decision from the Supreme Court granting our application and ordering DOCCS to accept the member's resignation.

Great Meadow Correctional Facility: The member received a NOD for on duty personal cell phone use. This included use at both his personal vehicle and while working as an outside inmate transport officer, including a date on which it is alleged he sent/received over 450 texts. The NOD also contained allegations of inaccurate time records and that the member contacted an inmate's family member. DOCCS sought dismissal. In advance of the hearing, the member agreed to settle the matter for a suspension-to-date (six and ½ months) and a 1-year disciplinary evaluation period, limited to the NOD allegations regarding cell phone use and contact with an inmate's family member.

Great Meadow Correctional Facility: The member received an NOD for failing to intervene and stop an inmate suicide. Arbitration on this matter went forward on September 23, 2020, before Arbitrator Butto. Closing briefs were due on November 4, 2020. On November 17, 2020, we received the Award which found the member guilty and imposed a suspension to date. The member is also required to serve a twelve-month DEP.

Greene Correctional Facility: The member received a Notice of Discipline, dated April 11, 2019, for not being attentive to her assigned duties. This matter was adjourned without date.

Greene Correctional Facility: The NOD alleges that the member inappropriately slapped the buttocks of a civilian staff member at Albany Medical Center ("AMC") while on duty and in uniform at AMC and lied and/or provided false information regarding same. Prior to hearing, this matter was settled and the member is scheduled to return to work.

Green Haven Correctional Facility: The member received a Notice of Discipline which charges her with getting in an argument with a fellow officer and using racially insensitive language. Her arbitration went forward on scheduled for February 26, 2020. Closing Briefs were filed on May 11, 2020. Arbitrator Battisti found the member guilty of both charges in her NOD and terminated her employment.

Green Haven Correctional Facility: On February 13, 2020, the member was issued a NOD for allegedly being insubordinate in failing to turn in various timecards/timesheets. DOCCS is seeking thirty (30) days suspension. The matter was appealed to arbitration. The matter is now settled.

Green Haven Correctional Facility: The member was issued a notice of discipline on August 3, 2020. He is currently suspended without pay. The NOD alleges that he used excessive force in striking an inmate in the back of the head with his elbow and pushing the inmate's head into steel bars while in mechanical restraints. It is also alleged that he improperly used his body worn camera, that he completed his use of force paperwork based on information given to him by other staff members, that he left the officer's station unattended, and that he provided false/misleading information to his supervisor on the date of the incident and to OSI at his interrogation. The member was issued a separate NOD on July 22, 2020 alleging that he was AWOL from July 6, 2020 to July 20, 2020 and that he was also insubordinate on those dates for failing to comply with a supervisor's direct order for him to appear in person at the facility (he was on administrative leave at the time) to be issued paperwork. Both NODs were appealed to arbitration. The July 22, 2020 NOD is assigned to Arbitrator Jay Siegel and is scheduled for hearing on March 11, 2021.

The August 3, 2020 NOD is assigned to Arbitrator Robert Reden and is scheduled for hearing on March 2, 2021.

Green Haven Correctional Facility: The member was issued a total of three NODs (May 17, 2019, December 10, 2019, and July 16, 2020) alleging more than one hundred combined AWOLs. The second and third NODs sought termination. The hearing for the May 17, 2019 NOD was scheduled for August 4, 2020 before Arbitrator Dennis Campagna. The December 10, 2019 NOD was assigned to Arbitrator Taylor, but had not yet been scheduled for hearing. The July 16, 2020 was issued and immediately included within a settlement agreement for all three NODs. The matter settled for a one (1) year DEP, with no fine or loss of accruals or swapping privileges. On August 21, 2020, Director Shipley terminated the member for violating the terms and conditions of his DEP. We filed two letters in objection to the termination, along with supporting documentation, and held a conference call with DOCCS. Director Shipley upheld the termination on August 28, 2020. We will file an Article 78 proceeding to challenge the termination.

Green Haven Correctional Facility: The NOD in this case alleged that the member was found sleeping and/or giving the appearance of sleeping while on duty at Westchester Medical Center. The NOD further alleged that the member made false statements regarding the allegations. An expedited arbitration hearing in this case was scheduled for October 5, 2020, before Arbitrator Douglas. Prior to the hearing date, the member accepted a settlement to resolve the NOD.

Hale Creek ASACTC: The termination NOD in this case alleged that the member engaged in workplace violence against a fellow officer. A hearing in this matter was scheduled for December 4, 2020, before Arbitrator Taylor. Prior to the arbitration, the member accepted a settlement offer.

Kirby Psychiatric Center: The member works at Kirby Forensic Psychiatric Center and was issued a Notice of Discipline alleging that he accrued eight-nine (89) unauthorized absences between April 8, 2020 and August 10, 2020. He was suspended without pay and the case was submitted for suspension review. We were successful in arguing that OMH failed to meet the probable cause standard in its suspension of the member. As a result of this decision, the member will be restored to the payroll and have his leave credits restored retroactive to the date of suspension. This matter has yet to be appealed to arbitration. Accordingly, there is no arbitrator assigned as of yet.

Kirby Psychiatric Center: The member was issued a notice of discipline alleging that she acted inappropriately toward a co-worker, including making the statements “Do you like chaos?” and “snitches get popped” and slapping another co-worker on the rear end. Arbitrator Bruce Trachtenburg has been assigned. The matter is currently adjourned without date.

Manhattan Psychiatric Center: The member received a NOD for failing to investigate an alleged sexual assault of a female SSO. The hearing was scheduled for May 23, 2019. This matter was adjourned to July 23, 2019. This matter is now settled.

Marcy Correctional Facility: On September 30, 2020, the member was issued a Notice of Discipline alleging failure to conduct the count during his shifts on February 10-11, 2020. It is

also alleged that on September 15, 2020, he was reading a book on duty, failed to complete a round, but recorded that the round had been completed, and left his assigned post without proper relief. The member was suspended without pay on September 24, 2020. This matter is in the process of settling.

Marcy Correctional Facility: The member was issued a Notice of Discipline containing various charges based upon allegations of pre-filling inmate count slips, failing to perform counts, failing to perform rounds, making false logbook entries, and leaving his post without authorization on various dates. This matter is in the process of settling.

Marcy Correctional Facility: The member received a Notice of Discipline for a domestic violence incident. This matter has been settled.

Marcy Correctional Facility: The NOD alleges that the member was in possession of a Glock 36 45 mm, which was allegedly visible, on school grounds. A hearing in this matter was scheduled for October 8 and 9th, 2020 before Arbitrator Ed Battisti. DOCCS withdrew the Notice of Discipline on October 7, 2020. On behalf of this member, we contacted DOCCS Office of Special Investigations regarding the removal of the member's weapons prohibition. Jason Combs has advised us that the member's weapons prohibition has been removed.

Marcy Correctional Facility: The member was issued a Notice of Discipline for alleged possession of contraband on facility grounds, i.e. an M-80 or similar such device, that was found during a frisk of his personal vehicle on facility grounds. The NOD also contains charges alleging that the member refused to cooperate with OSI in their efforts to frisk his vehicle. He was suspended without pay effective January 22, 2020. This matter is now appealed to arbitration. Arbitrator McCarthy is the assigned arbitrator. Arbitration went forward on October 30, 2020. Briefs were submitted on December 2, 2020. We await the Arbitrator's award. In the interim, the member was issued another, related Notice of Discipline on November 4, 2020 for allegedly introducing illegal contraband into Marcy Correctional Facility and for possessing and using an illegal substance on January 16, 2020, both of which are plead in the NOD as Class A Misdemeanors. The member has not been charged criminally as of yet. The member was also re-suspended for this alleged conduct on October 28, 2020.

Mid-Hudson Forensic Psychiatric Center: This September 26, 2018, Notice of Discipline alleges that the member (SHTA) pushed her co-worker in the chest with her forearm and struck with her handbag in violation of the Employee Code of Conduct and Employee Workplace Violence policy. This matter was appealed to arbitration on August 18, 2020. Arbitrator Jeffrey Cassidy was assigned. The matter settled in advance of hearing.

Mid-Hudson Forensic Psychiatric Center: The member received a NOD, dated October 17, 2019, for physically abusing a patient. This matter was scheduled for arbitration on March 17 and 18, 2020. This matter has been settled, along with his accompanying Justice Center matter.

Mid-Hudson Forensic Psychiatric Center: This member is charged with physically assaulting or aiding in the physical assault of a patient in the elevator. It is alleged that the patient suffered a traumatic bladder rupture and multiple fractured ribs. There are 7 charges stemming from the

allegation. A hearing in this matter was scheduled before Arbitrator Bruce Trachtenberg on April 14 and 15, 2020. This matter has been settled, along with his accompanying Justice Center matter.

Mid-Hudson Forensic Psychiatric Center: The NOD alleges that the member struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor, and failed to provide proper medical care to a service recipient. The matter was assigned to Arbitrator Bruce Trachtenberg and was scheduled for hearing on April 16 and 17, 2020. This matter is the subject of a corresponding Justice Center report of substantiated finding. Prior to the hearing, the member accepted a settlement offer and returned to service.

Mid-Hudson Forensic Psychiatric Center: The NOD in this case, which sought twelve weeks' suspension, alleged that the member failed to properly supervise a service recipient and failed to lock a bathroom/shower room door, therefore permitting the service recipient an opportunity to harm himself. A hearing in this matter was scheduled for November 24, 2020, before Arbitrator Siegel. Prior to the arbitration, the member accepted a settlement offer.

Mid-Hudson Forensic Psychiatric Center: This March 2, 2018 Notice of Discipline alleges that the member inappropriately wrapped his arm around a patient's neck while performing a manual restraint. This matter was appealed to arbitration on August 18, 2020. Arbitrator Louis Patack was assigned but recused himself as he is only handling videoconference hearings at this point. Arbitrator Trachtenberg is now assigned. The hearing is scheduled for January 13-14, 2021.

Mid-Hudson Forensic Psychiatric Center: The NOD alleges that the member struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor, and failed to provide proper medical care to a service recipient. The matter has been assigned to Arbitrator Joel Douglas and was scheduled for hearing on May 11, 2020. In the midst of the stay-at-home order during the COVID-19 pandemic, it was agreed between the parties that the member would be returned to the payroll until such time as his arbitration could be held in-person. The member has criminal charges pending arising from the same events, including a felony charge, which remain unresolved at this time. The disciplinary matter was re-scheduled for hearing dates on November 30th and December 18th, 2020. However, the disciplinary matter settled prior to the first hearing date. This matter remains the subject of a corresponding Justice Center report of substantiated finding for physical abuse, which is scheduled for hearing on February 24, 2021.

Mid-Hudson Forensic Psychiatric Center: The member received a Notice of Discipline for allegedly striking a patient and failing to report that the patient fell. This matter was scheduled for arbitration on November 4, 2020. This matter was settled.

Mid-State Correctional Facility: The member received a Notice of Discipline for shoplifting at Walmart. This hearing went forward on December 8, 2020, and subsequently settled on December 9, 2020 for a suspension to date and one (1) year DEP.

Mid-State Correctional Facility: The NOD alleges that, on various dates, the member, as the console officer in S-Block left his post without authorization and without proper relief, failed to ensure that the Console hatch door was secured at all times, and placed the Console keys near the unsecured hatch door. The member has been suspended without pay since June 5, 2019. This

matter was scheduled for hearing before Arbitrator Timothy Taylor on June 29-30, 2020. This matter settled in advance of hearing.

Mid-State Correctional Facility: Two officers were accused of leaving their post unsecured, falsely documenting rounds that were not conducted, falsely submitting count slips, and watching a movie while on duty. This case was appealed to arbitration and Arbitrator Timothy Taylor has been assigned to the NOD. Hearing dates have been scheduled for July 1st and 2nd, 2020 in Utica, New York. Their matters were consolidated for hearing. Both members ultimately resigned.

Mid-State Correctional Facility: The member is charged with entering Mid-State Correctional Facility with a vape pen/vaporizer and using the device while on duty in the console area. Additionally, he is charged with opening end gates in the special housing unit without authorization; failing to ensure that the console hatch door was secured at all times and failing to perform security rounds; prematurely signing count slips and allegedly sleeping or giving the appearance of sleeping while on duty. The case was scheduled to be heard on April 7, 2020 before Arbitrator Sam Butto. However, it was adjourned without date by mutual agreement of the parties. On July 6, 2020, Arbitrator Butto provided October 6 and October 13, 2020 as possible arbitration dates. On August 6, 2020, the member submitted a letter of resignation.

NYS Education Department: The NOD in this case alleged that the member violated various SED policies when he engaged in a verbal altercation with a coworker about overtime and other topics. The NOD in this case sought termination. A hearing was scheduled before Arbitrator Butto on June 23, 2020. Prior to the hearing in this matter, the member accepted an offer of settlement.

New York State Museum (NYSED): The member works at the State Museum and was issued a Notice of Discipline alleging that he improperly used his personal cell phone while on duty on multiple occasions, committed insubordination and sexually harassed a female coworker. The member was suspended without pay and the case was submitted for suspension review. We were successful in arguing that NYSED failed to meet the probable cause standard in its suspension of the member. As a result of this decision, the member will be restored to the payroll and have his leave credits restored retroactive to the date of suspension. This matter is now appealed to arbitration and we are in the process of selecting an arbitrator.

Ogdensburg Correctional Facility: The NOD alleges that the member was allegedly driving a motor vehicle under the influence of a drug, as well as being arrested. He is also charged with being unfit for duty, in violation of the DOCCS regulations. An arbitration hearing was held before Arbitrator Timothy Taylor on September 16, 2020. After opening statements, Arbitrator Taylor conferred with the parties and the Notice of Discipline was withdrawn. As a result, the Notice of Discipline and any related documents are to be immediately removed from the member's folder at the Facility and Central Office. Because the member was sick at the time of the incident, the Arbitrator encouraged the parties to treat him as if he was sick and not discipline him. Therefore, in addition to the Notice of Discipline being withdrawn, the member will use sick leave accruals and any necessary alternate accruals for August 23, 2019. He will be placed on sick leave without pay, effective August 24, 2019 through October 7, 2019. He will be restored to the payroll effective October 8, 2019, beginning of business. The member is to receive full back pay and all

benefits restored for the period of October 8, 2019 through February 16, 2020, when he was returned to duty.

Ogdensburg Correctional Facility: The NOD in this case alleges that the member, when addressing inmates in a dormitory, yelled “shut the fuck up before I George Floyd your asses.” The NOD also alleges that he provided a false statement in a written memorandum to a lieutenant and made false statements during his OSI interrogation. An expedited arbitration in this matter was scheduled for August 17 and 18, 2020, before Arbitrator Taylor. The member resigned in advance of the hearing.

Roswell Park Cancer Institute: In this NOD, the member, a Special Police Officer, was accused of filing a false report of being backed into by a civilian motor vehicle. It is further alleged that she misrepresented facts and violated the Corporate Code of Conduct. The matter was assigned to Arbitrator Trachtenberg. The arbitration was tentatively scheduled for March 23, 2020. However, we advised that Roswell Park Cancer Institute was eliminating the job title of “Special Police Officer” as of the end of March. This disciplinary matter is now settled; the member returned to duty in the new job title of Public Safety Services Coordinator.

Shawangunk Correctional Facility: The NOD alleges that the member made numerous threats via social media to the Acting Commissioner of DOCCS and showed undue familiarity with numerous inmates, as evidenced by those same posts. The matter was assigned to Arbitrator Dennis Campagna, who recused himself since he would only perform a videoconference hearing. The matter has been assigned to Arbitrator David Lande, and the parties are finalizing hearing dates.

Shawangunk Correctional Facility: The NOD alleges that the member engaged in extensive absenteeism. The matter is assigned to Arbitrator Timothy Taylor. A hearing was scheduled for November 19, 2020. Prior to the hearing, the matter was resolved and the member agreed to settle this matter by receiving a Letter of Reprimand. In addition, he will be providing a Response to the Letter of Reprimand.

Sing Sing Correctional Facility: On October 26, 2020, the member was issued a Notice of Discipline for allegedly falsifying medical documentation on various dates to obtain workers compensation benefits. The NOD also includes a charge outlining that the member has been charged criminally with nine (9) counts of Offering a False Instrument for Filing (Intent to Defraud) in the 1st Degree, which is a Class E Felony. The member was suspended without pay on September 30, 2020. The criminal charges remained unresolved at this time. This matter has not been appealed to arbitration since there has been no agency level decision as of yet.

Sing Sing Correctional Facility: The member in this NOD is accused of having significant and numerous items of contraband in his Tower Post at Sing Sing CF, including a cellular telephone, air mattress and pump, homemade log book stamp, speed loader, among other items. Arbitrator David Lande was selected to hear the case. The hearing went forward on February 19, 2020. Closing briefs were due on March 20, 2020. Arbitrator Lande’s decision has been issued. The member was found guilty of possessing eleven out of the fifteen items of contraband listed in the NOD. Arbitrator Lande felt the suspension imposed was not for cause pursuant to the CBA. He

also did not feel that termination was the appropriate penalty, crediting the member's many years of service to the Department, his limited prior history of discipline, the testimony from his character witnesses and his sincere remorse. The penalty imposed by Arbitrator Lande was a forty-five (45) day suspension. He further awarded reimbursement of lost wages and accruals for the period of time the member was suspended minus the penalty of a 45-day suspension.

Sing Sing Correctional Facility: The NOD alleges that the member pre-filled out numerous count slips and other forms. The matter has been assigned to Arbitrator Dennis Campagna and a hearing date was scheduled for March 13, 2020. Prior to the hearing, the member accepted a settlement offer and returned to service.

Sing Sing Correctional Facility: The March 1, 2019 NOD alleged that the member engaged in an unlawful domestic incident while off-duty. The member was the subject of criminal charges. The member settled his disciplinary matter and is returning to work.

Sing Sing Correctional Facility: This member is charged with, on June 5, 2019, while on duty at Downstate Correctional Facility, sexually harassing and/or making inappropriate statements and behavior towards a subordinate staff member in violation of DOCCS' Rules and Regulations. The member was restored to duty pursuant to the suspension review process. The first day of hearing was held before Arbitrator Larry Dais on September 27, 2019. A second day of hearing was scheduled but was cancelled by the State due to the illness of the DOCCS Labor Relations representative. Subsequent days of hearing were held on February 21, 2020 and June 5, 2020. The transcript of the hearings was received on June 17, 2020, and the Closing Briefs were submitted to Arbitrator Dais on July 17, 2020. On September 10, 2020, Arbitrator Larry Dais issued an award finding that Grievant did engage in improper behavior, and guilty of the charges but determined that the appropriate penalty would be to place the Grievant on probation for one year and remain free of any disciplinary issues during the period. Additionally, the Grievant must take additional sexual harassment classes/training, as directed by the employer during this one-year probation.

On October 1, 2020, DOCCS made a Motion for Modification of the Opinion Award in this matter. The basis for the motion is that it is alleged that the Arbitrator did not address the suspension issue. He did not address the suspension issue because it was already decided by Master Arbitrator Joel Douglas. We have and continue to discuss this issue with the member and Southern Region Vice President Dave Luther, determining what is the best way to proceed with the Motion for Modification. In the meantime, the member has been returned to work at Sing Sing Correctional Facility.

Sing Sing Correctional Facility: The NOD in this matter alleges that the member comported himself unlawfully when he pointed a loaded handgun at an individual (off duty) after a verbal dispute. He received felony criminal charges. The matter is now settled.

Sing Sing Correctional Facility: The member received a Notice of Discipline for a domestic violence incident, which is also the subject of criminal charges. The criminal matter is resolved and the disciplinary charges are now settled.

Sullivan Correctional Facility: The member was issued an NOD for failing a urinalysis test on July 31, 2020. DOCCS is seeking his dismissal from service. The arbitration of this matter has been scheduled for January 21, 2021, before Arbitrator Jay Siegel. We are in the process of presenting relevant documentation to DOCCS in order to push for settlement.

SUNY Purchase: This member is the subject of two (2) NODs, which allege that she affiliated with a person who had committed unlawful acts and that she had impersonated a police officer while she was being pulled over. The associated criminal charges were dismissed and the matter proceeded to arbitration before Arbitrator Timothy Taylor. At the hearing, the matter settled and the member was reinstated to duty with approximately nine (9) months of back pay.

Taconic Correctional Facility: The member received a NOD for making telephonic contacts with two parolees. We had our first hearing on June 11, 2019. We believe that Charge 1 is timed out and a portion of Charge 2 is timed out. DOCCS has taken the position that the officer's actions constitute the crime of official misconduct. We have made a written motion to dismiss Charges 1 and 2 on the grounds that these charges are barred by the nine-month limitation and on the basis that the Charges lack the specificity required by Section 6.2 (a) of the CBA. The Arbitrator directed DOCCS to respond to our motion by June 21, 2019. A second hearing was held on July 9, 2019, for consideration of the motion to dismiss. Closing briefs were submitted on August 5, 2019. On September 9, 2019, we received the Arbitration Award. Arbitrator Lande dismissed Charges 1 and 2 of the NOD as untimely and for failing to meet the specificity requirements of the CBA. The member received a 75-day suspension for lying at this Interrogation. DOCCS has not yet reinstated the member and we have been told that the Arbitration Award is being reviewed by Counsel's Office. On September 26, 2019, we filed a proceeding, pursuant to CPLR Article 75, to confirm the arbitration award. On February 12, 2020, we received a Decision from Justice Corcoran confirming the arbitration award and dismissing the State's motion to vacate the award. DOCCS has not put the member back to work and we were told that the Decision is at Counsel's Office for review. On June 3, 2020, the State filed its Notice of Appeal. The State's Record and Brief are due on December 15, 2020.

Taconic Correctional Facility: The member received a second NOD for filing false medical notes. This arbitration was scheduled for September 28, 2020, before Arbitrator William McCarthy. This matter is now settled.

Taconic Correctional Facility: The NOD in this case alleged that the member shoplifted various items from a Wal-Mart; the member was subsequently arrested and charged with petit larceny, which the NOD alleges she failed to report to the facility. An expedited arbitration hearing in this case was scheduled for October 8, 2020, before Arbitrator Crangle. Prior to the hearing date, the member accepted a settlement to resolve the NOD.

Upstate Correctional Facility: The member was arrested and charged with animal cruelty for chaining up and abandoning two dogs. The disciplinary grievance arbitration was held on July 16, 2020. On July 30, 2020, the member's employment was terminated pursuant to Section 30 of the Public Officers Law.

Washington Correctional Facility: The member received a Notice of Discipline for shoplifting. The expedited disciplinary arbitration was completed on July 29, 2020. Closing Briefs were submitted on August 5, 2020. On August 17, 2020, we received the Arbitration Award. The member received a ninety-day suspension and will be returned to duty.

Woodbourne Correctional Facility: The member is currently suspended. She received a Notice of Discipline on June 25, 2020, containing a total of fifty-three (53) charges relating to allegations that she had telephone and social media communications with a former inmate and a current parolee. There are also charges alleging that she provided false and/or misleading testimony at her interrogation on May 22, 2020. This matter has been appealed to arbitration. We are in the process of selecting an arbitrator.

Justice Center

Kirby Psychiatric Center: This Category 3 report of neglect alleges that the member failed to provide adequate services to the service recipient (S.R.) during which time she did not allow him to use the bathroom. We submitted a request for amendment, which was denied. The matter was scheduled for a hearing on February 26, 2020, which went forward on that date. Administrative Law Judge Sharon Golish Blum found that the Justice Center proved by a preponderance of evidence that the member committed neglect by failing to provide adequate services to a service recipient, specifically not allowing a S.R. to use the bathroom, and that the report was properly categorized as a Category 3 act.

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that these members engaged in physical abuse of a service recipient (S.R.) (Category 2) by striking the S.R., and engaged in a deliberate inappropriate restraint against a S.R. (Category 2) for allegedly using excessive force and/or improper technique and causing injury. The initial pre-hearing conferences took place on August 18, 2020. A consolidated hearing in this matter was scheduled for October 16, 2020. Both matters were settled in advance of the hearing.

Mid-Hudson Forensic Psychiatric Center: The member was issued a Category 2 Report of Investigation Determination alleging that on June 18, 2020, she committed neglect when she failed to notice a service recipient on the floor and/or failed to complete required checks during rounds. We have submitted a timely request for amendment and await a response from the Justice Center.

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that the member engaged in physical abuse of a service recipient (Category 3) by grabbing and/or striking the service recipient. We are awaiting the decision from our request for amendment. The initial pre-hearing conference has yet to be scheduled.

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that the member engaged in physical abuse of a service recipient (Category 2), engaged in the deliberate inappropriate restraint of a service recipient (Category 2), and engaged in neglect for failing to follow PMCS de-escalation techniques (Category 3). The matter was scheduled for

a hearing on July 16, 2020. Prior to the hearing, the matter settled when the Justice Center unsubstantiated the Category 2 allegations.

Mid-Hudson Forensic Psychiatric Center: These Category 2 reports of neglect and abuse allege that the members struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor, and failed to provide proper medical care to a service recipient. All three members have accepted settlement offers in these matters.

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that the member engaged in physical abuse of a service recipient by shoving him into a chair and slamming a door on his fingers causing injury. There were two (2) Category 3 charges. The Justice Center hearing was held via videoconference on August 18, 2020. The incident was by all accounts an accident and the member was able to testify about the service recipient's demeanor, as well as the events immediately preceding his fingers being caught in the door. The judge determined that the Justice Center did not meet its burden of proving that the member committed physical abuse by a preponderance of the evidence. Thus, his request that the substantiated report be amended and sealed was granted.

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that the member engaged in physical abuse of a service recipient (Category 2) by striking the service recipient. The hearing in this matter is currently scheduled for February 24, 2021. Please note that the member is the subject of criminal charges, including a felony charge.

Improper Practice Charges

Statewide – Commissioner Annucci's Memorandum: This office filed an Improper Practice Charge in response to Acting Commissioner Annucci's May 3, 2017, memorandum. The memorandum was read at lineup to correction staff for ninety-six (96) hours, which, among other things, effectively accused the Union of disseminating "half-truths" and perpetuating a "negative outlook" about the Department. We received the State's Answer in response. An initial conference took place on October 19, 2017. This matter has been complicated by GOER indicating that it will consider issuing strike notices to members for alleged job actions that occurred at Auburn CF, Clinton CF, and Great Meadow CF in April-May 2017 if this IP is not withdrawn. That is because the Annucci memo was (in DOCCS' words) a "knock-it-off" response to the job actions. On January 8, 2018, this office met with NYSCOPBA then-Executive VP Tammy Sawchuk, Northern Region VP John Roberts, Business Agent Ricky Brunelle, and Stewards from Clinton CF and Great Meadow CF to present and discuss the facts surrounding the IP and possible strike notices, and its potential impact on members at Clinton CF. The matter was scheduled for a hearing, but has since been placed on the PERB hold calendar pending negotiations with GOER.

Statewide – Duty of Fair Representation: We submitted our Answer on behalf of NYSCOPBA in an Improper Practice charge filed by a member, alleging that NYSCOPBA breached its duty of fair representation in the manner in which it allegedly withheld union representation from a member. A conference was held at the Albany PERB Office on March 14, 2018, at 11 am. A second pre-hearing conference took place by phone on June 12, 2018, to discuss evidence and issues to be resolved at hearing, with hearing dates of July 30 and 31, 2018. The hearing was

adjourned on July 30, 2018, at the request of the member, as he was physically incapable of appearing at the hearing due to his recent surgery. Judge Reich adjourned the hearing and scheduled a phone conference to further discuss scheduling the matter. The matter was heard on November 7 and 28, 2018, before Judge Reich. The parties rested, have received transcripts, and submitted closing briefs. We await the decision. Judge Reich has since left PERB and the matter was reassigned to Judge Nancy Burritt. Recently, the matter was once again reassigned to Judge Linda Keller.

Statewide – Employee’s Manual: On February 23, 2018, we discussed settlements with GOER to resolve this charge. This IP is from 2014 and involves changes in the Employee’s Manual. Specifically, the changes include: section 2.2 regarding a change in the licensure practice; section 2.3 regarding reporting requirements in domestic violence situations; section 4.9 regarding copying documents; section 4.15 regarding dissemination of criminal history; section 6.3 regarding official stationary; and section 2.44 regarding alerting of supervisory rounds. We will keep you informed regarding progress of negotiations.

Statewide – DOCCS Light Duty: On January 11, 2019, we attended a pre-hearing conference at PERB before ALJ Mitchell to address this Improper Practice charge filed when DOCCS began assigning light duty officers to two new types of posts, construction and one on one watches. This IP alleges that these new posts change the long-standing parameters for light duty post (i.e. – counted toward minimum staffing – not an extra). At the conference we explained the arguments in our case. DOCCS agreed to review our arguments now that they better understood them and to see if any potential settlement could be reached. The matter was placed on hold. The matter has since been transferred to ALJ Rita Strauss, who has scheduled another pre-hearing conference for April 28, 2020. This matter was scheduled for a hearing on June 11, 2020. The matter was heard by Rita Strauss via videoconference on September 24, 2020. The Union was able to present its entire case-in-chief, but the State needed additional time to present its case. The matter will be continued on February 23, 2021.

Central New York Psychiatric Center: This office filed an Improper Practice Charge in response to CNYPC’s reinterpretation of the existing call-in procedure that changes how an ill employee reports an illness-related absence and how such absence is counted for discipline purposes. The matter was heard at a pre-hearing conference with ALJ Weisblatt on March 26, 2018. The Judge placed the matter on PERB’s hold calendar until June 1, 2018, to give the parties the opportunity to discuss possible settlement. The matter has been scheduled for a hearing but has since been placed on hold. The facility is in the process of negotiating with both NYSCOPBA and CSEA regarding resolution of this matter. However, since the facility has not made reasonable progress, we have requested that the matter be scheduled for a hearing. A second pre-hearing conference took place on September 24, 2019, wherein the parties discussed a preliminary intent to rectify the problems raised in the IP. A hearing date was set for December 11, 2019, but the parties again adjourned and jointly crafted a revised policy. The IP will be withdrawn upon implementation.

Central New York Psychiatric Center: We previously filed an Improper Practice charge against OMH for its policy change at CNYPC depriving our members of on-site medical care from facility physicians when they are injured on the job. Now, no medical care is provided to them and a supervisor is responsible for making the medical determination as to whether the employee should

seek outside medical treatment. After an initial conference with ALJ Burritt, the matter has been placed on hold. During that time, the Union will continue to review various assault alert forms completed by members in order to ascertain whether they received medical treatment or were ignored by facility physicians.

DOCCS (Statewide Screening Procedures): We filed an improper practice charge and amendment contesting the statewide screening procedures (screening questionnaire and taking temperatures) as outlined in memoranda by DOCCS Chief Medical Officer, Dr. John Morley, on the basis that the unilaterally added duties imposed on security staff are outside of the essential character of the position, i.e., that they are duties that should be performed by medical staff, in violation of 209-a.1(d) of the Act. We have asked for the memoranda to be rescinded and for all employees who have conducted screening to be made whole by compensating them at the appropriate rate for the screening duties performed. We attended the initial PERB conference by telephone on August 26, 2020. A follow-up conference was held on October 6, 2020. The hearing of this matter has been scheduled for April 21-23, 2021.

[Former Member] v. NYSCOPBA: On November 25, 2019, PERB received an improper practice charge filed against NYSCOPBA by a former member. The former member alleges that NYSCOPBA violated its duty of fair representation to her when, among other things, they improperly trained their union stewards on what to do if a member approaches them who has committed misconduct that might also constitute a criminal offense. We answered the charge on behalf of NYSCOPBA. We appeared for an initial conference before PERB on March 25, 2020 and then a subsequent conference on April 30, 2020. The hearing in this matter was scheduled for September 1, 2020. A pre-hearing conference was held on August 19, 2020, at which time the former member informed Judge Brittany Sergent that she was requesting an adjournment of the hearing as she was retaining counsel and intended to amend her charge. The former member was advised by Judge Sergent she would have to file a motion to amend the charge. The hearing was adjourned to January 20, 2021. A pre-hearing conference was held on November 5, 2020. The former member retained private counsel. The evening prior to the pre-hearing, he submitted a motion for leave to amend the improper practice charge. At the November 5, 2020 pre-hearing conference, the hearing scheduled for January 20, 2021 was adjourned without date pending the resolution of the motion to amend. Judge Sergent advised the parties that she would consider the motion and then provide the Union a date upon by which to respond and oppose the motion. Judge Sergent subsequently, on November 10, 2020, wrote to the parties advising that the former member's attorney would need to make an offer of proof on the issue of timeliness for the original charge and the amended charge. The former member's offer of proof was due by December 11, 2020, and her attorney submitted this to the Court on December 2, 2020. The Union's response is due on January 4, 2021.

Helen Hayes Hospital: On August 5, 2019, we appeared at a PERB Conference for the member. During the conference, the ALJ stated that we had established a prima facie case that the employer terminated the member based upon union activity. The ALJ directed the employer to investigate whether the member could be reinstated. By way of background, on May 10, 2019, we filed an improper practice charge on behalf of the member against Helen Hayes Hospital. The member received a temporary appointment to the position of Security Services Assistant, Helen Hayes Hospital, effective May 15, 2015. Notwithstanding the fact that she had been a temporary

appointment, the member continued service at Helen Hayes Hospital from May 2015 through April 23, 2019, when she was abruptly discharged. The member filed her first grievance on March 25, 2019, regarding shift selection. The member then filed her second and third grievances on April 23, 2019 – the same date as her termination from Helen Hayes Hospital. We alleged that the termination was to interfere with, restrain, and retaliate against the member from exercising her guaranteed rights under the *Taylor Act*. This case is on hold pending further investigation.

Marcy Correctional Facility: This office filed an Improper Practice charge in response to DOCCS' suspension of swapping privileges at Marcy CF during the early months of the COVID-19 pandemic. A pre-hearing conference occurred on August 26, 2020, which failed to resolve the matter. The matter has been scheduled for a hearing on April 7, 2021.

Mid-Hudson FPC Bag Restriction: We filed an Improper Proper Practice Charge alleging a failure to negotiate regarding a mandatory subject of bargaining. Mid-Hudson FPC unilaterally changed a significant work rule, impacting the comfort and convenience of employees. Specifically, the facility implemented a new rule restricting all employees to entering the facility with only one bag (of restricted size) for clothing, etc. and one small cooler for food. The prior practice at the facility did not limit employees in the size and number of bags they could bring into the facility for each shift. We appeared at a conference on March 21, 2018, before ALJ Weisblatt. The parties had a substantive conversation about settling this case. The ALJ placed the matter on the hold calendar so that the discussions could continue.

NYSED New York State Museum – Cultural Education Center: We filed an Improper Practice Charge alleging a failure to negotiate regarding a mandatory subject of bargaining. It is alleged that NYSED unilaterally transferred unit work from Security Officers represented by NYSCOPBA to non-unit, contract security officers in violation of the Taylor Law when it reassigned the duty of canvassing for overtime for unit Security Officers. Prior to August 6, 2020, only unit Security Officers canvassed for overtime for other unit Security Officers. Contract security officers did not perform those duties. This matter was sent out for filing on October 1, 2020. The State's Answer is due on December 2, 2020. The initial pre-hearing telephone conference with PERB Judge Sergeant is scheduled for December 21, 2020.

Otisville Correctional Facility: This office filed an Improper Practice Charge alleging retaliation and interference against various supervisory staff at Otisville CF for discouraging NYSCOPBA members from voting for certain stewards. A pre-hearing conference before ALJ William Weisblatt took place on April 25, 2019, at PERB in Albany. ALJ Weisblatt directed NYSCOPBA to submit an offer of proof on certain portions of the charge, in order to specify the connection between various instances of retaliation. ALJ Weisblatt directed the State to issue an amended Answer after NYSCOPBA submits its offer of proof. This office has submitted the necessary paperwork on NYSCOPBA's behalf and met with representatives from DOCCS and GOER in order to inspect various at-issue documents on June 3, 2019. DOCCS and GOER will provide us with additional documentation. The ALJ directed NYSCOPBA to submit an offer of proof regarding the charge, which this office filed on NYSCOPBA's behalf, to which DOCCS responded. At subsequent pre-hearing conferences, the ALJ directed DOCCS to turn over additional documentation, which DOCCS has yet to do. This office provided an update to the ALJ to that effect, indicating that NYSCOPBA would not take further steps toward potential resolution.

until DOCCS turned over the documentation. Since then, this office has requested additional documentation from GOER, which GOER indicates that it will provide.

Rochester Psychiatric Center: We filed an improper practice charge alleging that Rochester P.C. violated the Taylor Law in dealing directly with the Safety and Security Staff at the facility. Specifically, the nursing department sent an e-mail to the Safety and Security staff listservs seeking SSOs interested in performing out-of-title overtime work in the SHTA job title. The human resources department at the facility created a form entitled “RPC Out-of-Title Overtime Emergency Coverage.” Any individuals agreeing to perform the out-of-title overtime work in the SHTA job title were required to execute this form, which contained terms and conditions of employment relating to compensation for overtime work, mandatory training, scheduling of tours of duty/shifts, and disciplinary procedures. The facility directly contacted our unit members and prepared the out-of-title overtime agreement without the consent of, or any negotiation with, NYSCOPBA representatives. A pre-hearing conference was held on April 7, 2020 at PERB. This matter was placed on the PERB hold calendar pending negotiations with GOER.

Rochester Psychiatric Center (Workers’ Compensation Documentation Policy): We filed an improper practice charge contesting the unilateral implementation of a new workers’ compensation documentation policy requiring members to provide documentation both before and after a preapproved workers’ compensation appointment, in violation of 209-a.1(d) of the Act. We have asked for the new policy to be rescinded and for the past practice to be reinstated. The State has agreed to rescind the at-issue policy and we are in the process of drafting a settlement agreement.

Roswell Park Cancer Institute: We filed an improper practice charge after RPCI unilaterally changed the work schedules and pass days of several members’ bidded posts without prior negotiations. This resulted in some members losing their rotating three-day-weekends and other members having weekday pass days instead of weekend pass days. A pre-hearing phone conference took place on October 4, 2018. A second phone conference took place on November 16, 2018. The ALJ requested that the parties draft written submissions on various procedural topics that may impact the case irrespective of the merits. Those submissions were due on January 18, 2019. The parties await the response of the Judge. The parties have agreed to a conditional deferral of the matter to the parties’ grievance procedure. The Judge issued a decision granting the conditional deferral and the matter will now be processed as a grievance.

Suffolk Area Office (Bohemia Parole Reporting Location): We filed an improper practice charge after DOCCS unilaterally changed the terms of conditions of employment for Institution Safety Officers (ISOs) at the Suffolk Area Office. Specifically, a member was advised by the Bureau Chief that he could no longer combine his lunch and break times together. From December 1, 2017 through December 24, 2019, ISOs were permitted to take a forty-five (45) minute lunch combined with a fifteen (15) minute break. That practice was in effect continuously for that time period. Since December 24, 2019, the member has been required to take a thirty (30) minute lunch and two (2) fifteen (15) minute breaks. Meal times and breaks are mandatory subjects of bargaining and there was no negotiation with NYSCOPBA before this change was implemented. The IP was filed with PERB on January 30, 2020. The pre-hearing conference was held on April 13, 2020. VP Luther attended a labor-management meeting at the Suffolk Area Office on

September 2, 2020 in an effort to resolve this matter. In the interim, this matter is on the PERB hold calendar pending negotiations with GOER.

Contract Enforcement

Triage was not held in April, May or June due to the COVID-19 pandemic. Subsequently, Jeffrey M. Selchick, Esq., replaced Joel Douglas, PhD as NYSCOPBA's Master Arbitrator. Since bringing Master Arbitrator Selchick on board in July, we have triaged 145 grievances and resolved 64 of them. We are waiting on an additional 11 decisions, which when received, will bring the total to 76 grievances resolved in the first four months.

Appeals to Arbitration: During the months of March through November 2020, we received forty-one (41) requests from NYSCOPBA's grievance department to appeal contract grievances to arbitration.

Covid Grievances (Statewide): We are working with the Grievance Department and pursuing an agreement with GOER about resolving hundreds of grievances for members who were not granted leave with pay, without charge to accruals, for their first DOH or DOCCS-directed quarantine.

CON20-0222 – Statewide Class Action – (Deferral of Contractual Raises): NYSCOPBA filed this statewide class action grievance when New York State notified the Union that across the board 2% salary raises effective April 1, 2020, would be deferred due to the impact of COVID-19 on State Finances. This grievance also covers each time the raises are deferred, currently deferred until January 2021. NYSCOPBA and GOER agreed that the grievance should be filed directly to Step 3 on April 7, 2020. GOER advised that no answer would be issued, so the Grievance was Auto Progressed per article 7.4 to Step 4 on August 21, 2020. The grievance was introduced to the Alternate Dispute Resolution Process of Arbitration on October 2, 2020, and all parties agreed that the grievance should be advanced to a full arbitration hearing. The selection process for an arbitrator has commenced and a hearing date will be established once the arbitrator is selected.

Orleans Correctional Facility: The member filed a grievance alleging that the State violated Article 15 of the Agreement when it changed his work shift and deprived him of an opportunity to work overtime. The State sustained the grievance and paid the member one hour of overtime pay for the day at issue.

Sing Sing Correctional Facility: The member filed a grievance alleging that the State violated Article 11 of the Agreement when it failed to pay him the appropriate amount of inconvenience pay over the course of 4 days. The State sustained the grievance and paid the member inconvenience pay for the 4 days at issue.

Sing Sing Correctional Facility: The member filed a grievance alleging that the State violated Article 11 of the Agreement when it failed to pay him the appropriate amount of inconvenience pay over the course of several years. The State sustained the grievance and paid the member inconvenience pay totaling approximately \$1500.

Washington Correctional Facility: The member filed a grievance alleging that the State violated Articles 15 and 24 of the Agreement when it inappropriately changed two of her regularly

scheduled days off in order to attend training. The State sustained the grievance and paid the member eight hours of overtime pay for the days at issue.

Retirement

Coxsackie Correctional Facility: This is a disability retirement matter. The Applicant's physician testified on February 14, 2018. The member testified on September 14, 2018. The State's doctor's testimony was scheduled for July 22, 2019. This testimony has been adjourned by the Retirement System. The State's doctor is scheduled to testify on October 2, 2019. Closing briefs were filed on February 21, 2020. On August 5, 2020, we received the Final Determination from the Retirement System which denied the Application on the basis that the member was not permanently disabled. The Hearing Officer held that the member was not permanently disabled because he worked full duty for eighteen months after filing his Application.

Downstate Correctional Facility: The member's disability retirement application was denied on the grounds that he was not permanently disabled from performing his duties and on the grounds that his injury was not inmate related. The member's right leg was amputated below the knee after two knee replacements and an antibiotic resistant MRSA infection. After his right leg was amputated, under the Americans with Disabilities Act, the member was granted a reasonable accommodation and a perimeter patrol vehicle was retrofitted so that he could continue to work his post. We have now had the opportunity to review the Records Compact Disc from the Retirement System. The initial Determination of Retirement System held that the incident of April 10, 1997, was the act of an inmate. The System's orthopedic surgeon, in his report, conceded that the incident of April 10, 1997, was the cause of the loss of the member's right leg. The System denied the application on the basis that the member was not permanently disabled from performing his duties. This Determination was based on the IME finding that the member was not disabled from performing the duties of his perimeter patrol post. The IME Report stated that the member could not work inside a facility with inmates. There is authority for the System's position that an officer is not permanently disabled from performing his or her duties where the officer has been assigned to a light duty or restricted duty post. In the case of the member, however, the System overlooked the fact that he is required to work mandatory overtime which takes him inside of the facility. The initial hearing was held on January 17, 2019, at which one of the member's doctors testified. The second hearing scheduled was held on August 28, 2019, at which the member and a second doctor testified. Closing briefs were due on November 22, 2019. On July 10, 2020, we received a final Determination finding that the member was not permanently disabled. The medical testimony from both sides was that the member was permanently disabled from performing the duties of correction officer. The member, however, continued to work full duty, and the Hearing Officer held that he was not permanently disabled. The Hearing Officer disregarded the report of the System's expert finding the report was not fact based. On August 24, 2020, we filed an Article 78 Proceeding to review the administrative determination. This proceeding was returnable on October 30, 2020. We are waiting for an Order of Transfer to the Appellate Division. On November 10, 2020, we received the order transferring this case to the Appellate Division, Third Department. Our Record and Brief must be filed by May 9, 2021.

Greene Correctional Facility: This is a disability retirement matter. The initial hearing was held on January 17, 2018. The testimony of the member's doctor was taken on July 31, 2019. The matter was then continued for the submission of additional medical record and for the testimony

of the System's doctor. The System rested without calling its physician. Closing briefs were filed on November 4, 2019. On July 30, 2020, we received a Final Determination. Both the Applicant's doctor and the System's IME physician agreed that the member was not able to perform the duties of correction officer. The Hearing Officer held that the member, because he continued to perform his full duties, was not permanently disabled. It appears that the System is going to take the position that if an employee continues to work, that employee is not disabled from performing his or her duties. We filed an Article 78 Proceeding seeking to vacate the Final Determination on November 2, 2020.

Green Haven Correctional Facility: This is a disability retirement matter where the member sustained a head injury. On March 21, 2016, the member and his treating psychologist testified. This matter was continued to allow the Retirement System to put in the testimony of its psychiatrist. The System's psychiatrist testified on February 3, 2017. This matter was continued for the testimony of the System's neurologist. The System's neurologist has filed a supplement report but will not testify because he is no longer under contract with the System. We have agreed with the System to close the proof in this matter. The System permitted us to enter into evidence medical records that were not submitted to the System within forty-five (45) days after receipt of the acknowledgement letter. Closing briefs were submitted on March 23, 2018. On November 13, 2018, we received a Final Determination from the Comptroller's Office denying the member's Applications for both Ordinary Disability Retirement Benefits and Inmate-Related Disability Retirement on the grounds that he was not permanently disabled from performing the duties of a correction officer.

We presented evidence that the member was disabled by virtue of the neurological deficits caused by his Post-Concussive Syndrome. The Hearing Officer, in his Decision, did not even touch upon his Post-Concussive Syndrome.

The Hearing Officer failed to consider the Independent Medical Examination ("IME") performed by Patrick Hughes, M.D., a neurologist, who performed the IME for the State Insurance Fund on December 13, 2016. Dr. Hughes diagnosed the member with Post-Concussive Syndrome and opined that he could return to light duty with no sitting, standing, or walking for more than thirty minutes at a time or lifting more than twenty pounds. The Physical Capabilities Form completed by Dr. Hughes, on December 13, 2016, stated that the member could never lift more than twenty pounds, could never squat, crawl, climb or run. The member could not restrain combative inmates and, more importantly, he could never return to the full duties of a correction officer.

Ira Neustadt, M.D., the System's neurologist, prepared a supplemental report, dated May 12, 2017. Dr. Neustadt admitted that the member's psychiatric manifestations could be related to multiple concussions. Dr. Neustadt wrote that it was possible that the member's psychiatric problems could be caused by his multiple concussions and render him permanently disabled and unable to perform the duties of a correction officer.

Because the Hearing Officer did not consider the evidence regarding the member's Post-Concussive Syndrome, there is a strong argument that the Final Determination is not supported by substantial evidence. Our Article 78 was filed on January 16, 2019, with a return date of February 15, 2019. Because this is a substantial evidence question, this matter was transferred to the

Appellate Division, Third Department. The Record and our Brief was filed in the Appellate Division on August 6, 2019. The State's Brief was filed on September 26, 2019, and our Reply Brief was filed on November 20, 2019. The matter was scheduled for the March, 2020, Term of the Appellate division, Third Department. On April 30, 2020, we received a Decision from the Appellate Division denying the application for retirement benefits and confirming the decision of the Retirement System. Any Motion for Leave to Appeal would have to be filed on or before June 12, 2020. To get to the Court of Appeals, we have to show that the question of law presented in this case is novel or of public importance, that there is a split in the decisions of the various Appellate Divisions of the State, or the lower court did not follow prior decisions of the Court of Appeals. Although we disagree with the Decision of the Appellate Division, we do not have the facts necessary to get to the Court of Appeals.

Orleans Correction Facility: This a disability retirement appeal. The issue is whether the member is permanently disabled for performing the duties of a correction officer. The member testified on December 12, 2018. The matter has been continued for additional medical proof.

Sullivan Correctional Facility: The member was injured when he was struck in the head with a baton swung by an inmate. The member's disability retirement application was denied by the Retirement System which found that he was not permanently disabled from performing his duties. The initial hearing was held on March 6, 2018. The matter has been continued for the testimony of the System's doctor. The testimony of the System's doctor was held on July 18, 2019. The System's doctor admitted that Applicant was permanently disabled. Closing Briefs were not required. We received a Final Determination on March 12, 2020, granting the member service-related disability retirement

Civil Service Law Cases

Auburn Correctional Facility: The member was out of work due to a Workers' Compensation injury. He submitted a return-to-work note and was sent to EHS pursuant to Section 5.9 of the Civil Service Rules. He was found unfit. We appealed this determination. The member submitted an updated return-to-work note and was subsequently reexamined by EHS. He was found fit and returned to work on June 26th, 2020.

Clinton Correctional Facility: We submitted a letter to DOCCS requesting that the member's Civil Service Section 71 termination be held in abeyance and requesting that he be entitled to two years of workers' compensation leave rather than one year due to him sustaining injuries as a result of an inmate assault.

Coxsackie Correctional Facility: The member was scheduled to be terminated pursuant to Civil Service Law section 71 in July 2020. He has been out due to an eye injury he sustained at work. He underwent surgery to correct his vision on June 4, 2020. He recently submitted a return-to-work note, which triggered another EHS examination. In the interim, his right to appeal the original fitness determination by EHS was preserved and his termination under CSL Section 71 is being held in abeyance pending this appeal. The member's hearing was scheduled for September 23, 2020 but has since been adjourned pending EHS. He attended EHS examinations scheduled

for September 3, 2020 and September 16, 2020. He has been found fit for duty and will return to work.

Elmira Correctional Facility: We submitted a letter to DOCCS personnel requesting that the member's Civil Service Section 71 termination be held in abeyance as a result of delays in treatment due to COVID-19. EHS and DOCCS subsequently cleared the member for full and unrestricted duty, and he is back to work.

Fishkill Correctional Facility: The member was previously retired from DOCCS and then returned to work. He was placed on leave pursuant to Civil Service Law Section 72 after he was observed limping and refused to use stairs at the facility. He was subsequently found unfit by EHS. An appeal was filed to preserve his right to a hearing. There is no hearing scheduled as of yet.

Fishkill Correctional Facility: The member has been out of work for approximately one year under Section 72 of the Civil Service Law. He was placed on leave following a report by an ex-girlfriend regarding mental health concerns. The member is in the process of submitting new medical documentation to personnel in an effort to be returned to work or sent back to EHS. We have also appealed the determination of the member's last EHS examination which found him unfit for duty.

Great Meadow Correctional Facility: We submitted a letter to DOCCS appealing its determination that the member is unfit for duty and requesting that his Civil Service Section 71 termination be held in abeyance and requesting that he be entitled to two years of workers' compensation leave rather than one year due to him sustaining injuries as a result of an inmate assault. EHS subsequently cleared the member for full and unrestricted duty and he is back to work.

Green Haven Correctional Facility: The member was scheduled to be terminated June 7, 2020. We demanded a Section 71 hearing and requested subsequent EHS evaluation. The member was returned to work.

Ogdensburg Correctional Facility: Member was placed on involuntary leave pursuant to Civil Service Law section 72. We have appealed that determination and demanded a hearing.

Rochester Psychiatric Center: The member was placed on an involuntary leave of absence pursuant to Section 72 of the Civil Service Law after reporting a sleep disorder to the administration at RPC. She was evaluated by EHS, who found her unfit for duty until such time as she could be evaluated by her sleep specialist. Her treatment has been delayed by the COVID-19 pandemic. On behalf of the member, we appealed the involuntary leave of absence and the EHS determination, to preserve her right to a hearing. The member submitted a return to work note in November 2020. She was seen by EHS in December 2020 and was found fit. She will be returning to work.

Rochester Psychiatric Center: The member was taken out of work involuntarily pursuant to Section 72 of the Civil Service Law after being absent for over 90 days on sick leave between

February 2019 and February 2020. He was found unfit psychologically by EHS on March 19, 2020. The member has appealed his involuntary leave of absence and requested a hearing. He subsequently submitted a return-to-work note and went back to EHS. He was cleared for duty and returned to work on June 5, 2020. This matter is now closed as the member decided, upon returning to work, to waive his Section 72 hearing.

Rochester Psychiatric Center: The member has been out of work since July 4, 2019 under Section 71 of the Civil Service Law. He intervened during a patient assault on staff to perform a manual body hold and was injured. The member was scheduled to be terminated on July 5, 2020. On May 29, 2020, our office objected to his upcoming termination arguing that he is entitled to two years of leave under the statute because this was a patient assault. We also requested that his termination be held in abeyance as his treatment for his Workers' Compensation injury was delayed due to the halting of non-essential medical appointments and procedures. By letter dated June 18, 2020, OMH granted our request to amend the member's Section 71 leave and extended it to two (2) years.

Shawangunk Correctional Facility: The member was placed on involuntary leave pursuant to Civil Service Law section 72 because of severe reaction to OC spray. We have appealed that determination and demanded a hearing.

Sing Sing Correctional Facility: The member was previously terminated on January 12, 2020 pursuant to Civil Service Law Section 73. She has been out of work since January 5, 2019 due to personal illness. The Section 73 termination was rescinded on February 13, 2020, pending EHS evaluation. The member attempted to attend scheduled EHS appointments on three occasions during the COVID-19 pandemic; however, she was turned away due to coughing. We were advised by DOCCS' personnel that EHS reported that the member did not appear for her third EHS appointment scheduled for May 6, 2020. However, the member contends that she was there, but was sent home due to coughing. We have requested that DOCCS' personnel immediately rescind the termination of this member and reschedule her for EHS. DOCCS was able to confirm that the member did, in fact, attempt to attend the May 6, 2020 appointment and thus, her EHS was rescheduled and held telephonically. She was found fit and returned to work. It is our understanding that she has since gone out of work due to a separate, unrelated Workers' Compensation injury.

Southport Correctional Facility: The member was placed on involuntary leave pursuant to Civil Service Law section 72. He was found unfit at EHS on June 1, 2020. That determination has been appealed and a hearing requested. The member attended EHS examination on September 14, 2020, after which he was once again found unfit. We appealed this determination as well on September 30, 2020.

St. Lawrence Psychiatric Center: The member was taken out of work and placed on an involuntary leave of absence pursuant to Civil Service Law Section 72. EHS found the member unfit for duty. He timely appealed the involuntary medical leave of absence. He has submitted a return to work note. He subsequently attended an EHS examination and was returned to work. The member has preserved his right to a hearing on these issues. We have tentatively agreed to a settlement on this matter and are in the processing of finalizing a settlement agreement.

SUNY Downstate: The member was taken out of work and placed on an involuntary leave of absence after sending what was alleged to be a concerning e-mail to his co-workers. EHS found him unfit citing to problems of “social judgment”. The member has since been re-evaluated by EHS and returned to work. His Section 72 hearing was scheduled for July 29th, 2020 before Hearing Officer Ira Lobel. Prior to the hearing, this matter settled.

Wallkill Correctional Facility: The member has been out of work since October 16, 2018, under Section 71 of the Civil Service Law, due to a non-inmate-related workers’ compensation injury. The member appealed the Department’s decision to terminate his employment at the end of one year following an EHS finding that he was unfit for duty. A hearing in this matter has not yet been scheduled. We have asked DOCCS to provide a list of possible hearing officers.

Washington Correctional Facility: The member was scheduled to be terminated on May 29, 2020 following a 2-year leave of absence under Civil Service Law Section 71. The member is also in the midst of the disability retirement process, which has been delayed significantly during the COVID-19 pandemic. We objected to the member’s termination and requested it be held in abeyance pending the processing of his disability retirement application. Our request was granted by DOCCS’ personnel, who agreed to hold his termination in abeyance until July 29, 2020. The member was subsequently terminated.

General

14-Day Rule (Bedford Hills CF): We are in communication with Central Office Personnel regarding an apparent requirement at Bedford Hills CF, and elsewhere throughout the State, that the date on medical documentation to return to work cannot be more than 14-days prior to the scheduled return to work date. We are gathering information to see if this can be challenged.

5500 Filing: NYSCOPBA is required to file a Form 5500, Annual Return/Report for NYSCOPBA’s Rainy Day Fund and Legal Defense Fund for the Plan Year ended December 31, 2019. We reviewed the forms with Frank Gilbo, David Yule and Mary Mlock from BST prior to Frank Gilbo signing the Form 5500.

Disciplinary Arbitration Panel: We have been working with the Governor’s Office of Employee Relations to establish a new arbitrator panel list. On June 24, 2020, we forwarded the list to PERB and was advised that PERB hopes to be able to implement this panel within the next three weeks. On July 3, 2020, the new list was implemented.

Juneteenth Holiday: We reviewed the Executive Order and subsequent guidance relative to the Governor’s order that June 19, 2020, be declared a holiday for State employees. We subsequently contacted GOER about whether the holiday falls under Article 16 of the Agreement, such that members working the holiday who opted in will receive additional compensation for the day. We worked in conjunction with the Grievance Department to file a statewide grievance on this issue. The statewide Class Action grievance was filed to directly to Step 3 with GOER’s agreement on June 7th, 2020. We also had individuals file template grievances at local facilities regarding their individual situation. We are currently exploring possible options for resolution with GOER.

Overpayment Recovery ([Member] – Sing Sing CF): The member received notice on 10/27/20 of a substantial overpayment recovery for which DOCCS recovered almost 40% of a single paycheck. We contacted personnel demanding that the overpayment recovery be done a no more than 10% of the member's biweekly paycheck, per the NYS Comptroller's Bureau of Payroll Services. The matter was resolved favorably.

Proposed Regulations for SHU Reform: On August 28, 2019, the Department published proposed regulations (I.D. No. CCS-35-19-00001-P) regarding various reformatations to its Special Housing Units. Those proposed regulations include a gradual phase-in period of reduced maximum time spent in SHU, alternative diversionary programs to SHU, and much more. The design of the proposed regulations was to decrease SHU time and increase alternative programming and structure for rehabilitative purposes. As these are only proposed regulations that have not yet been made into law, they are subject to a comment period for the public. The comment period for these particular regulations expired on October 27, 2019. This office met with NYSCOPBA representatives at NYSCOPBA HQ in order to provide guidance on the impact of the proposed regulations and to receive insight into the practical impact on the membership for purposes of providing a responsive comment to the Department. This office also took a tour of Greene Correctional Facility and met with the membership there to receive additional information to fold into the comment. A comment was then timely submitted to the Department. We await publication of the Department's response to the comment. In September 2020, DOCCS issued a notice of revised rulemaking, which further altered the proposed regulations and delayed their implementation, in part. This office provided an overview to the Board of the few changes made. Prior to the deadline for submission, this office submitted to DOCCS a revised comment regarding the most recent changes and incorporated by reference our prior comment. The combined comment sought answers to numerous questions and points raised by NYSCOPBA within the past year.

Rainy Day Fund: On June 19, 2020, we assisted the Rainy Day Review Panel to ensure that its determination was consistent with the NYSCOPBA Summary Plan description for the Rainy Day Fund.

Roswell Park Comprehensive Cancer Center (Upgrade Application): Roswell Park created a new title, the Public Safety Services Coordinator, within its Public Safety Department. This office has filed an appeal/upgrade application with Roswell Park asserting that the salary grade (SG-6) should be increased. Roswell Park is a Public Benefit Corporation and enjoys its own civil service autonomy for matters such as this, which requires a direct appeal/upgrade application to Roswell Park, as opposed to the New York State Civil Service Department. Roswell Park has since responded to the application and reached out to NYSCOPBA to try to resolve the matter jointly. In so doing, Roswell Park also revised its job duties for the position and provided salary survey data for our consideration regarding same.

Roswell Park Comprehensive Cancer Center (Title Abolishment): Roswell Park recently notified NYSCOPBA that it intended to abolish the Special Police Officer title. This office facilitated an agreement between NYSCOPBA and Roswell Park to transfer the sole remaining member in the SPO title to a new title.

Sing Sing Correctional Facility: Residency Issue. This member received notice to attend a meeting with DOCCS Director of Personnel Kelly Ahearn on December 3, 2020 regarding the status of her New York State residence. At the request of Southern Region Vice President Dave Luther, we were going to attend this meeting with the member. Prior to the meeting, we communicated with DOCCS personnel and presented them with relevant information supporting the member's New York State residence. After receiving this information and speaking with us, DOCCS personnel has decided to postpone the meeting so that it may look further into this matter.

Time Off to Vote (Edgecombe CF) – We investigated an issue at Edgecombe CF wherein officers were being denied time off to vote on Election Day because they “could have voted early.” DOCCS Dir. 2213 specifically provides for time off in certain circumstances for “An employee who is required to work on Election Day...” We contacted personnel and this issue was resolved favorably.

Title IX: SUNY sent President Powers and Law Enforcement Vice President Harmon a letter indicating that it needed to adopt regulations relating to sexual harassment claims in order to comply with Federal regulation and not lose Federal funds. The regulation is not clear, but it may change the manner in which a sexual harassment claim is processed. We helped Law Enforcement Harmon with a response whereby NYSCOPBA set forth that we do not believe the regulation affects NYSCOPBA members. We requested confirmation that the Title IX regulations do not apply to members of the Security Services Unit employed at SUNY, and, if not, we requested negotiations on all matters that would affect terms and conditions of employment for NYSCOPBA members. We did make clear that NYSCOPBA does not agree to any unilateral changes in the NYSCOPBA disciplinary procedures. We are currently preparing an improper practice charge challenging SUNY's unilateral change in terms and conditions of employment and failure to respond to NYSCOPBA's demand to negotiate mandatory subjects of negotiation.

Travel Restriction and Quarantine Requirements: We reviewed the new Executive Order and subsequent DOH guidance and DOCCS memorandum relative to the Governor's order that New Yorkers who have traveled to non-bordering states must quarantine for 14-days upon their return to New York, but may “test out” of quarantine before 14-days by obtaining negative COVID-19 tests three days prior and four days after returning to New York, among other requirements. At this time, DOCCS essential employees are eligible to return to work following travel to a restricted state if the operational needs of the facility dictate same and DOH safety measures are undertaken. DOCCS employees are also eligible to “test out” of quarantine so long as the facility permits, the requirements in the Executive Order are followed and documentation is provided to the facility's Medical Information Officer.

Virtual Disciplinary Arbitrations: We are in discussions with DOCCS regarding an agreement to hold hybrid virtual arbitrations in disciplinary matters in which the arbitrator assigned by PERB has indicated that they are not willing to do in-person arbitrations. A hybrid virtual arbitration is a format in which the parties and their representatives appear in person in a designated location, and the arbitrator appears via video conference technology.

Virtual Executive Assembly: We are currently planning and organizing NYSCOPBA's first ever virtual Executive Assembly, scheduled for December 16, 2020.

Visitation Policies and Restrictions/Employee Rapid Testing: We have received, reviewed and reported on DOCCS and DOH guidance relative to facility visitation restrictions and free, rapid COVID-19 testing for employees at facilities experiencing spikes or projected spikes in COVID-19 cases, including Greene, Elmira and Cayuga Correctional Facilities.

As always, please feel free to contact our office regarding any questions or concerns.



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MARCH 2020 LEGAL REPORT
TO THE EXECUTIVE ASSEMBLY

This is our report for the March 2020 Executive Assembly regarding the recent developments in some of the cases and legal matters we are handling for NYSCOPBA. For the matters cited, we have described activity occurring since the last report and scheduled future activity.

**** MONTHLY SPOTLIGHT ****

Litigation: [Member] (Edgecombe Correctional Facility) v. DOCCS: This case involves an Article 78 Proceeding arising out of the termination of the member's employment, by DOCCS, because he was out of work for a period in excess of one year. We contend that the member should have been given a two-year leave pursuant to Section 71 of the Civil Service Law. This case proceeded all the way to oral argument before the Appellate Division, Third Department. On January 30, 2020, we received a decision. While the court rejected our argument that the Penal Law definitions of assault should be applied by DOCCS, this was a three-to-two decision by the Court. This is significant because we now have an appeal by right to the Court of Appeals and can bring this issue to the highest New York State appellate court. The two dissenting Justices reached the conclusion that, using DOCCS' definition of assault, the determination that the member was not assaulted lacked a rational basis and was arbitrary and capricious. The Notice of Appeal was filed on February 6, 2020.

Disciplinary:

Greene Correctional Facility: The officer in this NOD was charged with allowing an inmate to stand in the back of a pickup truck during which time the inmate's arm was lacerated by barbed wire. The matter settled for a letter of reprimand.

Riverview Correctional Facility: The NOD alleged that the member engaged in various forms of sexual harassment, including asking for a civilian female coworker's phone number multiple times despite her refusal and request that he stop, commenting on her shoes, inviting to take her shoe shopping, staring at/winking at her, etc. The Department had indicated numerous times that there would be no settlement on the matter. This matter then proceeded to a hearing. After opening statements, this office called for an executive session with the Arbitrator and the representative from DOCCS Bureau of Labor Relations. During the executive session, this office argued the merits of the case and proposed a reasonable settlement offer to the Department in front of the Arbitrator. The Arbitrator found the proposal to be reasonable and indicated that the termination that the Department sought might not come to fruition. This prompted the Department

to change its mind and enter into a settlement with the member. Given the severity of the charges relating to sexual harassment, the member accepted the settlement.

Taconic Correctional Facility: The member received a NOD for making telephonic contacts with two parolees. We moved to dismiss the first two charges on timeliness, which the arbitrator granted. The member received a 75-day suspension for lying at his Interrogation. Despite the award, DOCCS did not reinstate the member. On September 26, 2019, we filed a proceeding, pursuant to CPLR Article 75, to confirm the arbitration award, which was successful. On February 12, 2020, we received a Decision from Justice Corcoran confirming the arbitration award and dismissing the State's motion to vacate the award. Despite the decision, DOCCS still has not put the member back to work and we were told that the Decision is at Counsel's Office for review. Any Notice of Appeal must be filed by March 25, 2020.

Suspension Review: Roswell Park Comprehensive Cancer Center: The NOD alleges that the member improperly delegated certain tasks to subordinate staff and used inappropriate language at various times. Specifically, the NOD alleges that the member, who is a supervisor, did not provide physical assistance during a restraint that was being conducted by other employees; delayed his own actions by calling his Captain to determine what to do first; vaguely delegating to an officer to "go and take care of" a situation; directed a subordinate who was not on the scene of a crime to go and detain a suspect when the member was already on the scene; telling employees at a meeting to "shut up" in an attempt to get everyone to quiet down; and two statements that arguably invoked race. Roswell Park proceeded to suspend this member and NYSCOPBA and this office sought review of the suspension. This office argued that the content of the charges was minor, even with the cumulative effect of numerous charges, that the supervisor is entitled to delegate and does not need to use perfect language, and that the member had worked for many months after the alleged events began to occur. The Master Arbitrator overturned the facility's suspension of this member, who is now back to work.

Contract Grievances:

Auburn Correctional Facility: In the underlying grievance on this matter, it is alleged that an officer's reimbursement form was unilaterally altered and reduced to the cost of a rental car. A Summary Proceeding on timeliness was held on January 23, 2020. The arbitrator found the grievance to be timely. The State argued that the date the funds were direct deposited into the officer's account triggered the time window for filing the grievance. The arbitrator was not persuaded. The arbitrator found the grievance to be timely filed because the grievance was filed six days after the officer actually became aware (notice) of the revised voucher and reduced reimbursement funds. The matter will now be decided on the merits.

Bedford Hills Correctional Facility: This grievance alleged that the State violated Articles 14 and 27 of the Agreement when it AWOL'ed the member for four days during which she called in sick and provided medical documentation. On February 13, 2020, DOCCS agreed to resolve this grievance for full value, removing all references to AWOL from her personal history folder, time record and Payserv and allowing the member to charge 32 hours of sick leave accruals for the days at issue.

Justice Center:

Bronx Psychiatric Center: These Justice Center cases involving two members were settled for an *immediate seal* of their respective Category 3 charges. It was alleged that the two members engaged in a Category 3 Deliberate Inappropriate Restraint with excessive force and improper technique. Specifically, it was alleged based upon video evidence that the members slammed the Service Recipient (S.R.) into the wall, scratching and/or striking him. The Justice Center intended to argue that the restraint itself was unwarranted because this was a transitional living residence and the S.R. could come and go as he pleased. However, our contention in discussions with the Justice Center was that the S.R. was verbally and physically aggressive with staff, threatening to kill staff, and was admittedly high on drugs (K2) and thus, the restraint was warranted. Their cases were scheduled for a Justice Center hearing on February 6, 2020, which is now cancelled in light of the settlement. Both members are pleased with the result.

Negotiations

Since the negotiated collective bargaining agreement was ratified by the NYSCOPBA membership on January 24, 2019, we have worked regularly with GOER on the implementation of the Agreement's terms and the resolution of issues relating to the new agreement. We continue to be involved in many issues including, but not limited to retroactive pay, overtime denominator, employee benefit fund, Article 12 issues (including Article 12.2 payments) and language, pre-shift brief payments, proofs and printing of new agreement, etc. We will continue to work with GOER, the Governor's staff and the Comptroller to fully implement the new agreement.

Litigation

Statewide – Retiree Health Insurance Litigation (NYSCOPBA v. State, et al., NDNY, 11-CV-1523): This is the case where NYSCOPBA (and other unions) filed litigation under the Contracts Clause of the US Constitution and under a breach of contract theory when the State raised the health insurance contribution rates for retirees (to a percentage higher than the percentage in existence in the CBA when they retired). NYSCOPBA (and the other unions) appealed this case to the US Court of Appeals for the 2nd Circuit challenging the lower court's (NDNY) decision granting Summary Judgment in favor of the Defendants. On March 6, 2019, all the unions filed their briefs. The State submitted its response on July 7, 2019. On August 7, 2019, we submitted a reply brief. The matter is now fully briefed. Oral argument has yet to be scheduled.

Statewide - Civil Service Promotional Exam Fees: NYSCOPBA, along with other unions, filed an IP alleging that the State unilaterally changed its policy/procedure with respect to the fees charged for promotional civil service examinations. The case was heard by an ALJ, went up to the Board, and was remanded back to the ALJ for further proceedings. Ultimately, ALJ Sargent found that the State, specifically the Department of Civil Service, violated § 209-a.1 (d) of the Act when it unilaterally began requiring employees to pay a fee for promotional/transition examinations, and ordered the State to make whole employees for any fees paid. Subsequently, the State filed exceptions to the Board on this decision. On behalf of NYSCOPBA, this office submitted a response to the exceptions. The Board upheld the ALJ's decision.

The State has since served on NYSCOPBA and the other unions a petition for an Article 78 special proceeding to challenge PERB's determination. The matter raises a question of substantial evidence, so it was transferred to the Appellate Division Third Department for decision.

On November 27, 2019, NYSCOPBA (and the other unions) submitted our memorandum in support to the Appellate Division, Third Department on this transferred proceeding. The State has an option of submitting a reply, then the matter will get placed on the calendar for oral arguments.

[Member] v. NYSCOPBA and Michael Powers (U.S. District Court, Northern District of New York) (17-CV-937). During December, 2017, the member, a correction officer at Riverview Correction Facility, commenced this action alleging a number of constitution claims based on allegations that overtime was not distributed in a fair and non-discriminatory manner. Our Motion to dismiss was filed in January, 2018. The member opposed the Motion and moved for leave to file an Amended Complaint. We opposed the motion to amend on the grounds that the proposed amendments were futile. On March 22, 2019, the Court issued its Decision and Order which granted the Plaintiff's motion to amend. The Court then proceeded to dismiss the Plaintiff's Amended Complaint. All of the Plaintiff's Federal Claims against NYSCOPBA have been dismissed and the Court has declined to exercise jurisdiction as to Plaintiff's State Law claims. Unless Plaintiff files a Notice of Appeal, this litigation is at an end. We have not received a Notice of Appeal, but it appears that the member has, or is attempting to, file a lawsuit on his State law claims in the Supreme Court, county of St. Lawrence. On April 22, 2019, we received a Notice of Judicial Assignment which means that the member filed a Request for Judicial Intervention ("RJ") in St. Lawrence County. On April 23, 2019, NYSCOPBA was served with Summons and Complaint in State court action commenced by the member. The Complaint had to be answered or moved against by May 13, 2019. We filed a Motion to Dismiss the Complaint which was returnable on June 7, 2019. We appeared in St. Lawrence County Supreme Court for oral argument. The court will issue a written decision on our motion. The State filed a motion to dismiss which was returnable on July 12, 2019. We are waiting for the court's decision.

[Member] and NYSCOPBA v. NYS DOH and NYS Department of Civil Service: We prepared an Article 78 Proceeding challenging the use of temporary SSA1s by OMH. OMH has several vacant SSA1 and SSO1 permanent positions and is using temporary SSA1s to perform these duties. The temporary positions exceed the time limits on such appointments found in Civil Service Law Section 64 and violate the merit and fitness requirements of Civil Service Law Section 61 and Article V, Section 6, of the New York State constitution. The Petition was filed on October 23, 2019, with a return date of December 6, 2019. At the request of the Attorney General's Office this matter was adjourned to January 24, 2020. On January 21, 2020, we received the State's Motion to Dismiss the Petition. On January 22, 2020, we filed our Memorandum in Opposition to the Motion to Dismiss. Assuming that we prevail on the Motion, the court will re-notice the Petition to be heard.

[Member] and NYSCOPBA v. NYS DOCCS (Albany County Index No. 2805-19): This is an Article 78 Proceeding involving DOCCS' termination of the employment of the member (Taconic Correctional Facility) pursuant to Section 71 of the Civil Service Law. The member was injured

during the restraint of an inmate who had refused to be escorted to keeplock and who punched another officer in the face. Once again, DOCCS determined that this was not an assault and only gave the member a one-year leave. We contend that the member was assaulted and is entitled to a two-year leave. This Proceeding was commenced on May 7, 2019, and was returnable on June 21, 2019. On September 9, 2019, we received a decision from the Supreme Court dismissing our Petition. On September 30, 2019, we filed a Notice of Appeal. Our Record and Brief were filed on December 10, 2019. State's Brief is due on January 9, 2020.

[Member] (Edgecombe Correctional Facility) v. DOCCS: This is another Article 78 Proceeding arising out of the termination of the member's employment, by DOCCS, because he was out of work for a period in excess of one year. The member was injured restraining a parolee/inmate who was attempting to swallow contraband. We contend that the member should have been given a two-year leave pursuant to Section 71 of the Civil Service Law. This proceeding is also based upon the definition of Assault in the Second Degree contained in Sections 120.05 (3) and 120.5 (6) of the Penal Law. Our Article 78 was returnable on October 26, 2018, but, at the request of the State, was adjourned to November 23, 2018. Our Reply Memorandum was filed on November 21, 2018. On December 19, 2018, we received a Decision dismissing our Petition. We filed a Notice of Appeal on January 11, 2019. On April 9, 2019, our Record and Brief was filed in the Appellate Division, Third Department. The State's Brief was filed on June 10, 2019. We filed our Reply Brief on June 18, 2019. Oral argument went forward on November 15, 2019. On January 30, 2020, we received a Decision from the Appellate division, Third Department. The court rejected our argument that the Penal Law definitions of assault should be applied by DOCCS. This was a three-to-two decision by the Court. The two dissenting Justices reached the conclusion that, using DOCCS' definition of assault, the determination that the member was not assaulted lacked a rational basis and was arbitrary and capricious. Because there were two dissents, we have an appeal by right to the Court of Appeals. We filed a Notice of Appeal on February 6, 2020, and should be receiving a Scheduling Order from the Court of Appeals.

[Member] v. DOCCS/[Member] v. DOCCS: These are two separate Article 78 proceedings challenging each officer's termination after one year of workers' compensation leave. These petitions allege that each officer's workers' compensation leave was due to an assault by an inmate, therefore they should each be entitled to two years of leave under Civil Service Law Section 71. We have received decisions in each of these cases dismissing the petitions. The Judge in each case held that DOCCS' determination that the individuals were not "assaulted" as the term is used in Civil Service Law Section 71, was not arbitrary and capricious. The Judge did not agree with our arguments that the penal law definition of assault should apply. A Notice of Appeal has been filed in each case. We recently received a decision in a very similar case at the Appellate Division, Third Department (see case above) on which we have an appeal by right to the Court of Appeals. The Notice of Appeal in both of these cases were filed to protect the right to perfect the appeal. We have six months to do so if needed.

[Member] (Clinton Correctional Facility): On November 1, 2019, we filed an Article 78 proceeding in Albany County Supreme Court challenging the termination of the member. This Officer from Clinton CF was terminated after one year of workers' compensation leave, when we argue he is entitled to two years due to an assault. The matter has been filed and served.

New York State Office of Mental Health, Central New York Psychiatric Center, Petitioner/Employer vs. [Member] and [Member], Respondents/Employees, Index No. 02930-19: The Employer, Central New York Psychiatric Center, is seeking permission from the court seeking video footage from CNYPC involving the member and a patient. OMH's papers seek to have the video tape sent to the arbitrator. On behalf of the member, who is a Security Hospital Treatment Assistant at CNYPC, we challenged the release of those records as a demand for arbitration has not been made and there is no arbitrator currently assigned. The matter is pending before the court and we await a determination.

[Member] (Fishkill Correctional Facility) and NYSCOPBA v. NYS DOCCS: The member, in an arbitration, was found guilty of using excessive force and his employment was terminated. The Arbitrator found that the initial suspension was not for probable cause and ordered back pay for the period of suspension. The Arbitrator, however, provided that the back pay award was to be offset by the members's income during the period of suspension. We prepared a special proceeding seeking to vacate the arbitration award on the grounds that the Arbitrator exceeded her authority. The proceeding was filed on March 8, 2019, with a return date of May 1, 2019. At the request of the Attorney General's Office this matter was adjourned to June 7, 2019. We received a Decision and Order/Judgment from the Supreme Court which granted our Petition to the extent that it vacated that portion of the Arbitration Award which provided that the back pay award was to be offset by any earned income or other work-related insurance. The court held that providing for a deduction from back pay of anything other than unemployment insurance violated the collective bargaining agreement. DOCCS has not appealed this decision. DOCCS has requested an Affidavit from the member that he did not receive unemployment insurance. To date, the member has failed to return to us the requested affidavit.

[Member] and NYSCOPBA v. DOCCS: The member received an arbitration award dated January 19, 2018. In that Award, the Arbitrator found that Grievant was guilty of Charge #3 and issued a penalty of dismissal from service. Regarding the suspension, the arbitrator found that the suspension was not in accordance with Article 8.4 (a)(2) of the collective bargaining agreement because of the acquittal of the criminal charges. He awarded that Grievant shall receive full back pay from the date of his suspension from duty. This matter was handled by W. James Schwan, who wrote to DOCCS Director of Labor Relations John Shipley requesting that DOCCS follow the award and pay the member the back pay money owed to him. Since the member was not made whole pursuant to the Arbitrator's January 19, 2018 Award, on March 29, 2018, we filed a Notice of Verified Petition and Verified Petition to confirm the arbitration award. By Decision and Order dated October 3, 2018, the judge granted NYSCOPBA's Petition to confirm the arbitrator's award and denied the State's Cross-Petition to partially vacate the arbitration award. The Order and Notice of Entry were filed with the Clerk and we served a copy of that filing pursuant to CPLR 2220 on Respondents on October 16, 2018. On November 19, 2018, DOCCS filed a Notice of Appeal. The Appellants-Respondents perfected their appeal and briefs were submitted. The Appellate Division issued its decision modifying the lower court's determination. The Appellate Division found that the Arbitrator exceeded his authority to make an award of back pay and that the Supreme Court should have granted DOCCS's cross-motion to the extent of vacating that award.

[Member] (Clinton Correctional Facility) v. DOCCS: This is an Article 75 Proceeding that we filed in the Supreme Court of the State of New York, County of Albany, on November 21, 2019. The member sustained injuries restraining a combative inmate who was in possession of a weapon. DOCCS determined that the member was not injured in an assault and terminated his employment after a one-year leave. We contend that the member was assaulted and is entitled to a two-year leave pursuant to Section 71 of the Civil Service Law. At the State's request, this matter was adjourned to January 31, 2020. We are awaiting a decision.

Elmira Correctional Facility (DOCCS Violation of IP Settlement): NYSCOPBA and DOCCS settled the underlying improper practice charge by agreeing that DOCCS will provide NYSCOPBA notice and details regarding certain planned changes to posts at Elmira Correctional Facility so that NYSCOPBA could provide meaningful insight into the practical effects of the changes and NYSCOPBA acknowledged that it could not prevent those staff-related changes. DOCCS proceeded to violate the terms of the settlement by failing to provide NYSCOPBA with sufficient notice to allow it to provide such input. This office filed a summons and complaint in Supreme Court, Chemung County, alleging breach of contract for violating the settlement. This matter proceeded to the discovery phase until the parties entered into settlement discussions. Since then, the settlement discussions have stalled and discovery will continue, with the ultimate goal of trial, if the parties cannot revisit settlement discussions.

Discipline

Interrogations: For the months of December 2019 and January/February 2020, we represented one hundred fifty-four (154) members who were interrogated by DOCCS.

Suspension Review Process: The new suspension review process contained in the most recent collective bargaining agreement is now effective. Since March 12, 2019, we have reviewed each suspension NOD to determine a) if it qualifies under the suspension review program and b) if it is a viable case to take to the Master Arbitrator to argue that on the face of the NOD, the grounds for the suspension have not been met.

To date, we have requested suspension review for thirty-six (36) suspension NODs. Out of these thirty six (36) cases, the suspension was overturned in twelve (12) cases, the suspension was upheld in sixteen (16) cases, and in eight (8) cases the matter settled before a decision.

Bare Hill Correctional Facility: The NOD in this case alleges that the member committed various acts of misconduct related to the lawn and grounds crew post, for which DOCCS is seeking termination. A hearing in this matter was held on December 4, 2019. The arbitrator decided that termination was the appropriate penalty in this case.

Bedford Hills Correctional Facility: The NOD alleges that the member was insubordinate towards a supervisor while on her post. The matter was scheduled for a hearing on July 23, 2019, but was postponed due the unavailability of a key witness due to health-related reasons. The matter has since been rescheduled for a hearing on June 2, 2020.

Bedford Hills Correctional Facility: A hearing was held on September 27, 2019, in this NOD where the department is seeking termination. The allegations involve false allegations against a co-worker (supervisor) for sexual harassment (specifically alleged sexual abuse and sexual assault). The parties are in receipt of the transcript of the hearing. Briefs were submitted. The member is currently working. On January 27, 2020, we received the arbitrator's Decision and Award. She found the member "not guilty" of Charge 1 and "guilty" of Charge 2. She determined that the proposed penalty of dismissal from State service was not appropriate. Rather, she awarded a two-day suspension without pay.

Cape Vincent Correctional Facility: The member is charged with going to an outside pub while on duty without authorization and driving another officer's personal vehicle to his or her home residence after consuming alcohol and then reporting to the facility to sign out. A hearing is scheduled on March 31, 2020.

Cape Vincent Correctional Facility: The member is charged with consuming alcoholic beverages and driving a facility vehicle. A hearing has been scheduled for March 16, 2020.

Central New York Psychiatric Center: The member received a Notice of Discipline for filing false documents with AFLAC. His arbitration is scheduled for March 4, 2020.

Coxsackie Correctional Facility: The NOD alleges that the member, while off-duty, impersonated a police officer when he allegedly used a privately installed bubble light in his personal vehicle to pull over an off-duty NYS Trooper and for lying to OSI at two (2) interrogations about the circumstances surrounding the incident. The matter is scheduled for a hearing on April 2, 2020.

Cultural Education Center: The member received a Notice of Discipline on October 8, 2019, for alleged incidences of personal cell phone use and misconduct and/or incompetence and insubordination. He has a number of prior disciplinary issues, which the State Education Department is citing in seeking the penalty of dismissal. The hearing is scheduled for March 17, 2020. This matter was referred out due to a legal conflict.

Downstate Correctional Facility: The NOD alleges that the member was insubordinate when she failed to submit a memorandum to her supervisor regarding alleged non-compliance with the Uniform/Equipment directive and when she failed to speak with her supervisor, as allegedly directed. The matter was scheduled for a hearing on February 13, 2020. However, it settled prior to the hearing.

Downstate Correctional Facility: The member received a NOD on October 8, 2019, following an incident where she operated a motor vehicle under the influence of alcohol during which time she struck a motorcyclist causing personal injuries and then left the scene of the accident. She has received various criminal charges, most notably felony charges for vehicular assault in the 2nd degree and leaving the scene of a serious physical injury accident. DOCCS is seeking dismissal. The member is currently suspended without pay. This matter has not been appealed to arbitration since there has been no agency level decision as of yet. The matter will not be scheduled for a

hearing until the underlying criminal charges are resolved, which may lead to automatic dismissal from service by operation of law upon a felony conviction.

Downstate Correctional Facility: The member received a Notice of Discipline for allowing an inmate during a funeral trip to have contact with individuals that were not members of his immediate family and allowing the inmate to be photographed with those individuals. Additionally, he was charged with failing to search/frisk the inmate prior to placing him back in the transportation vehicle and while escorting the inmate into the facility and/or back to the housing unit. A hearing was scheduled in Fishkill, New York on February 4, 2020. This matter settled at the hearing.

Downstate Correctional Facility: The member received a Notice of Discipline for allowing an inmate during a funeral trip to have contact with individuals that were not members of his immediate family and allowing the inmate to be photographed with those individuals. Additionally, he was charged with failing to search/frisk the inmate prior to placing him back in the transportation vehicle and while escorting the inmate into the facility and/or back to the housing unit. A hearing was scheduled at the Hilton Garden Inn in Fishkill, New York on February 10, 2020. The matter settled prior to the hearing and is now closed.

Downstate Correctional Facility): The officer in this NOD is accused of failing to secure the housing unit door, the door to the officer's station, permitting an inmate to access a secure post and offering a bribe to a sergeant who was reporting his alleged misconduct. A hearing was conducted on December 11, 2019. Briefs were submitted on January 12, 2020. The arbitrator found the member not guilty with respect to the bribery charges. However, he was found guilty on the remaining charges and thus, the arbitrator determined that the penalty of dismissal was appropriate.

Downstate Correctional Facility: This member was charged with misconduct for authoring an inmate count an hour and a half ahead of time; failing to secure the Housing Unit, introducing contraband into the facility, and also reporting to his work area without his collar brass on. The first hearing was on August 6, 2019. Day 2 was initially scheduled on September 17, 2019. The arbitrator had an unexpected medical procedure and the hearing was cancelled. The second hearing day was held on November 22, 2019. At the conclusion of the hearing, the Arbitrator directed DOCCS to have the member return to work and restored to the payroll as soon as possible. On November 25, 2019, the member was directed to return to duty on his next scheduled work day. On December 20, 2019, the Arbitrator issued an Award and found the member guilty of charges 1, 2 (authoring a count slip ahead of time), 3a (failure to secure the door to a housing unit), 4 (introducing contraband into the facility) and 5 (failure to maintain a posture of alertness while reading the Bhagavad Gita). He was found not guilty of charges 3b, 3c (failing to secure 36 individual cell doors and inmates in their cells) and 6 (failing to report to his assigned work location in full uniform). The Arbitrator awarded that the appropriate penalty was a suspension without pay from April 25, 2019 to the date he was reinstated to the DOCCS payroll on or about November 25, 2019.

Downstate Correctional Facility: The member received a NOD following an incident where he was arrested for driving while intoxicated. He has received various criminal charges, most notably

a felony charge for aggravated unlicensed operation of a motor vehicle in the first degree. His license had previously been suspended following a prior DWI in June 2019. DOCCS was seeking dismissal. The member's felony charge was recently reduced to a misdemeanor. This matter is now settled.

Eastern Correctional Facility: The member received a NOD alleging that he made a false statement in an official investigation regarding a lost firearm. He was arrested and charged with a misdemeanor for "Making a Punishable False Written Instrument". The NOD also contains an allegation that he lost or could not locate the subject firearm during a specific time frame. DOCCS is seeking dismissal. The member is currently suspended without pay. This matter has not been appealed to arbitration since there has been no agency level decision as of yet. The matter will not be scheduled for a hearing until the underlying criminal charges are resolved.

Fishkill Correctional Facility: The NOD alleges that the member unlawfully discharged a firearm and shot a raccoon while the member was off duty at his residence, and arrested and charged with violating NYS Penal Law § 120.20 (reckless endangerment 2°), a Class A Misdemeanor, and NYS Agriculture and Markets Law § 353-a, Article 26 (aggravated cruelty to animals), a Felony, and seeks dismissal from State service. The matter will not be scheduled for a hearing until the underlying criminal charges are resolved, which may lead to automatic dismissal from service by operation of law upon a felony conviction.

Fishkill Correctional Facility: The member received a NOD dated October 9, 2019 following an incident on September 28, 2019 where he allegedly displayed a firearm to a fellow motorist and said "Pull over, I have a gun." It is further alleged that he engaged in a high speed chase of this individual until authorities became involved and he was arrested. He was charged with Menacing in the Second Degree, a Class A Misdemeanor. The NOD also contained an allegation that the member failed to advise the facility of his purchase of this firearm. DOCCS is seeking dismissal. The member is currently suspended without pay. This matter had not been appealed to arbitration since there was no agency level decision as of yet. The member was acquitted of his criminal charges and the disciplinary matter is now settled.

Fishkill Correctional Facility: The member received a NOD for an alleged incident wherein he backed a state van into a loading dock but did not immediately report it. DOCCS is seeking a 30-day suspension without pay. The hearing is scheduled for March 26, 2020.

Fishkill Correctional Facility: The Notice of Discipline alleges that the member failed to comply with a lawful order from supervisory staff in violation of the Employees' Manual. Specifically, the officer is accused of taking a counseling memo back from the sergeant's hands and grabbing the sergeant's left and right hands. There are additional charges, all stemming from the same basic fact pattern. We filed for expedited arbitration and the matter was scheduled for a hearing on January 17, 2020. Ultimately, this matter settled for a suspension-to-date. The member is now back to work.

Gouverneur Correctional Facility: The member received a NOD for making a racially insensitive post on his Facebook page and for lying at his interrogation. The arbitration was held on July 12, 2019. Closing Briefs were filed on September 6, 2019. On September 16, 2019, we

received the Award from the Arbitrator who found the member guilty and offered the member the opportunity to resign or be terminated on October 1, 2019. DOCCS refused the member's resignation and terminated his employment. We commenced a special proceeding to confirm the arbitration award and compel DOCCS to accept the resignation. The return date is November 12, 2019. The AAG assigned to the case has requested a one month adjournment until December 17, 2019. The State filed a cross-motion to vacate the arbitration award which was returnable on December 30, 2019. On December 23, 2019, we filed our opposition to the cross-motion. We are waiting for a decision.

Great Meadow Correctional Facility: The member received a NOD for on duty personal cell phone use. This includes use at both his personal vehicle and while working as an outside inmate transport officer, including a date on which it is alleged he sent/received 457 texts. The NOD also contains allegations of inaccurate time records and of the member contacting an inmate's family member on social media to say "nice seeing you" and to tell her she was attractive. DOCCS is seeking dismissal. The hearing is scheduled for May 6, 2020.

Greene Correctional Facility: The member received a Notice of Discipline for not being attentive to her assigned duties. This matter is scheduled to be heard on March 10, 2020.

Greene Correctional Facility: The member received a NOD alleging that he allowed an inmate to stand in the back of a pickup truck during which time the inmate's arm was lacerated by barbed wire. The matter settled for a letter of reprimand.

Green Haven Correctional Facility: The member received a Notice of Discipline which charges her with getting in an argument with a fellow officer and using racially insensitive language. Her arbitration went forward on scheduled for February 26, 2020. Closing briefs will be due thirty (30) days after our receipt of the transcript.

Kirby Psychiatric Center: The member was issued a notice of discipline alleging that she acted inappropriately toward a co-worker, including the statements "Do you like chaos?" and "snitches get popped" and slapping another co-worker on the rear end. The hearing has been scheduled for April 20, 2020.

Manhattan Psychiatric Center: The member received a NOD for failing to investigate an alleged sexual assault of a female SSO. The hearing was scheduled for May 23, 2019. This matter was adjourned to July 23, 2019. This case has now been adjourned without date.

Mid-Hudson Forensic Psychiatric Center: The SHTA member received an NOD for allegedly physically abusing a patient. This matter is scheduled for arbitration on March 17 and 18, 2020.

Mid-Hudson Forensic Psychiatric Center: This member is charged with physically assaulting or aiding in the physical assault of a patient in the elevator. It is alleged that the patient suffered a traumatic bladder rupture and multiple fractured ribs. There are 7 charges stemming from the allegation. A hearing in this matter has been scheduled for April 14 and 15, 2020.

Mid-Hudson Forensic Psychiatric Center: The NOD alleges that the member struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor, and failed to provide proper medical care to a service recipient. The matter has been scheduled for hearing on April 16 and 17, 2020. This matter is the subject of a corresponding Justice Center report of substantiated finding.

Mid-Hudson Forensic Psychiatric Center: The NOD alleges that the member struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor, and failed to provide proper medical care to a service recipient. The matter is scheduled for hearing on May 11, 2020. This matter is the subject of a corresponding Justice Center report of substantiated finding.

Mid-State Correctional Facility: The officer in this NOD is accused of leaving his post unsecured, falsely documenting rounds that were not conducted, falsely submitting count slips and watching a movie while on duty. This case has been appealed to arbitration. Hearing dates have been scheduled for June 22, 23 and 24, 2020.

Mid-State Correctional Facility: The member is charged with entering Mid-State Correctional Facility with a vape pen/vaporizer and using the device while on duty in the console area. Additionally, he is charged with opening end gates in the special housing unit without authorization; failing to ensure that the console hatch door was secured at all times and failing to perform security rounds; prematurely signing count slips and allegedly sleeping or giving the appearance of sleeping while on duty. The case is scheduled to be heard on April 7, 2020.

New York State Psychiatric Institute: In this NOD, the member is accused of failing to follow orders when he refused to let a patient's service dog see a patient for a scheduled visit. We have submitted arbitrator requests and are awaiting the assignment of an arbitrator.

Riverview Correctional Facility: The NOD in this expedited arbitration alleges that the member engaged in a course of verbal sexual harassment against other DOCCS' employees. The matter was scheduled for a hearing on January 13, 2020. The parties entered into a settlement agreement at the hearing.

Roswell Park Cancer Institute: In this NOD, the member is accused of filing a false report of being backed into by a civilian motor vehicle. It is further alleged that she misrepresented facts and violated the Corporate Code of Conduct. The arbitration is tentatively scheduled for March 23, 2020. However, we were recently advised that Roswell Park Cancer Institute is eliminating the job title of "Special Police Officer" as of the end of March. Accordingly, we are in settlement discussions with Roswell Park at this time.

Sing Sing Correctional Facility: The officer in this NOD is accused of having significant and numerous items of contraband in his Tower Post at Sing CF. The hearing went forward on February 19 and 20, 2019. Closing briefs are due on March 20, 2020.

Sing Sing Correctional Facility: The NOD alleges that the member pre-filled out numerous count slips and other forms. A hearing date has been scheduled for March 13, 2020.

Sing Sing Correctional Facility: This member is charged with sexually harassing and/or making inappropriate statements and behavior towards a subordinate staff member in violation of DOCCS' Rules and Regulations while on duty at Downstate Correctional Facility. The member was restored to duty pursuant to the suspension review process. The first day of hearing was held on September 27, 2019. A second day of hearing was scheduled but was cancelled by the State due to the illness of the DOCCS Labor Relations representative. A second day of hearing was held on February 21, 2020. The third day has been tentatively scheduled for April 3, 2020.

Taconic Correctional Facility: The NOD alleges that the member was in possession of illegally obtained marijuana and received corresponding criminal charges. The member also tested positive for THC after a Department-ordered urinalysis. The criminal charges were dismissed and the matter will be appealed to arbitration. At this point, the member has elected to retain private counsel.

Taconic Correctional Facility: The member received a NOD for making telephonic contacts with two parolees. We had our first hearing on June 11, 2019. We believe that Charge 1 is timed out and a portion of Charge 2 is timed out. DOCCS has taken the position that the officer's actions constitute the crime of official misconduct. We have made a written motion to dismiss Charges 1 and 2 on the grounds that these charges are barred by the nine-month limitation and on the basis that the Charges lack the specificity required by Section 6.2 (a) of the CBA. The Arbitrator directed DOCCS to respond to our motion by June 21, 2019. A second hearing was held on July 9, 2019, for consideration of the motion to dismiss. Closing briefs were submitted on August 5, 2019. On September 9, 2019, we received the Arbitration Award. The Arbitrator dismissed Charges 1 and 2 of the NOD as untimely and for failing to meet the specificity requirements of the CBA. The member received a 75-day suspension for lying at this Interrogation. DOCCS has not yet reinstated the member and we have been told that the Arbitration Award is being reviewed by Counsel's Office. On September 26, 2019, we filed a proceeding, pursuant to CPLR Article 75, to confirm the arbitration award. On February 12, 2020, we received a Decision from Justice Corcoran confirming the arbitration award and dismissing the State's motion to vacate the award. DOCCS has not put the member back to work and we were told that the Decision is at Counsel's Office for review. Any Notice of Appeal must be filed by March 25, 2020.

Taconic Correctional Facility: The member received a Notice of Discipline for allegedly handing in a fraudulent medical note. This was a no offer case for DOCCS. The expedited arbitration was held on May 16, 2019. Closing Briefs were submitted on May 23, 2019. On June 6, 2019, we received an Arbitration Award finding the member not guilty and reinstating her with all back pay and accruals. The member was subsequently placed on administrative leave and DOCCS is continuing to investigate other medical notes submitted by the member. She was then suspended without pay. However, by decision dated January 16, 2020, the suspension was found to be inappropriate pursuant to the suspension review process.

Wallkill Correctional Facility: The member received a NOD dated May 15, 2019 for accruing 18 occasions between August 25, 2018 and May 8, 2019, including 8 alleged AWOLs. DOCCS was seeking a \$2000 fine, loss of 10 accruals and loss of swapping privileges. The matter was scheduled for a hearing on January 21, 2020. The matter was settled for a \$1250 fine only.

Justice Center

Bronx Psychiatric Center (two (2) members): This Category 3 report of deliberate inappropriate use of restraints alleges that the SSO conducted an unwarranted restraint with excessive force improper technique, which included slamming the service recipient into a wall, scratching and/or striking him. We submitted a request for amendment, which was denied. This matter was scheduled for a combined hearing with a second SSO member for February 6, 2020. However, it is now settled for an immediate seal.

Central New York Psychiatric Center: This case involves a Category One report of neglect alleging that the SHTA failed to provide proper supervision during which time a service recipient engaged in self-harm. Specifically, the allegation was that the SHTA was less than alert and/or sleeping during a 1-on-1 constant observation during which time the service recipient attempted to hang himself. The SHTA was previously issued an NOD based on this same incident, which proceeded to arbitration and resulted in an arbitrator's award on May 14, 2019, of a six-month suspension without pay and a one-year probationary period. The subsequent Justice Center hearing was held on October 29, 2019. Despite numerous conversations with the SHTA prior to the hearing, he refused to attend. At the hearing, the Justice Center presented 3 witnesses and a video of the incident. The judge issued the Final Determination and Order after Hearing on December 3, 2019. The Category 1 finding of neglect was maintained, with the Vulnerable Person's Central Register being notified and his name being referred to the Staff Exclusion List. In light of the SHTA's prior disciplinary arbitration decision, at which time he was put back to work, he remains employed at CNYPC despite the recent Category 1 finding.

Kirby Psychiatric Center: This Category 3 report of neglect alleges that the Senior SHTA committed neglect on November 2, 2018, when he directed derogatory statements toward a service recipient. We submitted a request for amendment which was denied. This matter was scheduled for a hearing on December 9, 2019. In advance of the hearing, the matter settled for an immediate sealing of the Category 3 report of neglect.

Kirby Psychiatric Center: This Category 3 report of neglect alleges the SHTA failed to provide adequate services to the Service Recipient during which time she did not allow him to use the bathroom. We submitted a request for amendment, which was denied. The matter was scheduled for a hearing on February 26, 2020, which went forward on that date. We await the decision.

Mid-Hudson Forensic Psychiatric Center (Four (4) members): These Category 2 reports of neglect and abuse allege that the members struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor (and/or failed to properly supervise), and failed to provide proper medical care to a service recipient. We submitted a request for amendment and await the response from the Justice Center.

Improper Practice Charges

Statewide – Commissioner Annucci's Memorandum (U-35773): This office filed an Improper Practice Charge in response to Acting Commissioner Annucci's May 3, 2017, memorandum. The

memorandum was read at lineup to correction staff for ninety-six (96) hours, which, among other things, effectively accused the Union of disseminating “half-truths” and perpetuating a “negative outlook” about the Department. We received the State’s Answer in response. An initial conference took place on October 19, 2017. This matter has been complicated by GOER indicating that it will consider issuing strike notices to members for alleged job actions that occurred at Auburn CF, Clinton CF, and Great Meadow CF in April-May 2017 if this IP is not withdrawn. That is because the Annucci memo was (in DOCCS’ words) a “knock-it-off” response to the job actions. On January 8, 2018, this office met with NYSCOPBA Executive VP Tammy Sawchuk, Northern Region VP John Roberts, Business Agent Ricky Brunelle, and Stewards from Clinton CF and Great Meadow CF to present and discuss the facts surrounding the IP and possible strike notices, and its potential impact on members at Clinton CF. The matter was scheduled for a hearing, but has since been placed on the PERB hold calendar pending negotiations with GOER.

Statewide – Duty of Fair Representation (U-36027): We submitted our Answer on behalf of NYSCOPBA in an Improper Practice charge filed by a member, alleging that NYSCOPBA breached its duty of fair representation in the manner in which it allegedly withheld union representation from the former member at Fishkill Correctional Facility. A conference was held at the Albany PERB Office on March 14, 2018, at 11 am. A second pre-hearing conference took place by phone on June 12, 2018, to discuss evidence and issues to be resolved at hearing, with hearing dates of July 30 and 31, 2018. The hearing was adjourned on July 30, 2018, at the request of the member, as he was physically incapable of appearing at the hearing due to his recent surgery. The judge adjourned the hearing and scheduled a phone conference to further discuss scheduling and the matter. The matter was heard on November 7 and 28, 2018. That judge has since left PERB and the matter was reassigned. The parties rested, have received transcripts, and submitted closing briefs. We await the decision.

Statewide – Employee’s Manual (U-33638): On February 23, 2018, we discussed settlements with GOER to resolve this charge. This IP is from 2014 and involves changes in the Employee’s Manual. Specifically, the changes include: section 2.2 regarding a change in the licensure practice; section 2.3 regarding reporting requirements in domestic violence situations; section 4.9 regarding copying documents; section 4.15 regarding dissemination of criminal history; section 6.3 regarding official stationary; and section 2.44 regarding alerting of supervisory rounds. We will keep you informed regarding progress of negotiations.

Statewide – DOCCS Light Duty (U-36658): On January 11, 2019, we attended a pre-hearing conference at PERB before ALJ Mitchell to address this Improper Practice charge filed when DOCCS began assigning light duty officers to two new types of posts, construction and one on one watches. This IP alleges that these new posts change the long-standing parameters for light duty post (i.e. – counted toward minimum staffing – not an extra). At the conference we explained the arguments in our case. DOCCS agreed to review our arguments now that they better understood them and to see if any potential settlement could be reached. The matter was placed on hold. The matter has since been transferred to ALJ Rita Strauss, who has scheduled another pre-hearing conference for April 28, 2020. This matter has also been scheduled for a hearing on June 11, 2020.

Central New York Psychiatric Center (U-35167): We previously filed an Improper Practice charge against OMH for its policy change at CNYPC depriving our members of on-site medical care from facility physicians when they are injured on the job. Now, no medical care is provided to them and a supervisor is responsible for making the medical determination as to whether the employee should seek outside medical treatment. After an initial conference with ALJ Burritt, the matter has been placed on hold. During that time, the Union will continue to review various assault alert forms completed by members in order to ascertain whether they received medical treatment or were ignored by facility physicians.

Central New York Psychiatric Center (U-36192): This office filed an Improper Practice Charge in response to CNYPC's reinterpretation of the existing call-in procedure that changes how an ill employee reports an illness-related absence and how such absence is counted for discipline purposes. The matter was heard at a pre-hearing conference with ALJ Weisblatt on March 26, 2018. The Judge placed the matter on PERB's hold calendar until June 1, 2018, to give the parties the opportunity to discuss possible settlement. The matter has been scheduled for a hearing but has since been placed on hold. The facility is in the process of negotiating with both NYSCOPBA and CSEA regarding resolution of this matter. However, since the facility has not made reasonable progress, we have requested that the matter be scheduled for a hearing. A second pre-hearing conference took place on September 24, 2019, wherein the parties discussed a preliminary intent to rectify the problems raised in the IP. A hearing date was set for December 11, 2019, but the parties have resolved the matter without a hearing.

Helen Hayes Hospital (U-36939): On August 5, 2019, we appeared at a PERB Conference on behalf of the member against Helen Hayes Hospital. During the conference, the ALJ stated that we had established a prima facie case that the employer terminated the member based upon union activity. The ALJ directed the employer to investigate whether the member could be reinstated. This case remains on hold. By way of background, on May 10, 2019, we filed an improper practice charge on behalf of the member against Helen Hayes Hospital. The member received a temporary appointment to the position of Security Services Assistant, Helen Hayes Hospital, effective May 15, 2015. Notwithstanding the fact that she had been a temporary appointment, the member continued service at Helen Hayes Hospital from May 2015 through April 23, 2019, when she was abruptly discharged. The member filed her first grievance on March 25, 2019, regarding shift selection. She then filed her second and third grievances on April 23, 2019 – the same date as her termination from Helen Hayes Hospital. We alleged that the termination was to interfere with, restrain, and retaliate against the member from exercising her guaranteed rights under the *Taylor Act*. The case is on hold until March 6, 2020.

Helen Hayes Hospital (U-37328): On November 22, 2019, we sent a Taylor Law request for information to Helen Hayes Hospital, because Helen Hayes has two additional employees that are working in the Safety Department and of whom Civil Service has no information. On December 10, 2019, we served a second Taylor request on Helen Hayes. Helen Hayes has not responded to either request. On January 10, 2020, we filed an improper practice charge against Helen Hayes. A conference has been scheduled for March 16, 2020.

Mid-Hudson FPC Bag Restriction (U-36147): We filed an Improper Proper Practice Charge alleging a failure to negotiate regarding a mandatory subject of bargaining. Mid-Hudson FPC

unilaterally changed a significant work rule, impacting the comfort and convenience of employees. Specifically, the facility implemented a new rule restricting all employees to entering the facility with only one bag (of restricted size) for clothing, etc. and one small cooler for food. The prior practice at the facility did not limit employees in the size and number of bags they could bring into the facility for each shift. We appeared at a conference on March 21, 2018, before ALJ Weisblatt. The parties had a substantive conversation about settling this case. The ALJ placed the matter on the hold calendar so that the discussions could continue.

Otisville Correctional Facility (U-36770): This office filed an Improper Practice Charge alleging retaliation and interference against various supervisory staff at Otisville CF for discouraging NYSCOPBA members from voting for certain stewards. A pre-hearing conference before ALJ William Weisblatt took place on April 25, 2019, at PERB in Albany. ALJ Weisblatt directed NYSCOPBA to submit an offer of proof on certain portions of the charge, in order to specify the connection between various instances of retaliation. ALJ Weisblatt directed the State to issue an amended Answer after NYSCOPBA submits its offer of proof. This office has submitted the necessary paperwork on NYSCOPBA's behalf and met with representatives from DOCCS and GOER in order to inspect various at-issue documents on June 3, 2019. DOCCS and GOER will provide us with additional documentation. The ALJ directed NYSCOPBA to submit an offer of proof regarding the charge, which this office filed on NYSCOPBA's behalf, to which DOCCS responded.

Rochester Psychiatric Center (U-37294): We filed an improper practice charge alleging that Rochester P.C. violated the Taylor Law in dealing directly with the Safety and Security Staff at the facility. Specifically, the nursing department sent an e-mail to the Safety and Security staff listservs seeking SSOs interested in performing out-of-title overtime work in the SHTA job title. The human resources department at the facility created a form entitled "RPC Out-of-Title Overtime Emergency Coverage." Any individuals agreeing to perform the out-of-title overtime work in the SHTA job title were required to execute this form, which contained terms and conditions of employment relating to compensation for overtime work, mandatory training, scheduling of tours of duty/shifts, and disciplinary procedures. The facility directly contacted our unit members and prepared the out-of-title overtime agreement without the consent of, or any negotiation with, NYSCOPBA representatives. A pre-hearing conference is scheduled for April 7, 2020 at PERB.

Roswell Park Cancer Institute (U-36525): We filed an improper practice charge after RPCI unilaterally changed the work schedules and pass days of several members' bidded posts without prior negotiations. This resulted in some members losing their rotating three-day-weekends and other members having weekday pass days instead of weekend pass days. A pre-hearing phone conference took place on October 4, 2018. A second phone conference took place on November 16, 2018. The ALJ requested that the parties draft written submissions on various procedural topics that may impact the case irrespective of the merits. Those submissions were due on January 18, 2019. The parties await the response of the Judge. The parties have agreed to a conditional deferral of the matter to the parties' grievance procedure. The Judge issued a decision granting the conditional deferral and the matter will now be processed as a grievance.

Sing Sing Correctional Facility [Member] (U-34606). On December 12, 2019, we received a Decision in this member's Improper Practice Charge case. After the member testified for us, as an expert witness, DOCCS revoked the member's status as a Training Officer. We filed an Improper Practice ("IP") Charge, pursuant to Taylor Law §§ 209.1(a) and (c), contending that DOCCS retaliated against the member for engaging in a protected activity.

The PERB Administrative Law Judge ("ALJ") found that NYSCOPBA had established a *prima facie* case. NYSCOPBA proved that the member was engaged in a protected activity when he testified on behalf of NYSCOPBA. The ALJ further found that DOCCS had knowledge of the protected activity and that the retaliation would not have occurred except for the protected activity. This finding is important to NYSCOPBA.

The burden of proof then shifted to DOCCS to establish that it had a good faith business justification for its actions. For us, the problem is that former DOCCS' Labor Relations Representative David Albano ("Albano") misrepresented the substance of the member's testimony both to John Shipley and at the PERB hearing.

At the underlying disciplinary arbitration, we called the member, as an expert witness, to give opinion testimony concerning the use of force at issue in the underlying disciplinary arbitration. DOCCS had previously called two witnesses who assumed that the inmates were truthful and gave the opinion that the use of force was not justified and was excessive. We asked the member to assume that the officer was telling the truth, that the inmate threatened to spit in the officer's face, that the inmate made a gurgling sound as if gathering saliva to spit, and that the inmate moved his head toward the officer. Assuming these facts, we asked the member whether he had an opinion as to whether the use of force was justified.

At the IP Charge hearing, Albano said that he did not recall whether the member was asked a hypothetical question. John Shipley testified that he was not told that the member was asked a hypothetical question and gave an opinion. DOCCS decided to remove the member from his training duties, because they believed he misrepresented DOCCS' use of force policies.

There was no transcript of the underlying disciplinary arbitration. DOCCS, therefore, based its actions solely upon Albano's version of the member's testimony. Albano's testimony was factually incorrect, but, without a transcript, we cannot prove that Albano misrepresented the member's testimony.

The ALJ found that DOCCS had a business justification for taking away the member's training duties. Based upon Albano's version of the member's testimony, the ALJ found that DOCCS acted in good faith. DOCCS also presented testimony, at the IP hearing, from two deputy commissioners, who said that the Officer was not in compliance with the use of force policy because there were less violent means available to the officer than throwing punches.

We do not recommend appealing the ALJ's Decision. The member has retired and this Decision no longer affects the member. The Decision is limited to its facts and does not give DOCCS any meaningful precedent for future cases. The Decision does, however, give NYSCOPBA useful precedent, which is that a unit member testifying at a disciplinary hearing is engaged in a protected

activity. DOCCS argued that the member testified as a member of the Department and was, therefore, not engaged in a protected activity. Lastly, it is unlikely that we could be successful on appeal, because, without a transcript of the underlying disciplinary hearing, there is no way to prove that Albano misrepresented the member's testimony. For these reasons, it was decided we would not appeal the ALJ's Decision.

State University of New York and State University of New York Downstate Medical Center (U-36999): We filed an Improper Practice Charge against SUNY and SUNY Downstate Medical Center for failure to provide parking to its employees. On March 4, 2019, the parking garage where all employees parked was closed. As a result, the employer would no longer be providing adequate parking to its employees. The current annual rate for parking has been \$79.81. As a result of the employer's decision to close the parking lot, employees' parking costs will increase to \$2,607.00 per year. Employer-provided parking is an economic benefit which is a term and condition of employment and a mandatory subject of bargaining. A conference was scheduled before the Administrative Law Judge on August 20, 2019 but was adjourned at the joint request of NYSCOPBA and GOER. The parties have signed a Memorandum of Understanding with Downstate Medical Center and the Unions who park at Downstate Medical Center. This is done.

Suffolk Area Office (Bohemia Parole Reporting Location) (U-37356): We filed an improper practice charge after DOCCS unilaterally changed the terms of conditions of employment for Institution Safety Officers (ISOs) at the Suffolk Area Office. Specifically, the member was advised by the Bureau Chief that he could no longer combine his lunch and break times together. From December 1, 2017 through December 24, 2019, ISOs were permitted to take a forty-five (45) minute lunch combined with a fifteen (15) minute break. That practice was in effect continuously for that time period. Since December 24, 2019, the member has been required to take a thirty (30) minute lunch and two (2) fifteen (15) minute breaks. Meal times and breaks are mandatory subjects of bargaining and there was no negotiation with NYSCOPBA before this change was implemented. The IP was filed with PERB on January 30, 2020. The pre-hearing conference is scheduled for April 13, 2020.

Contract Enforcement

Appeals to Arbitration:

We received seventeen (17) requests from NYSCOPBA's grievance department to appeal contract grievances to arbitration during the months of December 2019 and January/February 2020.

During that three-month time frame, we triaged seventy-seven (77) grievances; held expedited hearings on five (5) grievances; held summary hearings on nine (9) cases; settled four (4) grievances; and withdrew twelve (12) grievances.

Retirement

Coxsackie Correctional Facility: This is a disability retirement matter. The Applicant's physician testified on February 14, 2018. The member testified on September 14, 2018. The State's doctor's testimony was scheduled for July 22, 2019. This testimony has been adjourned

by the Retirement System. The State's doctor is scheduled to testify on October 2, 2019. Closing briefs were filed on February 21, 2020.

Downstate Correctional Facility: The member's disability retirement application was denied on the grounds that he was not permanently disabled from performing his duties and on the grounds that his injury was not inmate related. The member's right leg was amputated below the knee after two knee replacements and an antibiotic resistant MRSA infection. After his right leg was amputated, under the Americans with Disabilities Act, the member was granted a reasonable accommodation and a perimeter patrol vehicle was retrofitted so that the member could continue to work his post. We have now had the opportunity to review the Records Compact Disc from the Retirement System. The initial Determination of Retirement System held that the incident of April 10, 1997, was the act of an inmate. The System's orthopedic surgeon, in his report, conceded that the incident of April 10, 1997, was the cause of the loss of the member's right leg. The System denied the application on the basis that the member was not permanently disabled from performing his duties. This Determination was based on the IME finding that the member was not disabled from performing the duties of his perimeter patrol post. The IME Report stated that the member could not work inside a facility with inmates. There is authority for the System's position that an officer is not permanently disabled from performing his or her duties where the officer has been assigned to a light duty or restricted duty post. In the case of this member, however, the System overlooked the fact that the member is required to work mandatory overtime which takes him inside of the facility. The initial hearing was held on January 17, 2019, at which one of the member's doctors testified. The second hearing scheduled was held on August 28, 2019, at which the member and a second doctor testified. Closing briefs were due on November 22, 2019. We are awaiting a decision.

Greene Correctional Facility: This is a disability retirement matter. The initial hearing was held on January 17, 2018. The testimony of the member's doctor was taken on July 31, 2019. The matter has been continued for the submission of additional medical record and for the testimony of the System's doctor. The System rested without calling its physician. Closing briefs were filed on November 4, 2019. We are waiting for a decision.

Green Haven Correctional Facility: This is a disability retirement matter where the member sustained a head injury. On March 21, 2016, the member and his treating psychologist testified. This matter was continued to allow the Retirement System to put in the testimony of its psychiatrist. The System's psychiatrist testified on February 3, 2017. This matter was continued for the testimony of the System's neurologist. The System's neurologist has filed a supplement report but will not testify because he is no longer under contract with the System. We have agreed with the System to close the proof in this matter. The System permitted us to enter into evidence medical records that were not submitted to the System within forty-five days after receipt of the acknowledgement letter. Closing briefs were submitted on March 23, 2018. On November 13, 2018, we received a Final Determination from the Comptroller's Office denying the member's Applications for both Ordinary Disability Retirement Benefits and Inmate-Related Disability Retirement on the grounds that the member was not permanently disabled from performing the duties of a correction officer.

We presented evidence that the member was disabled by virtue of the neurological deficits caused by his Post-Concussive Syndrome. The Hearing Officer, in his Decision, did not even touch upon the member's Post-Concussive Syndrome.

The Hearing Officer failed to consider the Independent Medical Examination ("IME") performed by Patrick Hughes, M.D., a neurologist, who performed the IME for the State Insurance Fund on December 13, 2016. Dr. Hughes diagnosed the member with Post-Concussive Syndrome and opined that the member could return to light duty with no sitting, standing or walking for more than thirty minutes at a time or lifting more than twenty pounds. The Physical Capabilities Form completed by Dr. Hughes, on December 13, 2016, stated that the member could never lift more than twenty pounds, could never squat, crawl, climb or run. The member could not restrain combative inmates and, more importantly, the member could never return to the full duties of a correction officer.

Ira Neustadt, M.D., the System's neurologist, prepared a supplemental report, dated May 12, 2017. Dr. Neustadt admitted that the member's psychiatric manifestations could be related to multiple concussions. Dr. Neustadt wrote that it was possible that the member's psychiatric problems could be caused by his multiple concussions and render the member permanently disabled and unable to perform the duties of a correction officer.

Because the Hearing Officer did not consider the evidence regarding the member's Post-Concussive Syndrome, there is a strong argument that the Final Determination is not supported by substantial evidence. Our Article 78 was filed on January 16, 2019, with a return date of February 15, 2019. Because this is a substantial evidence question, this matter was transferred to the Appellate Division, Third Department. The Record and our Brief was filed in the Appellate Division on August 6, 2019. The State's Brief was filed on September 26, 2019, and our Reply Brief was filed on November 20, 2019. The matter has been scheduled for the March, 2020, Term of the Appellate division, Third Department.

Orleans Correction Facility: This a disability retirement appeal. The issue is whether the member is permanently disabled for performing the duties of a correction officer. The member testified on December 12, 2018. The matter has been continued for additional medical proof.

Sullivan Correctional Facility: The member was injured when he was struck in the head with a baton swung by an inmate. The member's disability retirement application was denied by the Retirement System which found that the member was not permanently disabled from performing his duties. The initial hearing was held on March 6, 2018. The matter has been continued for the testimony of the System's doctor. The testimony of the System's doctor was held on July 18, 2019. The System's doctor admitted that Applicant was permanently disabled. Closing Briefs were not required. We are waiting for a decision.

Upstate Correctional Facility: We filed a demand for a hearing with the NYS Retirement System on behalf of the member relating to Article 14 credit for his service as an SHTA. A hearing date has been set for December 18, 2019. The matter, however, was withdrawn as the member determined that he did not want to go forward with the appeal for a series of reasons.

General

Directive 2117 (Fraternization Policy): DOCCS released yet another draft of Directive 2117 for comment by NYSCOPBA and other unions. This office will provide a summary of the changes to the Board, together with potential concerns to raise with DOCCS when submitting its feedback.

Disciplinary Arbitration Panel: On December 23, 2019, agreements requesting arbitrators to serve on the NYSCOPBA disciplinary arbitration panel were sent to 28 arbitrators who were agreed to by NYSCOPBA and GOER. Currently, we are receiving responses from the arbitrators desiring to be on the panel. We met with PERB on February 26, 2020 to discuss the updated arbitration panel. PERB is the entity which sends out the arbitration selection lists. We are still hearing from some arbitrators to ascertain if they want to be on the panel and in which regions they will accept cases. We anticipate this process to be completed within the month. Once the final list is compiled we will be sending the disciplinary panel to PERB. PERB advised us that it will take them approximately 2 weeks to implement the list after it is received.

Clinton/Upstate Correctional Facilities: On October 2, 2019, we received notice that 18 current and/or past members were being subpoenaed to testify in the Grand Jury regarding the death of inmate Oscar Ortiz in February 2018. The inmate died at Clinton CF, but was transported by a team from Upstate CF. The first individuals were to testify on October 8, 2019. After several discussions with the District Attorney's Office and the BCI Agent on the case, the Grand Jury was adjourned pending further discussions. We will be representing all members called to the Grand Jury. Additionally, we are advocating for a number far less than 18. Future dates will be provided upon receiving notice.

Proposed Regulations for SHU Reform: On August 28, 2019, the Department published proposed regulations (I.D. No. CCS-35-19-00001-P) regarding various reformatations to its Special Housing Units. Those proposed regulations include a gradual phase-in period of reduced maximum time spent in SHU, alternative diversionary programs to SHU, and much more. The design of the proposed regulations was to decrease SHU time and increase alternative programming and structure for rehabilitative purposes. As these are only proposed regulations that have not yet been made into law, they are subject to a comment period for the public. The comment period for these particular regulations expired on October 27, 2019. This office met with NYSCOPBA representatives at NYSCOPBA HQ in order to provide guidance on the impact of the proposed regulations and to receive insight into the practical impact on the membership for purposes of providing a responsive comment to the Department. This office also took a tour of Greene Correctional Facility and met with the membership there to receive additional information to fold into the comment. A comment was then timely submitted to the Department. We await publication of the Department's response to the comment.

Roswell Park Comprehensive Cancer Center (Upgrade Application): Roswell Park created a new title, the Public Safety Services Coordinator, within its Public Safety Department. This office has filed an appeal/upgrade application with Roswell Park asserting that the salary grade (SG-6) should be increased. Roswell Park is a Public Benefit Corporation and enjoys its own civil service autonomy for matters such as this, which requires a direct appeal/upgrade application to Roswell

Park, as opposed to the New York State Civil Service Department. We await the response from Roswell Park.

Roswell Park Comprehensive Cancer Center (Title Abolishment): Roswell Park recently notified NYSCOPBA that it intended to abolish the Special Police Officer title. This office will provide a memorandum indicating to what extent, if anything, NYSCOPBA can challenge this action.

Steward Training: We have continued to attend Steward Training in each of the regions and present to the group of Stewards. We previously completed training in the Northern, Central, Southern, and Mid-Hudson regions, as well as for the Law Enforcement group. The Western Region's Steward Training was conducted in January.

As always, please feel free to contact our office regarding any questions or concerns.