

## **Statewide Grievance Topic Update: 2-10-21**

### **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 8/21/20. 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 Governor's Office of Employee Relations has agreed to designate Thomas Rinaldo as Arbitrator to hear the grievance matter.

An initial video discussion meeting was held with the parties and the Arbitrator to schedule the hearing dates. The parties will meet to work out any procedural issues on April 21, 2021. NYSCOPBA will present its case on May 19 and 20, 2021 with the State presenting their case on June 17 and June 30, 2021. A reserved date of July 14, 2021 will be made available for either or both sides to present any needed rebuttal.

### **COVID-19 Grievances –**

NYSCOPBA filed an Article 78/Declaratory Judgement action lawsuit in Albany County Supreme Court on January 15 against DOCCS to challenge the Department's failure to provide our members with paid leave for multiple or extended quarantines due to COVID-19 infection or exposure.

NYSCOPBA advises members to continue to file new grievances regarding usage of accruals and denials of Quarantine related leave based solely on the employer recognizing only one quarantine period or denying leave once absences extend past 14 days of Quarantine leave. Template grievances were made available to CSSs for filing these grievances.

Over 500 individual grievances have been filed thus far seeking time off without charge to accruals when an employee was under quarantine as directed by the Department of Health, their personal physician or directed by a supervisor or through a work related contact trace. Many of these grievances have been advanced to the Step 4 Arbitration process. GOER and NYSCOPBA continue to discuss possible resolutions to some of these grievances depending on the documentation available.

**Limited (Light) Duty IP and Grievances** – NYSCOPBA filed and Improper Practice Charge against DOCCS regarding the change in their long standing light duty assignment policy to include certain assignments, special watches and construction, without first negotiating the policy change with NYSCOPBA. The IP also addresses the policy change in counting light duty officers in considering if minimum staffing levels are met. After several conferences and a change in the Administrative Law Judge, a PERB hearing commenced on September 24, 2020. NYSCOPBA was able to present its case in its entirety. The State will present their case on day 2, scheduled for February 23, 2021.

Meanwhile, NYSCOPBA has also advised and continues to request that individuals file a grievance locally if they are assigned to these duties, which are not consistent with their submitted individual physical capabilities form. NYSCOPBA crafted and distributed an individual grievance template to CSSs and the membership in August of 2018.

**CON20-0567 – Statewide Class Action – (Juneteenth Holiday Option)-**

NYSCOPBA filed this grievance when New York State, Civil Service and Agencies advised that all state workers would receive compensatory time off for 6-19-20, Juneteenth Holiday, as declared by the Governor, but that the contractual holiday option selections for monetary compensation for the holiday would not be honored.

NYSCOPBA considered this a violation of the holiday option available under article 16. Since the issue affects all workers and crosses all agencies, GOER agreed with NYSCOPBA's request to appeal the grievance directly to Step 3 on 7/7/20.

NYSCOPBA also advised and requested that individuals file a grievance locally if they chose monetary compensation under the holiday option and were denied. NYSCOPBA crafted and distributed an individual grievance template to CSSs and the membership in July 2020.

GOER and NYSCOPBA are currently working together to explore if any possible options exist to resolve these grievances, and if those options will be logistically feasible.

**CON20-0419 – (Disciplinary Suspension Review)** – NYSCOPBA filed a statewide class action grievance citing that DOCCS continually and improperly submits extraneous additional and argument based information to the Arbitrator as part of their statement during the Disciplinary Suspension Review Process. NYSCOPBA cites that the Side-Letter for Disciplinary Suspension Review specifically states, "For the purpose of such review, the Article 7 "triage" arbitrator shall accept as true the contents of the NOD and shall limit review to the reasons the suspension does or does not meet the contractual standard." NYSCOPBA's stance is that the extraneous information is not part of the contents of the NOD and cannot be considered by the Arbitrator in this process.

GOER and NYSCOPBA agreed to waive step 1 of the grievance process, and the grievance was submitted directly to DOCCS at step 2. As expected, the grievance was

denied by DOCCS at step 2. NYSCOPBA then appealed the grievance to GOER at Step 3. GOER denied the grievance as well, referring it to the labor management process, and the grievance was appealed to arbitration on November 6, 2020. The grievance will be introduced at the Alternate Dispute Resolution (ADR/Triage) process at the next available scheduling date with the Master Arbitrator.