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DECEMBER 2017 LEGAL REPORT TO THE EXECUTIVE ASSEMBLY

This is our report for the December 2017 Executive Assembly, regarding the recent developments in some of the cases and legal matters we are handling for NYSCOPBA.

Legislative Developments

Since our most recent “Legislative Developments” memorandum, we have been diligently pursuing the enactment of two key pieces of legislation through our advocacy with the Governor’s office. The bills and their status are explained below. We have also been coordinating with legislative leadership regarding their support for our proposals and have been successful in our efforts to have both the Senate and Assembly weigh in with the Governor’s office in support of our legislative agenda.

“Death Gamble” legislation: This bill has been a priority of the union for the past several years. Costs associated with the bill, coupled with a reluctance of the Assembly to move the bill, prevented the bill’s passage by the Legislature. During the 2017 Legislative Session, however, we were successful in our efforts to move the bill through both Houses and were hopeful for a chapter from the Governor. Toward that end, we met with key Executive Chamber personnel on several occasions, including the Governor’s counsel, the Deputy Secretary for Public Safety, the Assistant Deputy Secretary – presenting clear data evidencing the necessity for this bill’s enactment. Statewide Public Affairs’ Managing Partner, Christopher Duryea, accompanied us during our several meetings with the second floor. We drafted several support letters to the Governor’s office for President Powers’ signature, as well as coordinated information for the general membership regarding this bill.

Despite our best efforts, the Governor chose to veto this bill during the final minutes of the final day of the 10-day executive action period. According to the Governor, the costs associated with the bill coupled with his opinion that this benefit is more appropriately an issue for collective negotiations led him to veto our bill. (It should be noted that the Governor is wrong in his assertion that this is an issue for collective negotiations and we made his office and the Legislature very much aware of this erroneous position.)

Following the veto, we immediately crafted a NYSCOPBA press statement voicing the union’s strong opposition to the Governor’s actions and, as of the time of this writing, are coordinating with NYSCOPBA’s PR firm in promoting a statewide message chastising the Governor for his failure to enact this critical proposal.

Paid Leave for Combat Veterans legislation: In addition to advocating for NYSCOPBA’s “death gamble” legislation, we also extensively lobbied for the enactment of the union’s priority bill to grant additional paid leave to veterans who have experienced combat, to the extent such leave is needed for health-related services. This bill, which applies to all

bargaining unit members, was developed by NYSCOPBA, was drafted by our office, and was introduced at the specific request of the union. We are pleased to inform you that this bill has been signed into law as Chapter 406 of the Laws of 2017.

We have also had several meetings with Members and staff from both Houses of the Legislature regarding legislative issues applicable to the union's Law Enforcement members, including discussions regarding the need to ensure that all SSO's have peace officer status 24-hours per day and discussions relating to SHTA members – issues specifically related to peace officer status and assault reporting. We have also been coordinating with NYSCOPBA's retirement specialist in an effort to administratively deal with some problematic SHTA retirement issues.

In addition to our work with respect to the union's legislative agenda, we have also been aggressively advocating for changes to the Workers' Compensation Board's recently proposed impairment guidelines. Aside from many meetings in Albany with legislative staff members, we have traveled to Senate offices within New York City in an effort to convey NYSCOPBA's strong opposition to the original proposal. We met with Senator Alcantara in her Bronx district office and outlined the union's concerns with the guidelines. We also discussed a budget proposal that the union is seeking to ensure that our members are eligible for Workers' Compensation benefits for PTSD related illnesses.

With respect to the WCB's proposed impairment guidelines, we are happy to report that Board has revised its proposal and, according to experts in the field of Workers' Compensation, the revisions are much more worker-friendly. We are in the process of reviewing the newly proposed guidelines and will report to the Executive Board on our findings.

Finally, we have been working with NYSCOPBA's ad-hoc *Janus* committee in an effort to develop a strategy to deal with the potential fall-out from an adverse Supreme Court decision surrounding the *Janus* case.

Negotiations

We met with the collective bargaining committee on October 26, 2017, in preparation for our planned meeting with the State team on December 6, 2017.

Litigation

Statewide – Retiree Health Insurance Litigation (NYSCOPBA v. State, et al., USDC, NDNY, 11-CV-1523): On November 3, 2017, the State defendants filed a summary judgment motion seeking to dismiss our claims. On November 6 and 16, 2017, union counsel in all of the related cases met to discuss and collaborate on drafting opposition papers in response to the State's motion. Our opposition papers are due on December 20, 2017. We expect to raise genuine issues of material fact that would prevent an award of

summary judgment in favor of the State defendants, and result in a trial regarding whether or not the State defendants negotiated health insurance contribution rates for represented employees in retirement during the 1982-1985 bargaining and contracts.

[Member] v. State of New York (Orange County Supreme Court/Appellate Division, Second Department): On November 3, 2017, we filed a Reply Brief in the *Matter of [Member] v. State of New York* in the Appellate Division, Second Department. By way of background, the member was hired as an SHTA on May 14, 2015. Pursuant to Civil Service Rules, he was to serve a one (1) year probationary term. The member was involved in an incident with a patient, which resulted in a Justice Center investigation. Based upon the findings from that investigation, the member was terminated from his employment, effective April 14, 2016, one month prior to the completion of his probationary term. We filed an article 78 proceeding to challenge the determination as arbitrary and capricious. The lower court denied our petition and dismissed the proceeding. The basis for the court's decision was that the member did not exhaust his administrative remedies. The court noted in its decision, "by his own papers, [the member] admits that the Report which is cited for his termination is under appeal, and that no decision has yet been rendered."

The incident which resulted in the termination occurred on February 12, 2016. On that date, the member was performing his routine SHTA duties. At approximately 2:55 p.m., a patient remained in the bathroom, contrary to facility rules. The member directed the patient to leave the bathroom, but the patient refused. The patient then threw a cup of water in the member's face. After throwing a cup of water, the patient began striking the member with closed fist punches. The member reported the incident to the Safety and Security Officers on the Mid-Hudson Forensic Psychiatric Center campus and filed a supporting deposition, seeking criminal charges against the patient.

On April 8, 2016, the member received a letter from MHFPC indicating that "a recommendation has been made and approved by the Executive Director for termination of your probationary services as a Security Hospital Treatment Assistant pursuant to Civil Service Rule 4.5." The member was terminated from his employment from MHFPC, effective April 14, 2016, one month prior to the completion of his probationary term.

As indicated above, the lower court did not address the merits of the case. Instead, the lower court noted that the member had requested a Justice Center hearing on whether he committed the alleged abuse and/or neglect, and that the hearing has not been conducted. The court further noted, "it is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative before being permitted to litigate in a court of law." Based upon the failure to exhaust administrative remedies, the lower court denied the petition and dismissed the proceeding.

On July 25, 2017, we filed a brief and record on appeal challenging the decision of the lower court. On November 3, 2017, the State responded, arguing that the Article 78 proceeding was merely a collateral attack on the Justice Center findings and, as such, the matter was not ripe until after the Justice Center hearing. Further, the State addressed the merits of the Article 78, arguing that there was a good faith basis for the termination.

In our November 14, 2017, reply brief, the Union argued that even if the request to the Justice Center is granted in its entirety, the result would be that the two Category 2 abuse and neglect findings are unsubstantiated and the Justice Center's records sealed, the member would not be returned to his prior employment. Therefore, the determination that the member challenged, the termination of employment, is separate and distinct from the Justice Center's determination. We further argued that, as the Justice Center is continuing to investigate the incident and has not reached *any* final disposition of the administrative appeal, the decision to terminate Petitioner's employment should be set aside. "An action which has not reached *any* conclusion should not be used as a basis to terminate someone's employment." We await the Appellate Court's decision on the matter.

DOCCS, et al. v. NYSCOPBA: The member received an arbitration award dated July 18, 2017. The arbitrator found the member not guilty of Charges #1 and #2 of the Notice of Discipline, but did not make a determination regarding Charge #3 as the criminal adjudication had not been resolved. The State is seeking vacatur of the award, which NYSCOPBA and the member are opposing. NYSCOPBA's papers are due on December 15, 2017, and the Petitioners' Reply papers are due on January 11, 2018, with a return date of January 12, 2018.

[Member] v. State, (Albany County Supreme Court/Appellate Division Third Department) Gender Specific Directive (#2230): On November 14, 2017, we presented oral argument before the Appellate Division, Third Department, on this matter. By way of background, on January 5, 2015, DOCCS updated Directive #2230 to require that special watches and suicide watches must be conducted by staff members of the same gender as the inmate who was under observation.

As relevant to this specific case, at Albion Correctional Facility, hiring for overtime is based upon seniority. On April 27, 2015, the member was on the list to be hired for overtime. However, as conceded by DOCCS, Albion CF applied the above-referenced directive to deny the member the opportunity for overtime based upon his gender. A female correction officer with less seniority than the member was hired for overtime instead. The member and another male officer were both ahead of the female officer based upon terms of seniority, but both officers, including the member, were skipped over based on the gender specific directive

Before the Division of Human Rights, we argued that the Division was incorrect because a *prima facie* case of discrimination was established. First, DOCCS Directive #2230 clearly discriminated upon the basis of gender. Second, based upon that discriminatory practice, the member suffered an adverse action – he was not permitted to perform the overtime to which he was entitled based upon his seniority under the Collective Bargaining Agreement between NYSCOPBA and the State. The application of this directive has deprived the member of material benefits in that he was denied overtime opportunity. Therefore, the member was directly impacted by Directive #2230, has suffered damages based upon this Directive, and will continue to suffer damages in the future, based upon this Directive.

On November 16, 2015, the Division dismissed the Complaint, finding the existence of a Bona Fide Occupational Qualification (BFOQ). On January 15, 2016, we commenced an Article 78 proceeding challenging the Division's determination as being arbitrary and capricious. On June 22, 2016, the lower court affirmed the Division's finding that there was a BFOQ. We appealed that decision to the Appellate Division, Third Department. The basis for the appeal was that DOCCS did not establish a valid BFOQ defense and that the Division's determination was legally insufficient, arbitrary and capricious, and not supported by a rational basis. To establish a BFOQ, a Respondent must make a strong factual showing that no reasonable alternatives existed. DOCCS failed to do so before the Division. Furthermore, because a BFOQ determination must be so factually specific, we submit that a full evidentiary hearing was necessary; lacking that, the determination should be annulled as arbitrary and capricious. Specifically, the decision does not adequately consider whether any reasonable alternatives exist. We argued that the only aspect of the special and suicide watches that might involve impermissible cross-gender surveillance is in observance of defection, and a female officer could be used for that task. Therefore, a reasonable alternative exists. Mere inconvenience does not establish a Bona Fide Occupational Qualification. Because the court did take reasonable alternatives into account, we believe the lower court erred.

We submitted our brief on April 13, 2017. DOCCS submitted their brief in opposition on August 22, 2017, and we submitted a reply brief on August 29, 2017. We now await the Appellate Court's decision.

Creedmoor Psychiatric Center: The member is an SSO1, at the Creedmoor P.C., whose driver's license was suspended and who obtained a restricted license from the Department of Motor Vehicles. OMH terminated the member's employment because, in its opinion, he failed to meet the minimum qualification of a valid New York driver's license. OMH took the position that a valid driver's license cannot be a conditional license or a restricted license. Additionally, the examination announcement, at the time that the member took the test, said that a conditional license was not sufficient. On behalf of the member, we filed an Article 78. On June 26, 2017, we received the State's answering papers and on June 28, 2017, we filed a Reply Brief. In the State's answering papers the Assistant Attorney General advanced the argument, for the first time, that the member was not fired, because he had a restricted license, but, rather, was fired because he allowed his driver's license to become suspended. We argued that this position was not supported in the records of OMH and could not be raised in the Article 78 Proceeding. We also contended that, if the member was fired for past misbehavior, his due process rights required that OMH resort to the disciplinary procedures contained in Article 8 of the CBA. On behalf of the member, we have also filed an unjust discipline contract grievance. On September 14, 2017, we received a Decision/Order from the Supreme Court which granted the relief requested in the Petition. This means that the member should be restored to duty with all lost pay and benefits. OMH has not yet put the member back to work, and we were told that OMH was considering an appeal. A Notice of Appeal must be filed on or before October 30, 2017. The State did not appeal and the member went back to work on November 15, 2017.

[Member] v. State Department of Civil Service (Albany County, Supreme Court): On November 14, 2017, we commenced an Article 78 proceeding challenging a determination by the New York State Department of Civil Service denying disabled veteran credits to the member, a U.S. Marine Corp veteran, for use on the Correction Lieutenant test. Specifically, we challenged the Department's decision to use the date in which the Department of Veterans Affairs back-dated the member's disability to, rather than the date of its actual disability determination. The State used the "retroactive" date of the determination and by so doing, denied the member disabled veteran's points toward the lieutenant's examination. We contended that the Department's determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. We await the State's answer.

Fishkill Correctional Facility: We initiated an Article 75 proceeding to confirm a contract arbitration award on July 7, 2017. The parties had reached a settlement agreement resolving the member's contract grievance on July 8, 2016, and the master arbitrator signed off on the settlement. As part of that settlement, the State was to cease deductions relative to a particular overpayment and reimburse the member for any deductions made after April 21, 2016. As of July 7, 2017, the State had not yet made the member whole in accordance with the parties' settlement agreement. Subsequent to the filing of the Article 75, the State did issue the member a check. Discussions are continuing with the AG's Office and GOER regarding whether or not the member was properly compensated in accordance with the parties' agreement to settle the member's contract grievance.

Mid-Hudson Forensic Psychiatric Center: We commenced an Article 78 proceeding to challenge OMH's decision to impose a six-week suspension the member stemming from a prior disciplinary settlement agreement, which contained a one-year DEP for "same or similar" conduct. Pursuant to a separate disciplinary settlement dated November 28, 2017, Petitioners SHTA and NYSCOPBA agreed to withdraw the Article 78 proceeding.

Rochester Psychiatric Center (NYSCOPBA and [Member] v. OMH, Rochester PC, et al): We filed an Article 78 petition to challenge Rochester PC's unlawful summary termination of the member. Rochester PC terminated the member's employment based on his probationary status, but an argument can be made that the member had completed his probationary period prior to summary termination. The Petition seeks his reinstatement. We filed the Petition and received the State's Answer, we then submitted our Reply and a Supplemental Reply. On March 2, 2017, we appeared on behalf of the member in Supreme Court, Monroe County, before Judge William Taylor. We received a decision from the Judge, which denied and dismissed our petition because the Judge found that the member was not qualified to hold the title of SSO Trainee on his first day of work and his probation could not have started until he was qualified. Therefore, according to the Judge, the member was properly summarily terminated within his probationary period. This office filed a Notice of Appeal, and the matter will be heard before the Appellate Division, Fourth Department. This office finalized the Record on Appeal and additional legal documents necessary to perfect and pursue the appeal, and filed the paperwork on August 14, 2017. The appeal will be heard at oral argument before the Appellate Division, Fourth Department, in Rochester, in the February 2018 appellate term.

[Member] v. Justice Center (Supreme Court, Albany County): On November 7, 2017, we submitted a reply memorandum requesting that the matter be forwarded to the Appellate Division, Third Department, for review of an issue of substantial evidence. By way of background, on August 3, 2017, we commenced a special proceeding pursuant to *CPLR* Article 78 to review a determination of the Justice Center, which denied the member's request to amend and seal a report of alleged abuse. The challenged decision was issued after an administrative hearing conducted before Administrative Law Judge Sharon Golish Blum on March 8, 2017, at the Adam Clayton Powell Jr. State Office Building in New York, New York. In the Decision after Hearing, the Administrative Law Judge denied the member's request to amend the substantiated finding of abuse and to seal the file.

The case resulted from an incident on July 4, 2015, at the Kirby Forensic Psychiatric Center in which it was alleged that the member conducted a restraint with excessive force and improper technique. Such technique included grabbing a service recipient by his shirt, lifting him up by his collar, pushing him to the floor, dragging him into the hallway, and/or punching him in the face. On July 4, 2015, during the lunch time, two service recipients started fighting while seated at one of the cafeteria tables. Although other staff members were present, they were not in the immediate area to provide assistance to the member. The fight escalated and both patients began exchanging closed fist blows. After standing up, one patient grabbed a plastic knife and attempted to stab the other patient in the face. At that time, the member intervened, grabbed the patient with the knife to restrain him in an OMH-approved maneuver called a "standing wrap." However, in doing so, the member backed into the table behind him, causing both the member and the patient to fall to the floor.

The ALJ found that allegation unsubstantiated because the member's actions were reasonable emergency interventions to prevent the imminent risk of harm to a person – he had to prevent the other patient from being stabbed in the face. While the patient was on the floor, the member observed that the knife previously used in the attack was on the floor, and within reach. The member reasonably believed that the patient might harm someone - - another patient, another staff member, or himself -- so with no staff assistance immediately available, he grabbed the patient, who had previously possessed the knife, and dragged him 6 to 8 feet out of the dining room and into the hallway. With respect to that allegation, the Administrative Law Judge found the abuse allegation substantiated because dragging the patient out of the cafeteria was not a reasonable emergency intervention.

In the Article 78 papers, we alleged that the finding in the Recommended Decision after Hearing, that the act of dragging the Service Recipient out of the dining room by the back of his shirt was not a reasonable emergency intervention to prevent imminent risk of harm, was irrational and not supported by substantial evidence.

Ulster Correctional Facility: The Appellate Division, Third Department, ordered that the matter be remanded to the arbitrator to issue a penalty consistent with the analysis of the court. Hearings were held before Arbitrator Dais on July 28, and August 17, 2017. A third day of hearing took place October 11, 2017, and briefs are due on December 22, 2017.

Ulster Correctional Facility: On January 11, 2017, we filed an Article 75 Proceeding to confirm the arbitration award. We were concerned that, in the event that the Appellate Division, Third Department, confirms the first arbitration award (case was argued on January 20, 2017), that, in the event that the second award was not confirmed, DOCCS might refuse to put the member back to work. This proceeding was returnable on February 13, 2017, but was adjourned to March 3, 2017. On March 1, 2017, we received the State's opposition papers and motion to vacate the arbitration award. The State is again arguing to vacate the penalty portion of this award on public policy grounds relating to Inmate Fabian, even though the arbitrator dismissed the Fabian charges because they had been litigated in the first arbitration. Our Reply Memorandum and opposition to the cross-motion was served on March 2, 2017. On March 16, 2017, the Appellate Division, Third Department, affirmed Judge O'Connor's order in the first case, and remanded the matter to the Arbitrator for the imposition of a new penalty. On May 9, 2017, we received a letter from Judge McDonough, in the proceeding to confirm the second arbitration award, requesting submissions on the issue of how the Appellate Division decision affected the second confirmation proceeding. Our submission was filed on May 12, 2017. On August 27, 2017, we received a letter from the Court telling us that it was staying our Article 75 Proceeding, until the first arbitration has finally decided. That matter is presently before Arbitrator Dais.

Discipline

Interrogations: For the month of November, 2017, we represented forty-six (46) members who were interrogated by DOCCS.

Auburn Correctional Facility: The notice of discipline was after the member was arrested and criminally charged with sexual abuse, endangering the welfare of a child, and supplying alcohol to minors. This matter was scheduled for arbitration on December 19 and 20, 2017, before Arbitrator Samuel Butto. The member resigned on November 17, 2017.

Downstate Correctional Facility: This case involved a member's fourth Notice of Discipline for time and attendance issues. A hearing in this matter was scheduled for October 23 and 24, 2017. Prior to the hearing, the parties settled the matter.

Downstate Correctional Facility: The member received a Notice of Discipline for criminal charges resulting for possession of marijuana. The underlying criminal charges have been resolved. Hearings took place on October 19, 2017, and November 17, 2017, at the Ramada Inn in Fishkill. Briefs are due on December 18, 2017. The member testified that his uncle had left marijuana in his vehicle the night prior to the stop.

Downstate Correctional Facility: The member's expedited arbitration hearing took place on September 29, 2017, before Arbitrator Larry Dais, regarding an altercation between officers, during which racially charged and profane language was allegedly used between

two African American correction officers. The parties submitted closing briefs. The Arbitrator found the member guilty of all charges and issued a suspension to date (approximately four months). The member has since returned to work.

Downstate Correctional Facility: The NOD alleges several instances of time and attendance abuse. The matter was scheduled for arbitration on September 21, 2017, before Arbitrator Timothy Taylor. The matter has settled.

Downstate Correctional Facility: The NOD alleged that the member made inappropriate and racially charged statements to an inmate, along with the physical act of tipping an inmate out of his chair. The matter was appealed to expedited arbitration, but the State opted out. The matter was then heard at arbitration on October 12, 2017, before Arbitrator Samuel Butto. The parties submitted closing briefs. The Arbitrator found that the member did not make any vulgar statements to the inmate, nor did she physically remove the inmate from his chair. However, the Arbitrator found that the member did state a racial term, but that she did not do so with racist intent and merely repeated back to the inmate the exact racial term he said to her. The Arbitrator issued a three-month suspension and ordered that DOCCS repay the member for the time in excess of three months that she spent on suspension without pay pending the results of the hearing.

Elmira Psychiatric Center: The NOD alleged failure to follow proper protocol in the restraint of a patient. This hearing was scheduled for arbitration before Arbitrator Ronald Kowalski on June 1, 2017. Because of a conflict with schedules with union representatives, we adjourned the matter. The matter was scheduled for hearing on October 27, 2017. OMH withdrew the NOD ahead of the hearing.

Fishkill Correctional Facility: The NOD alleged that the member committed the criminal charge of obstructing governmental administration. The matter was heard at arbitration on October 20, 2017, before Arbitrator Lise Gelernter. The parties have submitted closing briefs and await the decision of the Arbitrator.

Fishkill Correctional Facility: This member has been charged with using unnecessary and excessive force. The first day of hearing was held on September 8, 2017, before Arbitrator Lise Gelernter. A second day of hearing has been scheduled for December 19, 2017.

Fishkill Correctional Facility: The NOD alleges that the member provided false and misleading statements regarding a use of force. A hearing took place on September 28, 2017, before Arbitrator Dennis Campagna. The second day of the arbitration took place on December 4, 2017. A third day of hearing is scheduled for March 7, 2018.

Franklin Correctional Facility: This member has been charged with using excessive and unjustified use of force, among other charges. Hearings were held on August 23, 2017, in Plattsburgh, New York, and on October 20, 2017, in Albany, New York. Additional hearing dates have been scheduled for January 31, February 1, and February 2, 2018, before Arbitrator Louis Patack.

Franklin Correctional Facility: A hearing in this matter had been scheduled for July 17 and 18, 2017, before Arbitrator Taylor. Prior to the date of hearing, the parties adjourned the matter while additional documents are obtained and turned over to the union. The hearing in this matter is rescheduled for April 13, April 20, and May 3, 2018. This case involves allegations that the member failed to report other staff members striking an inmate and putting their hands around the inmate's neck, as well as an allegation that the member provided a false statement in his interrogation.

Green Haven Correctional Facility: This member is charged with operating a motor vehicle on a public highway while impaired and/or under the influence of alcohol and/or an illegal drug. Additionally, among other charges, she is charged with reporting to duty in a physically impaired condition. A hearing has been scheduled before Arbitrator Louis Patack on December 14, 2017, at the Ramada Inn in Fishkill, New York.

Green Haven Correctional Facility: The member was charged with sexual harassment in the workforce. A hearing was scheduled before Arbitrator Timothy Taylor on October 24, 2017. Prior to the hearing, the member entered into a Settlement Agreement wherein she accepted a 50-day suspension.

Kirby Forensic Psychiatric Center: A hearing took place on October 3, 2017, before Arbitrator Dennis Campagna. The NOD alleged use of an improper restraint technique by placing hands on a patient's neck. At the hearing, after the State had completed its case-in-chief, the Union made a motion to dismiss the NOD based on the fact that the State had not brought any witnesses to testify who had first-hand knowledge of the events that occurred. The Arbitrator adjourned the hearing to consider the motion. In a written decision, the Arbitrator granted the Union's motion and dismissed the NOD in its entirety.

Mid-Hudson Forensic Psychiatric Center: This matter settled on November 29, 2017. The NOD alleged that the member committed neglect when she fell asleep or was less than alert while on duty, and/or otherwise failed to provide a service recipient with proper supervision during a one-to-one supervision, which allegedly resulted in the patient being found lying on her bed with dry blood around her mouth and the bandage removed from her arm. The member denied that she was assigned to one-to-one supervision with this patient at the time the incident occurred. Nonetheless, the videotape from the unit that night showed her seated, not moving, wearing sunglasses and hooded sweatshirt. Moreover, she signed the logbook indicating that she did rounds between 1 am and 3 am, but there is no sight of her on video. The NOD was settled for suspension to date, a one year DEP, and removal of her article 78 proceeding.

Mid-Hudson Forensic Psychiatric Center: The Notice of Discipline alleged that the member falsified a document, was inattentive, and failed to constantly observe a patient, allowing that patient to re-open a previous wound. A hearing in this matter had been scheduled for November 17, 2017. Prior to the hearing, the parties settled the matter.

Mid-Hudson Forensic Psychiatric Center: The notice of discipline alleged that the member failed to call for assistance for a patient in a timely manner and used an improper restraint technique to restrain a patient causing an injury to his lip. This matter settled prior to the November 9, 2017, arbitration for a letter of reprimand.

Mid-Hudson Forensic Psychiatric Center: The notice of discipline dated April 24, 2017, alleges that the member failed to call for assistance for a patient in a timely manner and used an improper restraint technique to restrain a patient causing an injury to his lip. The arbitration of this matter has been scheduled for December 13, 2017, before Arbitrator Lise Gelernter.

Mid-Hudson Forensic Psychiatric Center: The member is accused of biting a patient. The first day of hearing was held on July 12, 2017. The second hearing day was held on November 10, 2017. Closing briefs are due on December 15, 2017.

New York State Education Department: The member received a Notice of Discipline for allegedly having sex with an unknown visitor in a conference room at the Manhattan Office of the State Education Department. The hearings were held on November 8, 2017, and November 20, 2017. Closing Briefs are due on December 21, 2017.

Ogdensburg Correctional Facility: The member received a Notice of Discipline for criminal charges resulting from an assault. Although he was convicted of only a violation, he spent seven (7) days in jail, but returned to work. The parties have been unable to settle back pay. The hearing took place on October 25, 2017, in Ogdensburg.

Sing Sing Correctional Facility: This time and attendance notice of discipline was scheduled for arbitration on October 17, 2017, before Arbitrator Louis Patack. This matter settled prior to arbitration.

Staten Island Developmental Disabilities Services Office: The member was arrested for assault as the result of striking a police officer with her car. As a result of this arrest, the member received a Notice of Discipline. The arbitration was held on July 17, 2017. Closing briefs were submitted on September 11, 2017. On October 2, 2017, we received the Award form Arbitrator Campagna. The Arbitrator did not find the member to be a credible witness and terminated her employment.

Sullivan Correctional Facility: The NODs alleged that the member used a racial slur directed at a supervisor and that she was insubordinate when she failed to comply with a direct order to return her badge and identification to the facility. The matters were heard at a consolidated arbitration hearing on November 3, 2017, before Arbitrator Lise Gelernter. The parties have submitted closing briefs and await the decision.

Taconic Developmental Disabilities Services Office: The Notice of Discipline in this case alleged in fifty-five (55) charges that the member put in for overtime not actually worked; the member was charged criminally, as well. Once the criminal charges were

resolved, and prior to a hearing being scheduled, the member chose to accept a settlement in order to return to work.

Taconic Correctional Facility: A disciplinary arbitration was held on September 12, 2017, before Arbitrator Louis Patack. The notice of discipline alleged that the member failed to comply with a lawful order given by a supervisor to work a mandatory overtime assignment. The State sought a sixty-day suspension without pay. Arbitrator Patack found the member guilty of the allegation in the notice of discipline and imposed a two-week suspension without pay.

Washington Correctional Facility: The member received a Notice of Discipline for using unnecessary and excessive force. We have now had four days of hearings on this case. The most recent day of arbitration was supposed to be September 14, 2017. The State was having some difficulty getting into evidence the testimony of its medical expert and DOCCS requested an adjournment in an attempt to locate further photographic evidence to support the doctor's testimony. Hearings have been scheduled for December 13 and 14, 2017.

Washington Correctional Facility: Hearings have been held on September 11 and 12, October 16, and November 13, 2017, and are scheduled to continue on January 10 and 11, 2018, and February 8, 2018, before Arbitrator Louis Patack. Grievant is charged with excessive force, failure to report, failure to report employee misconduct, and proving false and misleading statements during his interrogation.

Justice Center

Central New York Psychiatric Center: The Justice Center charged the member with failing to stay alert and giving the appearance of sleeping, a Category 3 charge. This office appealed the finding and requested that the finding be unsubstantiated and sealed. The Justice Center denied the request to appeal and amend the findings. The matter is scheduled for a pre-hearing phone conference with ALJ Molik on December 21, 2017, in order to schedule an administrative hearing date.

Central New York Psychiatric Center: The member was issued a Category 3 Report of Substantiated Finding alleging physical abuse and neglect for pushing a service recipient and directing derogatory and inappropriate language toward a service recipient and/or threatening a service recipient. We attended the pre-hearing conference in this matter on November 28, 2017. We now await an administrative hearing date.

Mid-Hudson Forensic Psychiatric Center: This member has been charged with failing to provide proper supervision to a patient while posted outside the bathroom and did not call for assistance or a nurse in a timely manner. A hearing was scheduled for November 30, 2017. Prior to the hearing, the member entered into a Settlement Agreement wherein she accepted a written Letter of Reprimand.

Mid-Hudson Forensic Psychiatric Center: On November 10, 2017, we received a decision substantiating a Category 2 finding against the member. We previously attended a hearing on this matter in Poughkeepsie, N.Y., on August 30, 2017, and submitted supplemental briefs on the legal issue of res judicata and collateral estoppel on September 8, 2017. This Category 2 report of physical abuse alleges that the member pushed, shoved, hit, and kicked a service recipient. The member was previously issued a NOD alleging the same charges and was found not guilty by an arbitrator. Unfortunately, the ALJ did not address our legal arguments and substantiated the charge. We drafted a detailed memorandum to the Board on November 20, 2017, recommending that an Article 78 be filed challenging this decision. We will be drafting the appropriate papers to be filed in the coming months.

Improper Practice Charges

Statewide – DOCCS (Consolidated Clear Bag and Staff Allowable List Case) (U-35624 and U-35745): We have been in contact with GOER to discuss the items on the staff allowable list NYSCOPBA intends to continue to pursue at a hearing, as well as propose changes to a few items on the list that would be amendable settlements for NYSCOPBA. These discussions with GOER are on-going. We notified PERB, as directed, that NYSCOPBA is narrowing the list of items to address at the hearing, and that NYSCOPBA and GOER have been in contact to discuss the details.

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. The matter has been placed on PERB's hold calendar until December 20, 2017, to allow the parties time to determine the best course of action.

Statewide – Civil Service Promotional Exam Fees (U-29179): On November 29, 2017, we received the Administrative Law Judge decision in this improper practice charge. ALJ Sergeant found that the State, specifically the Department of Civil Service, violated § 209-a.1(d) of the Act when it unilaterally began requiring that employees pay a fee for promotional/ transition examinations, and ordered the State to make whole employees for any fees paid. NYSCOPBA filed this charge after the Department of Civil Service issued General Information Bulletin No. 09-01, in March 2009, indicating that new, fifteen dollar (\$15) examination fees would be charged to all applicants taking the promotional examination for the position of Correction Sergeant beginning in May 2009. Similar improper practice charges were filed by PEF, CSEA, and DC 37, and the cases were consolidated for hearing. In 2012, the ALJ held that the State did not violate the Act because there was no unilateral change in past practice. We filed exceptions, and the full Board reversed the ALJ's decision. The Board did not decide whether the subject of the charged examination fees are a mandatory subject of negotiations, but remanded that issue

to the ALJ to decide. A hearing on this limited issue was held on October 21, 2015, and led to the instant decision. In her decision, ALJ Sergent found that that the language of Civil Service Law §50, giving broad discretion to the Director of Civil Service to waive fees, does not manifest clear intention by the legislature to remove this subject from collective bargaining, and that the evidence produced by the State established that the exam fees primarily impacted public employees. Therefore, the State was not privileged to unilaterally implement a fee for promotional examinations without engaging in negotiations with charging parties NYSCOPBA, CSEA, and DC 37. PEF's charge was found to be untimely. ALJ Sergent ordered the State to: (1) Cease and desist from requiring unit employees represented by NYSCOPBA, CSEA, and DC 37 to pay a fee for promotion/ transition examinations; (2) Make unit employees represented by NYSCOPBA, CSEA, and DC 37 whole for any fees paid as a result of the State's unilateral implementation of application fees for promotional/ transitional examinations, with interest at the maximum legal rate; (3) Negotiate in good faith with NYSCOPBA, CSEA, and DC 37; and (4) Sign and post a notice at all physical and electronic locations normally used to post notices of information to unit employees. The State has the ability to file exceptions within 15 working days to the full Board excepting the ALJ's holdings on this remanded decision.

Statewide – Directive 2115 (U-35942): This office filed an Improper Practice Charge in response to the recent change to Directive 2115, which addresses drug testing DOCCS employees. The change made discipline mandatory for failing to report for a drug test, when it had previously been discretionary discipline. Therefore, an employee will be disciplined regardless of if the employee faces travel or other legitimate issues that make it difficult to comply with a lawful order to submit for a drug test. An initial conference took place on November 10, 2017, before ALJ Mitchell. The matter has been placed on PERB's hold calendar until December 11, 2017, to allow the parties time to determine the best course of action.

Statewide – Directive 0750 (U-35987): This office filed an Improper Practice charge in response to DOCCS adding a brand new Directive 0750, which addresses an employee's responsibility to report suspicious activities of inmates and fellow staff. The directive labels as "suspicious" commonplace activities like owning a large amount of weapons, frequenting gun ranges, engaging in martial arts, interests in surveillance, etc. The matter was scheduled for a preliminary conference on November 15, 2017, before ALJ Frederick Reich. Prior to the conference date, the parties agreed to adjourn so as to meet and discuss their respective positions on the directive. The matter has been placed on the PERB hold calendar until December 15, 2017.

Statewide – Office for People with Developmental Disabilities (U-35979): On September 26, 2017, we filed an Improper Practice Charge with PERB, stemming from a statewide OPWDD job posting for specialized SSO1 positions as Family Care Inspectors. The job posting requires interested candidates to submit a cover letter and resume. Past practice has been to bid these positions regionally and award them by seniority. The charge alleges that OPWDD violated the Act by unilaterally changing the posting and bidding

procedures without negotiating with NYSCOPBA. The initial conference regarding this matter is scheduled for December 20, 2017.

Auburn Correctional Facility (U-35866): This Improper Practice Charge was filed following a July 14, 2017, incident wherein the member was pulled from his bid job after declining to speak with the NYS BCI. The charge alleges that Auburn Correctional Facility engaged in illegal retaliation against the member for engaging in protected activity, i.e., invoking his rights as set forth in the Outside Police Agreement between NYSCOPBA and DOCCS. On October 11, 2017, the initial PERB conference for this improper practice charge was held. The hearing in this matter is scheduled for February 20, 2018.

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 until January 29, 2018. During that time, the Union will 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-35167): A conference is scheduled for January 17, 2018. On September 21, we filed an Improper Practice Charge alleging that Central New York Psychiatric Center ("CNYPC") interfered, restrained, retaliated against and coerced employees in the exercise of their rights guaranteed under the *Taylor Law*. Specifically, we alleged that on August 27, 2017, the member, a NYSCOPBA member, Union Steward, and a Central Service Staff member, was directed to cover a mandatory overtime post at SUNY Upstate Medical Center. On September 13, 2017, NYSCOPBA filed a grievance regarding the mandating of overtime to the member and the change in overtime policy generally. After the grievance was filed, on September 15, 2017, Mr. Paparella confronted Central Service Staff members regarding the grievance on overtime mandating and distribution. During the discussion, Mr. Paparella stated, among other things: 1) Things are going to happen if [the grievance] goes through; 2) That he is sick and tired of all the whining and complaining; 3) That he planned to remove responsibilities from those who filed the grievance; 4) That Central Staff SHTA's duties would be changed such that, upon entering the building, they would be assigned different posts and locations. On September 19, 2017, in further retaliation to the grievance, Mr. Paparella directed supervisory staff to assign Central Service Staff members to cover all Mandatory Overtime at the SUNY Upstate Medical Center. Such direction is inconsistent past practice, as well as the local Labor/Management agreement.

Coxsackie Correctional Facility (U-36054): On November 2, 2017, we filed an Improper Practice Charge alleging a failure to negotiate regarding a mandatory subject of bargaining. Coxsackie CF unilaterally rescinded the practice of paying a \$12 overtime meal allowance to officers with bids at Coxsackie who are assigned to Albany Medical Center and return at least two hours beyond the end of their normal 8-hour shift. This same issue also

previously occurred at Greene CF. A contract grievance addressing this was previously filed. It is likely that this IP will get deferred and the matter will proceed to arbitration of the contract grievance. If the arbitration in the contract grievance does not produce a decision on the merits, or should the arbitrator determine that the issue is not covered by the agreement, we will have the right to return to PERB and ask that the IP be processed. The IP has been processed by PERB. The conference is scheduled before ALJ Nancy Burritt on January 30, 2018.

Five Points Correctional Facility (U-33576): PERB's full Board affirmed Judge Nancy Burritt's decision, holding that DOCCS's denial of the member's request for Union representation during an OSI interview constituted interference and was a violation of § 209-a.1 (g) of the Act, even though DOCCS asserted that the member was "only a witness" and not the subject of the investigation. The full Board also held that the evidence before Judge Burritt did not establish that DOCCS "selected" a particular steward over another steward to represent another member during questioning by OSI, and therefore, the Board reversed Judge Burritt's decision and found no violation by DOCCS as to this issue. This was a factual determination by the Full Board regarding whether or not in this case there was an affirmative "selection" by DOCCS—this decision does not change the underlying proposition or case law that definitively states that the employer cannot dictate what Union representative is present during questioning. NYSCOPBA filed this improper practice charge on June 6, 2014, alleging that DOCCS wrongfully denied Union representation to the member during questioning by OSI, and that DOCCS wrongfully refused to allow a particular NYSCOPBA steward, or any other available representative, to represent a different member during questioning by OSI. ALJ Burritt issued a decision on November 12, 2015, finding that DOCCS violated the §§209-a.1(a), (b) and (g) of the Act. DOCCS filed exceptions to Judge Burrit's decision on January 14, 2016, which resulted in the instant full Board decision. The full Board ordered the State to: (1) to permit, upon the employee's demand, representation for a DOCCS employee in the NYSCOPBA-represented unit when at the time of the questioning it reasonably appears that he or she may be the subject or target of potential disciplinary action; (2) immediately destroy all documents maintained by the State, including documents in DOCCS personnel records, the member's personnel records, and in DOCCS OSI's investigatory notes, memoranda, email and reports which may contain information that was obtained during the questioning of the member without representation; (3) not use, in the context of the member's State employment, any information obtained during the interview; and (4) sign and post notices.

Livingston Correctional Facility (Retaliation and Interference): On November 28, 2017, we attended a conference at PERB on this charge, which alleges that facility administrators intentionally bypassed the steward who was designated by the local as the individual with whom management should deal on a labor/management issue involving sergeants' job descriptions. The steward who was bypassed is the only sergeant among Livingston's stewards and the only steward with substantial knowledge of the issue. We contend that by ordering other stewards to meet on this issue at times when the sergeant wasn't working, the administration interfered with NYSCOPBA's ability to decide for itself the union representative(s) it chooses to handle particular matters. The administrative

law judge has put the case on hold until January 18, 2018, while the parties see if a settlement can be negotiated.

Contract Enforcement

Appeals to Arbitration: We received one (1) request from NYSCOPBA's grievance department to appeal contract grievances to arbitration during the month of November, 2017. We have reviewed the grievance file and drafted and submitted the arbitration appeal to the Governor's Office of Employee Relations (GOER).

During the month of November, 2017, two (2) triage sessions were conducted, reviewing a total of thirty-nine (39) pending grievances. Three (3) grievances were withdrawn; three (3) grievances were settled. We conducted two (2) summary proceedings. We also received an expedited arbitration award for Groveland. In that case, the grievance was denied. The member had been denied payment on a voucher for traveling to training. Prior to attending training, he did not request a State vehicle. The arbitrator held that pursuant to applicable directives, employees must first ascertain if a state vehicle is available for use prior to using their personal vehicle and submitting a voucher.

Hudson Correctional Facility: A summary proceeding on the issue of timeliness was held before the Master Arbitrator. The Master Arbitrator determined that the grievance was not timely filed based on the notifications received by the grievant. Accordingly, the grievance was denied.

Sing Sing Correctional Facility: This grievance alleged that the State violated Article 14 of the Agreement when it improperly LWOP'ed the member for two (2) weeks after she failed to report to work for light duty. The grievance was bifurcated for a determination on timeliness. On November 7, 2017, Master Arbitrator Joel Douglas determined that the grievance was not timely filed within twenty days of the first date that she was LWOP'ed. As such, the grievance was denied.

Taconic Correctional Facility: This grievance alleged that the State violated Article 14 of the Agreement when it AWOL'ed the member for submitting non-conforming medical documentation following an approved absence on January 3, 2012. The State agreed to settle this grievance for removal of the AWOL and allowed the member to charge sick leave accruals for the day.

Retirement

Moriah Shock Correctional Facility: On November 28, 2016, we received a decision from the Retirement System denying the disability retirement application on the basis that the member was not injured by the act of an inmate. Surprisingly, the Hearing Officer found that the member was not struck in the knee by a branch released by the inmate. The member was injured when an inmate let go of a branch that struck the member in the knee.

The Retirement System denied the member's application for disability retirement, pursuant to Retirement and Social Security Law Section 507-b, on the grounds that the incident was not inmate related. The hearsay statements of two inmates, in light of the member's contradictory, sworn testimony should not constitute substantial evidence. We commenced an Article 78 Proceeding on January 5, 2017, which is returnable on February 3, 2017. After the return date this matter was transferred to the Appellate Division, Third Department. On April 10, 2017, our Record and Brief were filed in the Appellate Division. On November 16, 2017, we received the Memorandum and Judgment of the Appellate Division which denied the member's retirement application. The member destroyed his credibility when he decided to testify that he believed that the inmate intentionally struck him with the branch and that he ordered the inmate to stop. His accident report and incident report did not say anything about ordering the inmate to stop. Our primary argument was that an administrative determination could not be based entirely on hearsay evidence, but the Appellate Division, in recent Justice Center cases, has reversed itself and has held that an administrative determinations can be based entirely on hearsay evidence.

Workers' Compensation

Workers' Compensation Discrimination: A hearing is scheduled for December 18, 2017, in Utica. In October, 2016, we filed a complaint of discrimination under the New York Workers' Compensation Law, Section 120, for discrimination at Central New York Psychiatric Center (CNYPC). In the complaint, we alleged that CNYPC unlawfully used, and continues to use, the amount of Workers' Compensation benefits in its employment and promotion decisions and that the management of CNYPC maintained a Worker's Compensation "scorecard" for use in its promotion process. *Workers' Compensation Law* § 120 provides that it shall "be unlawful for any employer . . . to discharge . . . or in any other manner discriminate against an employee . . . because such employee has claimed . . . claim compensation from such employer." We alleged that employees at CNYPC were adversely impacted for utilizing Workers' Compensation leave and that certain members were not promoted despite superior test, scores, experience and qualifications.

The sole remedy for a violation of *Workers' Compensation Law* relating to employment discrimination is to file a complaint with the Workers' Compensation Board. Other actions, such as EEOC or Human Rights Claims will be dismissed because a complaint to the Board is the exclusive and sole remedy. Although the reported cases concern termination of an employee's employment, the section specifically prohibits discrimination *in any other manner*. We believe this would include denial of promotions. Moreover, the section specifically authorizes the board to restore any *privileges* lost due to the discriminatory practice. The anti-discriminatory provision applies equally in the public sector. In such cases, the preliminary inquiry is whether civil servants, who are injured on the job, are treated detrimentally when compared to those who must take leaves of absence for non-work-related injuries. *Duncan, supra*. If the action complained of is not made in retaliation for the employee's compensation claim or testimony, the section not violated. In the present case, as indicated in the "scorecard" the three most recent promotees had the lowest workers' compensation days used since December 2015. The coincidence is

statistically unreasonable. Moreover, most of the individuals we spoke with were not promoted despite superior test scores, experience and qualifications.

Employee Health Services

Creedmoor Psychiatric Center: On August 4, 2017, the member was placed on an involuntary leave of absence pursuant to Civil Service Law 72(5) pending an examination by Employee Health Services, scheduled for September 25, 2017. Employee Health Services found the member fit for duty on October 4, 2017, and Creedmoor Psychiatric Center returned her to duty and restored her accruals.

Rockland Psychiatric Center: The member has been put out of work on involuntary Section 72 leave. On December 1, 2017, we requested a hearing to determine the member's fitness for duty.

General

Clinton Correctional Facility (State Inspector General's Office): On October 12, 2017, we represented members at Clinton Correctional Facility who were questioned by the New York State Inspector General's Office regarding the misconduct of the Industrial Shop civilian employee Denise Prell, who had an unauthorized relationship with an inmate. On October 23, 2017, we also represented two members at the New York State Inspector General's Office in Albany, New York.

Constitution and By-Laws Committee: On November 9, 2017, we attended the Constitution and By-Laws Committee meeting.

Marcy Correctional Facility (Release of Members' Personal Information): On November 8, 2017, after reviewing documents concerning the release to an inmate of certain personal information of some members at Marcy CF in response to a FOIL request, we prepared for President Powers a letter to DOCCS counsel Kevin Bruen protesting the improper release and calling for an investigation.

Paid Family Leave: As discussed at the September EA, the Paid Family Leave program (PFL) goes into effect for private sector employees on January 1, 2018. For public employees, PFL is a subject for collective bargaining and cannot be unilaterally imposed. At the Board's request, we initiated and attended a preliminary meeting with the State to obtain basic information as to how the benefit would be administered, and we later developed additional questions to which the State responded. The State has indicated its willingness to provide the benefit and to negotiate with NYSCOPBA with respect thereto. Further discussions with the State regarding PFL will occur at the collective bargaining table.

QWL Insurance: On October 24, 2017, we attended a meeting between representatives of NYSCOPBA, GOER, and the statewide Labor/Management committee to discuss insurance issues pertaining to the QWLs and the measures that need to be taken to protect NYSCOPBA and ensure that all QWL users equitably share expenses.

Roswell Park Cancer Institute: After multiple labor/management meetings regarding RPCI's plans to move members from unarmed titles to armed titles, the parties have agreed on the terms of the transition and have finalized the language of the draft Memorandum of Understanding. The final version of the MOU has been fully executed by NYSCOPBA and RPCI.

Steward Training: We have reviewed the Steward Training binders used in prior years training sessions and updated the outlines and contents in preparation for training in 2018.

Upstate Correctional Facility: On November 15, 2017, we represented four correctional officers from Upstate Correctional Facility who were being questioned by the New York State Inspector General's Office regarding their conduct.

Workers' Compensation/Civil Service Law Questions from Members: We have continued to address a number of questions, concerns, and issues for individual members regarding leave, terminations, Employee Health Services, IMEs, and orders to return to work. We have been working with the new NYSCOPBA Workers' Compensation Specialist as she has been learning the job. We also successfully received an extension of a termination date (under Civil Service Law Section 71) for the member.

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



Lippes Mathias Wexler Friedman LLP

Attorneys at Law

SEPTEMBER 2017 LEGAL REPORT TO THE EXECUTIVE ASSEMBLY

This is our report to the September 2017 Executive Assembly regarding the recent developments in some of the cases and legal matters we are handling for NYSCOPBA.

Negotiations

On July 6, 2017, we attended a meeting of the Collective Bargaining Committee.

Litigation

Statewide – Retiree Health Insurance Litigation (NYSCOPBA v. State, et al., USDC, NDNY, 11-CV-1523): On July 19, 2017, we attended a discovery conference before Magistrate Judge Hummel, who granted our application, over the State's objections, ordering the State defendants to accept service of deposition subpoenas on behalf of all potential witnesses identified by the State during discovery, and on behalf of all individual members of the State's 1982-1985 collective bargaining agents and health insurance committee members (State Bargaining Agents [SBA]); or, alternatively, to provide us with their last known address to enable personal service of deposition subpoenas and notices. As a result, we have scheduled twenty-two (22) depositions for the month of August, starting August 1st, and including the following witnesses: Michael Volforte (GOER), Robert Dubois (CSD), James Dewan (DOB), Judith Ratner (CSD), Mary Frye (CSD), Walter Pellegrini (SBA) Priscilla Feinberg (GOER), Peter Sennett (SBA), Robert Brondi (DOB), Joseph Bress (SBA), Stephen Beditz (SBA), Jacob Thomas (SBA), Meyer (Sandy) Frucher (SBA), Gary Johnson (GOER), Howard Glaser (Dir. State Ops.), Ronald Rich (SBA); Barry Sample (SBA), Patricia A. Hite (CSD); Robert Megna (DOB), June Egeland (CSD), Thomas Gibbs (SBA) and Deirdre Taylor (CSD). The deposition witnesses fall into two subject matter categories: (1) State bargaining agents who negotiated the 1982-1985 collective bargaining and health insurance agreements; and (2) State agents involved in 2011 extension of increased health insurance contribution costs to retirees under Chapter 495 of the Laws of 2011. The State defendants have not noticed any depositions. Our goal is to limit potential testimony from the State that would support a motion for summary judgment dismissing our claims, and to force a trial and/or settlement.

During the month of August, we completed twenty-three (23) depositions of potential witnesses identified by the State defendants and the available individual members of the State's 1982-1985 collective bargaining agents and health insurance committee members, pursuant to the Court's shortened discovery deadline on September 1, 2017. We expect the State to make a motion for summary judgment dismissing our claims on or before the motion deadline on November 3, 2017. Now that discovery is completed, we are collaborating with union counsel in the related cases to draft papers in opposition to the

State's anticipated summary judgment motion. Based upon the deposition testimony and exhibits, we believe there are genuine issues of material fact that should prevent an award of summary judgment in favor of the State defendants, and result in a trial. The State Attorney General's Office advised us that the State has rejected the proposed settlement to grandfather health insurance contribution rates for employees who retired prior to October 2011. However, we may be able to revisit our settlement negotiations if we are successful in opposing summary judgment by the State, and can force a trial on the merits. At trial, we would have the burden of proof by a preponderance of the evidence.

Creedmoor Psychiatric Center: The member is an SSO1, at Creedmoor P.C., whose driver's license was suspended and who obtained a restricted license from the Department of Motor Vehicles. OMH terminated the member's employment because, in its opinion, he failed to meet the minimum qualification of a valid New York driver's license. OMH has taken the position that a valid driver's license cannot be a conditional license or a restricted license. Additionally, the examination announcement, at the time that the member took the test, said that a conditional license was not sufficient. On behalf of the member, we filed an Article 78, which was originally returnable on June 9, 2017. The Attorney General requested an adjournment until June 30, 2017. On June 26, 2017, we received the State's answering papers and on June 28, 2017, we filed a Reply Brief. In the State's answering papers the Assistant Attorney General advanced the argument, for the first time, that the member was not fired, because he had a restricted license, but, rather, was fired because he allowed his driver's license to become suspended. We argued that this position was not supported in the records of OMH and could not be raised in the Article 78 Proceeding. We also contended that, if the member was fired for past misbehavior, his due process rights required that OMH resort to the disciplinary procedures contained in Article 8 of the CBA. We are awaiting a decision from the Court. On behalf of the member, we have also filed an unjust discipline contract grievance. The AAG assigned to this case has offered a settlement in which we would withdraw our Article 78 and OMH would return the member to his position with no back pay. The member has turned down this settlement offer.

Fishkill Correctional Facility: We filed an Article 75 motion to confirm a contract arbitration award on July 7, 2017. The parties had reached a settlement agreement resolving the member's contract grievance on July 8, 2016, and the master arbitrator signed off on the settlement. As part of that settlement, the State was to cease deductions relative to a particular overpayment and reimburse the member for any deductions made after April 21, 2016. As of July 7, 2017, the State had not yet made the member whole in accordance with the parties' settlement agreement. Subsequent to the filing of the Article 75, the State did issue the member a check. Discussions are continuing with the AG's Office and GOER regarding whether or not the member was properly compensated in accordance with the parties' agreement to settle the member's contract grievance.

Kirby Forensic Psychiatric Center: On August 4, 2017, we commenced an Article 78 proceeding to challenge the determination of the Justice Center. The Justice Center alleged that on July 4, 2015, the member abused a patient when he conducted a restraint with excessive force and improper technique, which included grabbing the patient by his shirt,

lifting him up and pushing him to the floor. The record was closed on March 8, 2017. The Justice Center found that using force was proper to stop the fight because it was an emergency situation, but that the member applied an inappropriate restraint on the patient when he pulled him by his shirt across floor to remove him from the incident. We believe the decisions are inconsistent and are challenging that ruling.

Powers v. DOCCS (Appellate Division, Third Department): On August 30, 2017, we filed a Reply Brief in Opposition to the State's Brief in Opposition to the Appeal. The case is now set to be heard at the November 2017 term. By way of background, on May 20, 2015, we commenced a proceeding on behalf of NYSCOPBA and the member under the *New York State Executive Law* Section 290, *et seq.*, ("*Human Rights Law*") and Title VII of the *Civil Rights Act of 1964*, 42 U.S.C. Section 2000 *et seq.*, ("*Title VII*") alleging that DOCCS adopted changes to Directive #2230, which constitute an unlawful discriminatory practice based upon gender. The basis for the complaint was that on January 5, 2015, DOCCS updated Directive #2230. Although the Directive had been in place for many years, the January 2015 update contained language which we alleged violated New York Human Rights law as well as Title VII. Specifically that same gender officers had to perform Special Watch (e.g. drug watch) and Suicide Watches.

In the complaint, we asserted that the changes to Directive #2230 were actions based upon gender. As the ability to work specific assignments within a correctional facility is a term, condition, and/or privilege of employment, we contended that the changes to DOCCS Directive #2230 constitutes an unlawful practice because the Directive discriminates against employees, based upon their gender in terms, conditions, or privileges of employment.

On November 4, 2015, the Division of Human Rights dismissed the Complaint finding the existence of a Bona Fide Occupational Qualification to have same gender officers perform suicide watches and special watches. On January 15, 2016, we commenced a special proceeding under CPLR article 78 to vacate that determination. The lower court denied the application to vacate the determination, and we appealed that decision. On appeal, we argued that DOCCS did not establish a valid BFOQ defense and that DHR's determination was legally insufficient, arbitrary, and capricious. To establish a BFOQ, the Respondent must make a strong factual showing that no reasonable alternatives existed and this was not done before the DHR. Therefore, we argued that the DHR's determination should be reversed as it was arbitrary and capricious. Oral argument is set for November 2017 and the decision should be issued in January 2018.

Mid-Hudson Forensic Psychiatric Center: On August 17, 2017, we commenced an Article 78 proceeding to challenge OMH's decision to impose a six-week suspension on the member stemming from a prior disciplinary settlement agreement which contained a one-year DEP. OMH alleges that the member engaged in "same or similar" conduct so as to trigger the suspension. The Article 78 petition alleges that OMH's decision to impose the six-week suspension was made in bad faith and was arbitrary and capricious, and we have requested appropriate back pay and benefits for the period of suspension.

Rochester Psychiatric Center (NYSCOPBA v. OMH, Rochester PC, et al): We filed an Article 78 petition to challenge Rochester PC's unlawful summary termination of an SSO. Rochester PC terminated the member's employment based on his probationary status, but an argument can be made that the member had completed his probationary period prior to summary termination. The Petition seeks his reinstatement. We filed the Petition and received the State's Answer, we then submitted our Reply and a Supplemental Reply. On March 2, 2017, we appeared on behalf of Petitioner Burel in Supreme Court, Monroe County, before Judge William Taylor. We received a decision from the Judge, which denied and dismissed our petition because the Judge found that the member was not qualified to hold the title of SSO Trainee on his first day of work and his probation could not have started until he was qualified. Therefore, according to the Judge, the member was properly summarily terminated within his probationary period. This office filed a Notice of Appeal, and the matter will be heard before the Appellate Division, Fourth Department. This office finalized the Record on Appeal and additional legal documents necessary to perfect and pursue the appeal, and filed the paperwork on August 14, 2017. The appeal will be heard at oral argument before the Appellate Division, Fourth Department, in Rochester, in January 2018.

Ulster Correctional Facility: The Appellate Division, Third Department, ordered that the matter be remanded to the arbitrator to issue a penalty consistent with the analysis of the court. Hearings were held before Arbitrator Dais on July 28, and August 17, 2017. A third day of hearing has been scheduled for October 11, 2017.

Ulster Correctional Facility: On January 11, 2017, we filed an Article 75 Proceeding to confirm the arbitration award. We were concerned that, in the event that the Appellate Division, Third Department, confirms the member's first arbitration award (case was argued on January 20, 2017), that, in the event that the second award was not confirmed, DOCCS might refuse to put the member back to work. This proceeding was returnable on February 13, 2017, but was adjourned to March 3, 2017. On March 1, 2017, we received the State's opposition papers and motion to vacate the arbitration award. The State is again arguing to vacate the penalty portion of this award on public policy grounds relating to Inmate Fabian, even though the arbitrator dismissed the Fabian charges because they had been litigated in the member's first arbitration. Our Reply Memorandum and opposition to the cross-motion was served on March 2, 2017. On March 16, 2017, the Appellate Division, Third Department, affirmed Judge O'Connor's order in the member's first case, and remanded the matter to the Arbitrator for the imposition of a new penalty. On May 9, 2017, we received a letter from Judge McDonough, in the proceeding to confirm the member's second arbitration award, requesting submissions on the issue of how the Appellate Division decision affected the second confirmation proceeding. Our submission was filed on May 12, 2017. On August 27, 2017, we received a letter from the Court telling us that it was staying our Article 75 Proceeding, until the member's first arbitration has finally decided. That matter is presently before Arbitrator Dais.

Discipline

Interrogations: For the months of June, July, and August, 2017, we represented one hundred and three (103) members who were interrogated by DOCCS.

Auburn Correctional Facility: We received a decision on August 4, 2017. The Arbitrator found that termination was not appropriate and that the appropriate penalty was a three-month suspension. That case involved unsecured items, including a baton and DOCCS manuals, found in an unsecure locker. This case also involves a rifle and ammunition found in his car on facility grounds. That NOD did NOT involve any allegations that he planted weapons on inmates. The member received a separate NOD for alleged planting of weapons.

Auburn Correctional Facility: Hearing was held on July 28, 2017. This case involves contraband (potential weapons) found in the member's locker. Briefs were submitted on September 1, 2017.

NYS Department of Labor – Brooklyn N.Y.: On or about October 25, 2016, the member was served a Notice of Discipline with numerous charges. Five of the seven charges were previously dismissed when the arbitrator granted our Motion to Dismiss. Subsequently, at the hearing on April 13, 2017, we made a motion that the suspension was not in compliance with Article 8.4(a)(2) of the 2009-2016 collective bargaining agreement as there were no details outlining the basis for the grievant's suspension without pay. The arbitrator, at the hearing, directed that the grievant be placed on the payroll effective April 13, 2017, and reserved the question of back pay to grievant's first day of suspension. By Decision dated June 12, 2017, the arbitrator granted the Union's motion to reimburse the grievant for all lost time associated with his unpaid suspension. The arbitrator invalidated the grievant's unpaid suspension beginning October 25, 2016 and directed that the grievant be reimbursed for all lost time at his then straight time rate. The State was also directed to replenish all paid leave time taken by the grievant during the suspension period. Such action by the State was ordered to take effect no later than Monday, June 26, 2017. The second hearing date for this matter was scheduled for July 11, 2017. Prior to the hearing, this matter was settled. One of the charges was withdrawn by the Department and the member accepted a one-month penalty and a Letter of Reprimand for the one remaining charge. The member was returned to duty on July 15, 2017.

NYS Department of Labor – Brooklyn N.Y.: On April 19, 2017, the member received a second Notice of Discipline. We filed for disciplinary expedited arbitration. Arbitrator J. Roger Rice was appointed to hear this matter. A hearing was scheduled for July 12 and 13, 2017. Prior to the hearing, this matter was settled. The member accepted a three-month suspension and a Letter of Reprimand. The member was returned to duty on July 15, 2017.

Capital District Psychiatric Center: A hearing in this matter had been scheduled for July 5, 2017. Prior to the hearing date, the matter was settled for a letter of reprimand. This case involved an allegation that the member failed to report the abuse of a patient.

Coxsackie Correctional Facility: The NOD alleged that the member used and tested positive for cocaine. He has since resigned.

Downstate Correctional Facility: The member received a Notice of Discipline for criminal charges resulting for possession of marijuana. The underlying criminal charges have been resolved. His hearing is October 19, 2017, at the Ramada Inn in Fishkill.

Downstate Correctional Facility: The member received a Notice of Discipline for criminal charges resulting from an assault. The underlying criminal charges have been resolved. His hearing is October 10, 2017, at Ramada Inn in Fishkill.

Downstate Correctional Facility: The member's expedited arbitration hearing will take place on September 22, 2017, before Arbitrator Larry Dais, regarding an altercation between officers, during which racially charged language was allegedly used.

Downstate Correctional Facility: The NOD alleges several instances of time and attendance abuse. The matter is scheduled for arbitration on September 21, 2017, before Arbitrator Timothy Taylor.

Downstate Correctional Facility: The NOD alleges that the member made inappropriate and racially charged statements to an inmate. The matter was appealed to expedited arbitration, but the State opted out. The matter is scheduled for arbitration on October 12, 2017, before Arbitrator Samuel Butto.

Downstate Correctional Facility: This member received a Notice of Discipline for failing to detect that an inmate was not living/breathing during his security rounds. Hearings were held before Arbitrator Lande on March 29, 2017, and May 18, 2017. At the hearing, we made a motion to lift the suspension and place the member back on the payroll until a final award was issued. By Amended Interim Decision as to lifting the suspension dated June 9, 2017, Arbitrator Lande affirmed his May 18, 2017, ruling lifting the suspension imposed on November 10, 2016, effective May 19, 2017, pending the issuance of his Opinion and Award in the matter. Briefs were submitted on June 30, 2017. On July 24, 2017, Arbitrator Lande issued an Opinion and Award finding that the proposed penalty of dismissal from service and loss of any accrued annual leave is excessive and, in lieu of same, Grievant shall sustain a suspension of eight (8) weeks' pay, and shall be made whole for the time in excess of that penalty for which he was suspended from service without pay.

Downstate Correctional Facility: The NOD alleges that the member solicited a prostitute. The matter was scheduled for arbitration on August 18, 2017. Despite the criminal charges still pending, the matter settled and the member returned to work.

Elmira Psychiatric Center: The NOD alleges failure to follow proper protocol in the restraint of a patient. This hearing was scheduled for arbitration before Arbitrator Ronald Kowalski on June 1, 2017. Because of a conflict with schedules with union representatives, we adjourned the matter. The matter is scheduled for hearing on October 27, 2017.

Fishkill Correctional Facility: The member was served with a Notice of Discipline charging her with possessing contraband in the form of unauthorized items during a search of an unassigned locker located in the Officer's common area, which she admitted to using. An expedited arbitration hearing was scheduled for September 14, 2017, before Arbitrator Thomas Rinaldo. The matter has since settled.

Fishkill Correctional Facility: The NOD alleges that the member committed the criminal charge of obstructing governmental administration. The matter is scheduled for arbitration on October 20, 2017, before Arbitrator Lise Gelernter.

Fishkill Correctional Facility: This member has been charged with using unnecessary and excessive force. A hearing in this matter has been scheduled before Arbitrator Lise Gelernter on September 8, 2017.

Fishkill Correctional Facility: The first hearing was held on February 10, 2017, in Fishkill. The second and third days were held on May 11 and 12, 2017, in Fishkill. This case involves an allegation that the member arranged and/or facilitated two (2) inmates to fight and then lied in an Inmate Misbehavior Report. The case was continued on August 22, 2017. We presented testimony of two (2) additional witnesses. The record is now closed and briefs are due September 29, 2017.

Fishkill Correctional Facility: The NOD alleges that the member provided false and misleading statements regarding a use of force. A hearing is scheduled for September 28, 2017, before Arbitrator Dennis Campagna.

Franklin Correctional Facility: This member has been charged with using excessive and unjustified force, among other charges. A hearing was held on August 23, 2017, in Plattsburgh, New York. We are in the process of scheduling a second day of hearing.

Franklin Correctional Facility: A hearing in this matter had been scheduled for July 17 and 18, 2017, before Arbitrator Timothy Taylor. Prior to the date of hearing, the parties adjourned the matter while additional documents are obtained and turned over to the union. The hearing in this matter will be rescheduled. This case involves allegations that the member failed to report other staff members striking an inmate and putting their hands around the inmate's neck, as well as an allegation that the member provided a false statement in his interrogation.

Franklin Correctional Facility: On July 20, 2017, we appeared before Arbitrator Patack for an arbitration hearing for the member in this non-suspension NOD alleging that the member had left his post and was out of place in the infirmary (where he was ultimately involved in a use of force). The parties were set to begin the hearing when the Arbitrator inquired about settlement. Ultimately, this matter did settle with a letter of reprimand. The member has been promoted to Lieutenant.

Greene Correctional Facility: One day of hearing in this expedited disciplinary matter was held on June 12, 2017. Briefs were submitted July 7, 2017. On July 23, 2017, we received a decision from Arbitrator Rinaldo. The Arbitrator found the grievant guilty of insubordination and unprofessional communication, ruled that termination was the appropriate penalty, and determined that the suspension was appropriate under the parties' contract.

Green Haven Correctional Facility: This matter involved allegations that the member provided an inmate an extra tray of food, made threatening and/or unprofessional statements to a fellow officer, and failed to follow instruction from a supervisor. The hearing in this matter was scheduled for August 31, 2017. The matter was resolved prior to the hearing for a suspension of approximately three (3) months.

Hale Creek Correctional Facility: The NOD alleged that the member kicked an inmate in the leg during a pat frisk. The matter was scheduled for arbitration on August 30, 2017, before Arbitrator Samuel Butto. The Department has since withdrawn the NOD.

Hale Creek Correctional Facility: The arbitrator scheduled a hearing for November 9, 2017. This member is charged with being "uncooperative and insolent" in his interactions with a sergeant on November 29, 2016.

Kirby Forensic Psychiatric Center: A hearing is scheduled for October 3, 2017, before Arbitrator Dennis Campagna. The NOD alleges use of an improper restraint technique by placing hands on a patient's neck.

Kirby Forensic Psychiatric Center: A hearing is scheduled for September 11, 2017, before Arbitrator Bolter, regarding a time and attendance issue. The matter has since been adjourned, in contemplation of a settlement between the parties.

Kirby Forensic Psychiatric Center: This matter involved an allegation that the member failed to report a reportable incident. Prior to the hearing in this matter, which was tentatively scheduled for August 18, 2017, the parties resolved this matter for a one-day suspension.

Mid-Hudson Forensic Psychiatric Center: The notice of discipline dated April 24, 2017, alleges that the member failed to call for assistance for a patient in a timely manner and used an improper restraint technique to restrain a patient causing an injury to his lip. The arbitration of this matter has been scheduled for November 9, 2017, before Arbitration Dennis Campagna.

Mid-Hudson Forensic Psychiatric Center: The notice of discipline dated April 24, 2017, alleges that the member failed to call for assistance for a patient in a timely manner and used an improper restraint technique to restrain a patient causing an injury to his lip. The arbitration of this matter has been scheduled for December 13, 2017, before Arbitrator Lise Gelernter.

Mid-Hudson Forensic Psychiatric Center: The member is accused of biting a patient. The first day of hearing was held on July 12, 2017. The second hearing day is scheduled for October 13, 2017.

Ogdensburg Correctional Facility: The member received a Notice of Discipline for criminal charges resulting from an assault. He was suspended, but returned to work. We have been unable to settle back pay, so we are going to arbitration. The hearing is scheduled for October 25, 2017, in Ogdensburg.

Rochester Psychiatric Center: The NOD alleges that the member was insubordinate and committed an act of workplace violence during a formal counseling session. The matter has been appealed to expedited arbitration and scheduled for hearing on August 23, 2017, before Arbitrator Timothy Taylor.

Rockland Psychiatric Center: The member received a Notice of Discipline for Aggravated DWI (.22 BAC) and possession of marijuana. His hearing is September 12 and 13, 2017, at Rockland Psychiatric Center.

Sing Sing Correctional Facility: The notice of discipline dated February 17, 2017, alleges that the member was absent from duty on twenty (20) days, constituting ten (10) occasions. This arbitration of this matter has been scheduled for October 17, 2017, before Arbitrator Louis Patack.

Sing Sing Correctional Facility: The member was served with a Notice of Discipline charging her with submitting false or inaccurate records. Specifically, she is charged with altering or causing to be altered a doctor's note. The member is also charged with making false and misleading statements during an official interrogation. The first day of hearing was held on March 10, 2017, before Arbitrator Lise Gelernter. A second arbitration hearing date was held on June 23, 2017. Arbitrator Lisa Gelernter issued an Opinion and Award dated July 20, 2017, granting the grievance in large part. She found the member not guilty of the charges in the Notice of Discipline dated September 22, 2014. However, it appeared that the member may have unintentionally violated DOCCS' written policies with respect to the handling of medical documentation. In order to ensure that the member understands what is expected in the future, as a non-disciplinary matter, DOCCS may verbally counsel the member about the policies and clarify how she is to proceed, particularly if she is requested by a superior officer to make notations on medical notes. The arbitrator instructed that DOCCS expunge the NOD and all related material from the member's records except for this award and those records necessary to show the sequence of events in the disciplinary process, including the finding that she was not guilty of the charges.

Sing Sing Correctional Facility: The matter was scheduled for a hearing on October 29, 2017, regarding time and attendance. The matter has been settled.

Sing Sing Correctional Facility: On July 17, 2017, we received the arbitrator's award finding this member not guilty of all charges and directing his reinstatement with full back

pay and benefits. The member was accused: (1) of failing to make proper security rounds on the day a civilian staff member was locked in the mess hall overnight; and (2) of failing to provide truthful answers in his Q&A. This is the fourth and final decision arising from this incident, so the entire matter is now closed.

Staten Island DDSO: The member was arrested for assault as the result of striking a police officer with her car. As a result of this arrest, the member received a Notice of Discipline. The arbitration was held on July 17, 2017. Closing briefs were due on August 31, 2017.

Sullivan Correctional Facility: The NOD alleges that the member used a racial slur directed at a supervisor. The matter is scheduled for arbitration on November 3, 2017, before Arbitrator Lise Gelernter.

Taconic Correctional Facility: The NOD dated February 7, 2017, alleges that the member failed to comply with a lawful order given by a supervisor to work a mandatory overtime assignment. The arbitration of this matter has been scheduled for September 19, 2017, before Arbitrator Louis Patack.

Washington Correctional Facility: The member received a Notice of Discipline for using unnecessary and excessive force. We have had three (3) days of hearings on this case. The final day of arbitration is scheduled for September 14, 2017.

Washington Correctional Facility: A hearing is scheduled for September 11 and 12, 2017, before Arbitrator Patack. The member is charged with excessive force, failure to report, failure to report employee misconduct, and proving false and misleading statements during his interrogation.

Justice Center

Central New York Psychiatric Center: A hearing took place on July 11, 2017, in Utica, before ALJ Naschi. This is a substantiated Category 3 allegation. This case involves the allegation that these two (2) SHTAs failed to provide proper supervision during a 2:1 observation, which allegedly created a situation for a service recipient to be able to insert foreign objects into her body. The decision from the ALJ found that the Justice Center had not met its burden of proof regarding the neglect/abuse charge, the members had acted properly and in accordance with the service recipient's treatment plan during the 2:1 observation, and that there was no abuse or neglect by either member. The charge has been amended to "unsubstantiated" and the matter is sealed.

Central New York Psychiatric Center: On August 1, 2017, we received a favorable decision in this Justice Center case which alleged that the member committed neglect during a one-on-one watch of a patient who swallowed a piece of a sweatshirt. The ALJ determined that the Justice Center failed to show by a preponderance of evidence that any neglect occurred, particularly addressing the fact that the member followed all of the

protocol (as articulated) for this particular one on one watch. The fact that the patient was able to swallow an item during this watch does not automatically prove neglect, so long as procedures for the watch were followed (which they were). The charge has been amended to “unsubstantiated” and the matter is sealed.

Central New York Psychiatric Center: Hearing was held on May 23, 2017, and the record closed. This is a substantiated Category 3 allegation. The case involved an allegation that the member improperly pushed or deflected a service recipient’s wheelchair, causing the wheelchair to strike the service recipient. The service recipient had attempted to hit the member with the wheelchair. The Judge found that the evidence was insufficient to support the allegation, unsubstantiated the charge, and sealed the record.

Central New York Psychiatric Center: The Justice Center charged the member with failing to stay alert and giving the appearance of sleeping, a Category 3 charge. This office appealed the finding and requested that the findings be unsubstantiated and sealed. We await the decision.

Mid-Hudson Forensic Psychiatric Center: The member is charged with sleeping on duty while assigned to a 1-on-1 supervision of a patient who was self-abusive. The patient, during the night, removed her bandages and re-opened her wound. The Justice Center will not settle this case. The hearing is scheduled for September 8, 2017.

Mid-Hudson Forensic Psychiatric Center: We attended a pre-hearing conference in this matter on August 15, 2017. The hearing of this matter will be assigned to Administrative Law Judge Jean Carney for a consolidated hearing in Poughkeepsie, NY. We now await a hearing notice. This Category 3 report of neglect alleges that the member failed to provide proper supervision to a service recipient by not calling for assistance or a nurse in a timely manner.

Mid-Hudson Forensic Psychiatric Center: The Justice Center issued a Final Determination and Order in this matter following a consolidated administrative hearing before Judge Jean Carney. The decision denied our request to amend the substantiated report of May 26, 2015. The Category 2 report of abuse and/or neglect alleged that the member conducted a restraint with excessive force and improper technique, which included applying pressure on and/or twisting a service recipient’s neck and/or head while on a restraint bed. The report of substantiated finding will be retained by the Vulnerable Persons Central Register for five years from the date of the report, and then it will be sealed.

Mid-Hudson Forensic Psychiatric Center: We attended a hearing on this matter in Poughkeepsie, NY, on August 30, 2017. This Category 2 report of physical abuse alleges that the member pushed, shoved, hit, and kicked a service recipient. At the hearing, the Justice Center presented a video of the event and the Investigator testified that his opinion was that the SHTA was the aggressor and acted inappropriately. On behalf of the member, we argued that the video does not in fact show this, and instead all of the statements made by other staff who were present support a finding that the service recipient fell on her own

(a behavior she does often, as supported by her medical reports in evidence) and then she grabbed on to the members legs so that he was stuck and could not get out of her grasp. The member was previously issued a NOD alleging the same charges and was found not guilty by an arbitrator. The hearing in the Justice Center matter was completed and we will be submitted briefs on the legal issue of res judicata/collateral estoppel, arguing that the member was previously found not guilty of this conduct by an arbitrator.

Mid-Hudson Forensic Psychiatric Center: We attended a pre-hearing conference in this matter on July 26, 2017. The hearing will be assigned to Administrative Law Judge Elizabeth Devane for a consolidated hearing in Poughkeepsie, NY. We now await a hearing notice. This Category 2 report of neglect alleges that the member fell asleep or was less than alert while on duty, and/or otherwise failed to provide a service recipient with proper supervision.

Mid-Hudson Forensic Psychiatric Center: A hearing in this matter was scheduled for August 16, 2017, in Poughkeepsie, NY, before Administrative Law Judge Louis Renzi. The Report of Substantiated Finding alleged Category 2 abuse (deliberate inappropriate use of restraints) and Category 2 physical abuse. Prior to the hearing, the matter settled. The Report of Substantiated Finding was amended to Category 3 abuse (deliberate inappropriate use of restraints). It will remain on the VPCR for five years from the date of the report.

Mid-Hudson Forensic Psychiatric Center: We attended a pre-hearing conference in this matter on August 15, 2017. The hearing of this matter will be assigned to Administrative Law Judge Jean Carney for a consolidated hearing in Poughkeepsie, NY. We now await a hearing notice. This Category 3 report of neglect, abuse and physical abuse alleges that the member failed to provide proper supervision to a service recipient by escalating his behavior or by not calling for assistance or a nurse in a timely manner. The report further alleges that the member struck a service recipient or restrained him with excessive force or improper technique.

Mid-Hudson Forensic Psychiatric Center: We attended a pre-hearing conference in this matter on August 15, 2017. The hearing of this matter will be assigned to Administrative Law Judge Jean Carney for a consolidated hearing in Poughkeepsie, NY. We now await a hearing notice. This Category 3 report of neglect, abuse and physical abuse alleges that the member failed to provide proper supervision to a service recipient by escalating his behavior or by not calling for assistance or a nurse in a timely manner. The report further alleges that the member struck a service recipient or restrained him with excessive force or improper technique.

Mid-Hudson Forensic Psychiatric Center: The Justice Center issued a Final Determination and Order in this matter following a consolidated administrative hearing before Judge Jean Carney. The decision denied our request to amend the substantiated report of May 26, 2015. The Category 2 report of abuse and/or neglect alleged that the member conducted a restraint with excessive force and improper technique, which included applying pressure on and/or twisting a service recipient's neck and/or head while on a

restraint bed. The report of substantiated finding will be retained by the Vulnerable Persons Central Register for five years from the date of the report, and then it will be sealed.

Rochester Psychiatric Center (Edgar Seymour): Justice Center hearing is scheduled for October 31, 2017, in Rochester, N.Y.

Improper Practice Charges

Statewide – DOCCS (Consolidated Clear Bag and Staff Allowable List Case) (U-35624): On August 22, 2017, the hearing began in the consolidated Improper Practice Charges regarding the clear bag and the Staff Allowable List. The hearing began with entering documents into the record and with opening arguments. Testimony will begin on the next hearing dates, March 28 and 29, 2018.

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, and 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 was scheduled on the matter with ALJ Ellen Mitchell for July 18, 2017, but has since been adjourned and the ALJ will reschedule the conference date.

Auburn Correctional Facility (U-35866): On July 25, 2017, we filed an Improper Practice Charge with PERB, stemming from a July 14, 2017, incident wherein the member was pulled from his bid job after declining to speak with the NYS BCI. The charge alleges that Auburn Correctional Facility engaged in illegal retaliation against the member for engaging in protected activity, i.e., invoking his rights as set forth in the Outside Police Agreement between NYSCOPBA and DOCCS. The initial conference at PERB is scheduled for October 11, 2017.

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 until September 26, 2017. During that time, the Union will review various assault alert forms completed by members in order to ascertain whether they received medical treatment or were ignored by facility physicians.

Hudson Correctional Facility (U-34382): On August 2, 2017, we received a decision from Judge Burritt denying this Improper Practice Charge and ruling that Hudson CF was allowed to unilaterally relocate the facility’s arsenal, on a temporary basis, into the

QWL. Judge Burritt, in her analysis, balanced the employer's interests in safety and security against the employees' interests of comfort and convenience (in closing the gym in the QWL). In determining that the subject was non-mandatory, the Judge determined that the employer's need for a safe and secure location for a temporary arsenal outweighed the employees' interests in this case.

Lincoln Correctional Facility (U-35772): On May 22, 2017, we filed an Improper Practice regarding sergeant schedules at Lincoln Correctional Facility. The Improper Practice alleged that until January 30, 2017, correction sergeants at Lincoln CF were able to work various squads and shifts in connection with their swaps to accomplish particular schedules. The Improper Practice further alleged that as of January 30, 2017, the Superintendent initiated a change from previous schedules to six (6) squads and shifts with rotating days off. Finally, we alleged that the changes described therein were not negotiated with the union and were unilaterally imposed by the Respondent. During the conference on August 24, 2017, we learned that a member filed a grievance on the same matter alleging that she is unable to bid for a job or receive a steady work schedule because of the above-referenced practice. In the grievance, she alleged that Lincoln Correctional Facility does not provide days off so she was forced to swap. The grievance was heard at Step 1 on January 2, 2017. Present were Carl Allen, Lewis Williams, and Yerushah Yehudah. At the conclusion of the meeting, the parties agree that all sergeant jobs will be posted bidding and that all sergeants will be placed in a squad effective January 30, 2017. Given the discussion between NYSCOPBA and Management, we withdrew the IP.

Livingston Correctional Facility (Retaliation and Interference): We are preparing an improper practice charge to address a situation at Livingston CF whereby facility administrators intentionally bypassed the steward who was designated by the local as the individual with whom management should deal on a labor/management issue. The particular issue concerns sergeants' job descriptions and the steward who was bypassed is the only sergeant among all stewards at Livingston CF. We will allege that by ordering other stewards to meet on this issue at times when the sergeant wasn't working, the administration interfered with NYSCOPBA's ability to decide for itself what union representatives it chooses to handle particular matters.

Sing Sing Correctional Facility (U-34606) (Retaliation/Interference): On May 22, 2017, we filed our brief in this case, following two (2) days of hearings. The charge alleges that the member was removed from his long-time bid job as trainer at Sing Sing CF in retaliation for having offered expert testimony in use of force procedures on behalf of the member at a disciplinary arbitration proceeding. We now await the administrative law judge's determination.

Sing Sing Correctional Facility (U-35737) (Retaliation/Interference – Q&A): On July 12, 2017, we attended a conference at PERB in this case. The charge alleges that facility administration denied a timely request to reschedule the pass day of a steward planning to represent a member at a Q&A in Albany on the steward's pass day. We contend that the denial was contrary to the long-standing practice at Sing Sing CF and that it was motivated by a desire to interfere with, and retaliate against, NYSCOPBA. The State indicated that

it was not interested in settlement and that a hearing would be necessary. The ALJ has scheduled a hearing for April 10, 2018.

Watertown Correctional Facility (U-35560) (Witness Intimidation): This office filed an Improper Practice charge regarding DOCCS' contacting one of NYSCOPBA's witnesses prior to a disciplinary arbitration. The charge alleges that DOCCS improperly attempted to persuade a member not to testify at a disciplinary arbitration on behalf of another member. Participating in a disciplinary arbitration is a protected union activity. A conference with ALJ Brittany Sergent took place on April 5, 2017, at PERB, with counsel and regional/local union representation present. No resolution was reached at that time. This matter was scheduled for a hearing on August 1, 2017, before ALJ Sergent, in Albany. The parties settled the matter at the hearing.

Contract Enforcement

Appeals to Arbitration: We received eighteen (18) requests from NYSCOPBA's grievance department to appeal contract grievances to arbitration during the months of June, July, and August, 2017. We have reviewed the grievance files and drafted and submitted arbitration appeals to the Governor's Office of Employee Relations (GOER).

Albion Correctional Facility: An expedited arbitration hearing in this matter was scheduled for August 8, 2017. At issue were eight (8) hours of overtime the member sought after being scheduled for training on his RDO and having his RDO rescheduled. Prior to the hearing, the parties resolved this matter for a split of the at-issue time.

Collins Correctional Facility: A summary proceeding in this matter was held on August 7, 2017. The Master Arbitrator denied the grievance, finding that although the grievant chose not to report to the facility after a medical appointment, the grievant would have had time to do so, and was therefore properly deemed AWOL.

Gowanda Correctional Facility: A summary proceeding was held July 27, 2017, to determine whether the grievance was timely filed. The Master Arbitrator found that the grievance was not timely filed, because it was filed more than twenty (20) days after any of the events that might or should have "triggered" the grievance filing. Since he found that the grievance was not timely, the Master Arbitrator denied the grievance.

Kirby Class Action (Triborough Bridge Tolls): This contract grievance was heard at full arbitration on the issues of whether the Office of Mental Health, specifically, Kirby Forensic Psychiatric Center and Manhattan Psychiatric Center violated Article 17.3 of Contract when it mandated employees to pay the up-front cost for work-related passage over the Triborough Bridge, and whether the grievance was timely filed. The parties submitted briefs in this matter on July 10, 2017, and await a decision from Arbitrator Drucker.

Taconic Correctional Facility: On July 31, 2017, we received a decision in the arbitration, denying the grievance. This case involved the administrative transfer of the member from Taconic CF to Fishkill CF, based upon twenty-four (24) allegations of sexual misconduct. Most were unsubstantiated, four (4) minor allegations were substantiated. The State argued the move was done for “safety” reasons. We argued that it was a violation of the contract, specifically unjust disciplinary action (Article 8.7) to involuntarily reassign the member. The Arbitrator found that the reassignment was not due to a disciplinary reason and accordingly, no violation of the contract.

Workers’ Compensation

Central New York Psychiatric Center: In October 2016, we filed a complaint of discrimination under the New York Workers’ Compensation Law, section 120 for discrimination at Central New York Psychiatric Center (CNYPC). In the complaint, we alleged that CNYPC unlawfully used, and continues to use, the amount of Workers’ Compensation benefits in its employment and promotion decisions and that the management of CNYPC maintained a Worker’s Compensation “scorecard” for use in its promotion process. *Workers’ Compensation Law* § 120 provides that it shall “be unlawful for any employer . . . to discharge . . . or in any other manner discriminate against an employee . . . because such employee has claimed . . . claim compensation from such employer.” We alleged that employees at CNYPC were adversely impacted for utilizing Workers’ Compensation leave and that certain members were not promoted despite superior test, scores, experience and qualifications. The full trial was adjourned to October 16, 2017.

Employee Health Services

Creedmoor Psychiatric Center: On August 4, 2017, the member was placed on an involuntary leave of absence pursuant to Civil Service Law 72(5) pending an examination by Employee Health Services, scheduled for September 25, 2017. We have preemptively requested a hearing should there be an adverse determination by the facility about the member’s fitness for duty. We are also looking into a change to the member’s shift that was made after she was placed on leave.

General

Capital Police Communications Specialist (Division of State Police): Working with Mike Marro, we are addressing with the Division of State Police the appropriate salary for two (2) members who are serving in one-year traineeships in this position. With at least one (1) of these employees, it appears the Division is not following Article 11.4 of the agreement in calculating the promotional salary.

FMLA (Intermittent Leave and Overtime): We have researched various issues involving the provisions of Directive 2220 (Family Medical leave Act), Section V(D), requiring that employees who cannot work mandatory overtime because of an FMLA-qualifying condition must be charged FMLA leave for the hours not worked.

Greene Correctional Facility (Salary Overpayment): Working with Greene CF steward Mike Tedford and Mid-Hudson Region VP Mike Mazzella, we are preparing a response to the Department's attempt to recover an alleged overpayment to a member concerning shift differential.

Greene Correctional Facility (Tardiness Policy): A new tardiness policy was issued at Greene CF, which outlines how many instances of being tardy can occur prior to counseling and discipline. This also occurred a number of years ago at Greene CF, an IP was filed, and the previous memo was withdrawn as a settlement. The prior practice has been a case-by-case determination regarding instances of tardiness (instead of a set number of instances). We have contacted GOER to see if they will resolve this by withdrawing the new memorandum. If we do not get that resolution from GOER, we will file an Improper Practice Charge.

NYSCOPBA Public Relations (PR) Committee: This office attended a meeting between the NYSCOPBA PR Committee and the New York State Gaming Commission regarding fundraising through raffle tickets and games of chance in order to give charitably to local and national charity organizations, and to ensure that such fundraising was in compliance with applicable laws.

QWL Insurance: We are working with Treasurer Viddivo to address the various issues concerning the insurance coverage of QWLs.

Rainy Day Fund: We are working with Treasurer Viddivo and attorney Ed Marinstein in an attempt to strengthen the legal remedies available to NYSCOPBA when a member who received payments from the fund fails to reimburse NYSCOPBA after having received a back pay award.

Roswell Park Cancer Institute: After multiple labor/management meetings regarding RPCI's plans to move members from unarmed titles to armed titles, the parties have agreed on the terms of the transition and are in the process of finalizing language of the draft Memorandum of Understanding for review by NYSCOPBA. This office has submitted to RPCI a final version of the MOU for approval.

Security Screen Technician Salary Issue (Division of State Police): We researched and responded to a question from steward Ryon Hallman concerning the appropriate salary level for four (4) Security Screening Technicians who were recently re-hired after having been laid off at the end of 2010 due to reductions in force.

Workers' Compensation Questions: Due to the retirement of NYSCOPBA Workers' Compensation Specialist, Susan Cunningham, we have addressed a number of individual

member questions and issues regarding Workers' Compensation leave, medical documentation, and scheduled exams (IME and EHS).

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



Lippes Mathias Wexler Friedman LLP

Attorneys at Law

JUNE 2017 LEGAL REPORT TO THE EXECUTIVE ASSEMBLY

This is our report to the June 2017 Executive Assembly regarding the recent developments in some of the cases and legal matters we are handling for NYSCOPBA.

Legislative

This office will provide a legislative update to the Executive Assembly at the meeting.

Negotiations

We prepared a Declaration of Impasse for filing with PERB.

Litigation

Statewide – Retiree Health Insurance Litigation (NYSCOPBA v. State, et al., USDC, NDNY, 11-CV-1523): On April 26, 2017, we deposed Mike Volforte, GOER Counsel, regarding record retention, custody, and identification of all documents, notes, and records concerning the 1982-1985 collective bargaining negotiations and agreements for health insurance, and the location and review of records produced to date by GOER in response to our discovery demands. As a result, we requested additional documents and lists from GOER to assist in identifying potential additional documents and records regarding the 1982-1985 collective bargaining negotiations and agreements for health insurance, and will use the information obtained to subpoena records from the State archives. On July 12, 2017, we are scheduled to depose a representative of the Civil Service Department regarding record retention, custody, and identification of all documents, notes, and records concerning the 1982-1985 collective bargaining negotiations and agreements for health insurance, and the enabling legislation (Ch. 495. L. 2011), and the location and review of records produced to date by the Civil Service Department in response to our discovery demands. On June 15, 2017, we served the State Defendants with Plaintiffs' joint First Request for Admissions regarding the 1982-1985 collective bargaining negotiations and agreements for health insurance, and the individuals involved. We are continuing our efforts to identify, reach out, and speak to union negotiators and committee members regarding the 1982-1985 health insurance negotiations. The public employee union plaintiffs in the related cases have agreed to share the deposition costs equally.

Central New York Psychiatric Center: On May 18, 2017, we had a preliminary conference before a Workers' Compensation Judge. We filed a complaint of discrimination under New York Workers' Compensation Law, section 120, for discrimination against three (3) SHTAs, employees of Central New York Psychiatric

Center (CNYPC), alleging that CNYPC unlawfully used the amount of Workers' Compensation benefits that an employee utilizes in its employment and promotion decisions. As evidence, we attached the Workers' Compensation "scorecard" for use in its promotion process. We alleged that use of such a document in employment/promotional decisions was *per se* unlawful discrimination.

Creedmoor Psychiatric Center: The member is an SSO at Creedmoor P.C., whose driver's license was suspended and who obtained a restricted license from the Department of Motor Vehicles. OMH terminated the member's employment because, in its opinion, he failed to meet the minimum qualification of a valid New York driver's license. OMH has taken the position that a valid driver's license cannot be a conditional license or a restricted license. Additionally, the examination announcement, at the time that the member took the test, said that a conditional license was not sufficient. On behalf of the member, we filed an Article 78 special proceeding, which was originally returnable on June 9, 2017. The Attorney General has requested an adjournment until June 30, 2017.

Rochester Psychiatric Center (NYSCOPBA, et al v. OMH, Rochester PC, et al): We filed an Article 78 petition to challenge Rochester PC's unlawful summary termination of the member. Rochester PC terminated the member's employment based on his probationary status, but an argument can be made that the member had completed his probationary period. The Petition seeks his reinstatement. We filed the Petition and received the State's Answer, we then submitted our Reply and a Supplemental Reply. On March 2, 2017, we appeared on behalf of the member in Supreme Court, Monroe County, before Judge William Taylor. We received a decision from the Judge, which denied and dismissed our petition because the Judge found that the member was not qualified to hold the title of SSO Trainee on his first day of work and his probation could not have started until he was qualified. Therefore, according to the Judge, the member was properly summarily terminated within his probationary period. This office filed a Notice of Appeal the week of April 3, 2017, and the matter will be heard before the Appellate Division, Fourth Department. This office is currently finalizing the Record on Appeal and additional legal documents necessary to perfect and pursue the appeal.

Southport Correctional Facility (Rosado v. State): We represent four (4) officers at a Civil Rights 50-a proceeding. In this case, an inmate is suing the State of New York for injuries sustained during a use of force. The only defendant in this case before the Court of Claims is the State of New York; the members are not defendants. By this motion, the Claimant is seeking full access to the members' Personal History Folders. The Attorney General has objected to the disclosure. The Judge directed us to submit papers by May 3, 2017. We submitted a memorandum of law, and each member submitted an affidavit objecting to any disclosure of any of his records. We await further action from the Court, to include oral argument on the matter. If the Judge finds any records relevant, she may direct that such records be given to her for an in camera (in her chambers) review. Then, if the Court determines that any records should go to the Claimant, we will have another opportunity to argue against disclosure and to redact/limit any records in accordance with a protective order.

SUNY College of Optometry: As you may recall, the member, in an arbitration award, was placed on a one-year disciplinary probation. SUNY treated the member as a regular (new hire) probationary employee and terminated his probationary employment. We treated his probationary discharge as an NOD (letter imposing discipline because he was fired) and filed a disciplinary grievance. SUNY rejected the grievance stating that the member was not disciplined, and we filed a demand for arbitration.

We commenced an Article 75 Proceeding to compel arbitration and, in the alternative, sought relief under Article 78 contending that the member's employment was terminated in bad faith. The Supreme Court converted the proceeding into a proceeding to confirm the arbitration award and remanded the matter back to the arbitrator. The arbitrator correctly concluded that he was without the power to modify, or clarify, his award.

We appealed and SUNY cross-appealed. The Appellate Division, Third Department, granted our petition to compel arbitration in a 3-2 decision.

SUNY appealed to the Court of Appeals, and the Court of Appeals, by letter dated July 27, 2016, advised us that the matter was being considered under the expedited procedure set forth in Section 500.11 of the Court Rules. On February 14, 2017, we received the Memorandum Decision from the Court of Appeals, which reversed the Order of the Appellate Division, Third Department. The basis for the reversal was the dissenting opinion in the Appellate Division, which found that the letter terminating the member's employment did not impose discipline and was not subject to arbitration under Article 8 of the CBA. The Court remanded the case back to the Appellate Division to consider the issues that were raised but not determined.

On April 20, 2017, the Appellate Division, Third Department, issued a decision, which finally determined this matter. We recommended moving to vacate the original arbitration award and the member did not want to do that. SUNY also offered the member one year's pay to settle this case. The Appellate Division, in its decision, did not discuss whether the probationary period, in the Arbitration Award, turned the member into a probationary employee in the same sense as a new hire. The Court simply determined that the lower court did not have the authority to convert our initial special proceeding into a proceeding to confirm the arbitration award and send the case back to the arbitrator. The Court also concluded that SUNY did not act in bad faith in terminating the employment of the member. The Court of Appeals, in its prior decision, arrived at the conclusion that the letter terminating the member's employment did not impose discipline and was not, therefore, subject to arbitration under Article 8 of the CBA.

Ulster Correctional Facility: On January 11, 2017, we filed an Article 75 proceeding to confirm the arbitration award. We were concerned that, in the event that the Appellate Division, Third Department, confirms the first arbitration award (case was argued on January 20, 2017), that, in the event that the second award was not confirmed, DOCCS might refuse to put the member back to work. This proceeding was returnable on February 13, 2017, but was adjourned to March 3, 2017. On March 1, 2017, we received the State's opposition papers and motion to vacate the arbitration award. The State is again arguing

to vacate the penalty portion of this award on public policy grounds relating to Inmate Fabian, even though the arbitrator dismissed the Fabian charges because they had been litigated in the first arbitration. Our Reply Memorandum and opposition to the cross-motion was served on March 2, 2017. On March 16, 2017, the Appellate Division, Third Department, affirmed Judge O'Connor's order in the first case, and remanded the matter to the Arbitrator for the imposition of a new penalty. On May 9, 2017, we received a letter from Judge McDonough, in the proceeding to confirm the second arbitration award, requesting submissions on the issue of how the Appellate Division decision affected the second confirmation proceeding. Our submission was filed on May 12, 2017. The State's reply was due on May 26, 2017, but the State has not made a submission. The matter is with the Court for a decision.

Wende Correctional Facility: The member was charged with allegations of excessive force on an inmate as well as other charges dated October 19, 2016. This case was handled by W. James Schwan. Arbitrator Bruce S. Trachtenberg found the member not guilty of the charges and specifications in the October 19, 2016, NOD. The member was ordered to be returned to duty with back pay and benefits. The arbitrator also found that the suspension was in accordance with the collective bargaining agreement. Subsequently, we were advised that DOCCS was considering their options with regard to this particular award. We immediately prepared a Notice of Verified Petition as well as a Verified Petition to confirm the arbitration award which was going to be sent out to the parties for their review. We were subsequently advised that DOCCS was complying with the arbitrator's award and therefore we did not file the Notice of Petition and Verified Petition to confirm the arbitration award.

Discipline

Interrogations: For the months of April and May, 2017, we represented eighty-eight (88) members who were interrogated by DOCCS.

Auburn Correctional Facility: Hearing was held on May 22, 2017, and the record closed at that hearing. The member is currently suspended. This case involves unsecured items, including a baton and DOCCS manuals, found in an unsecure locker. This case also involves a rifle and ammunition found in his car on facility grounds. This NOD does NOT involve any allegations that he planted weapons on inmates. That allegation is still under investigation.

Auburn Correctional Facility: The member was served with a Notice of Discipline charging him with five (5) counts of misconduct relating to his involvement with the Syracuse Hearing Aid Center and his plea to a Petit Larceny charge. Three (3) days of hearings were held before Arbitrator Samuel Butto. On April 7, 2017, the parties submitted closing briefs in this matter. On April 25, 2017, Arbitrator Butto issued his award finding the member not guilty of Charges 1-3, but guilty of Charges 4 and 5 as articulated in the June 3, 2016, NOD. He found the appropriate penalty shall consist of a 1-year suspension without pay from May 5, 2016 to May 4, 2017.

Auburn Correctional Facility: Hearing is scheduled for July 28, 2017. This case involves contraband (potential weapons) found in the member's locker.

Bedford Hills Correctional Facility: The NOD alleged that the member failed to complete her memorandum for inclusion in a Use of Force packet. The matter settled for a Letter of Reprimand.

Buffalo Psychiatric Center: The member received an NOD for allegedly removing facility property from the Buffalo Psychiatric Center and using the facility safety vehicle to transport those items to his personal residence. Additionally, he was charged with failing to respond to a radio request by a desk officer to provide assistance at Building #51 at the Buffalo Psychiatric Center. An arbitration hearing was scheduled before Arbitrator Lise Gelernter on June 1, 2017. Prior to the hearing, the member resigned.

Central New York Psychiatric Center: The NOD alleges that the member failed to monitor the cameras and intercom system in the Monitor Room and failed to grant staff entrance into the building which caused an interruption in State services. This matter was settled prior to the June 7, 2017, arbitration date for a Letter of Reprimand.

Clinton Correctional Facility: Hearing was held on March 14 and 15, 2017, in Plattsburgh. This case involved an allegation that the member used excessive force on an inmate, specifically applied multiple baton strikes after the inmate had been restrained. The inmate sustained a broken fibula as a result. In the hearing, the key evidence was that two (2) officers restrained the inmate's head/neck and upper body area while the member applied the baton strikes. The record was closed on March 15, 2017. Stenographic record of the hearing was received on April 3, 2017. Briefs were submitted on April 25, 2017. The arbitrator found the member guilty of excessive use of force and found that a nine-month suspension was proper.

Coxsackie Correctional Facility: Hearing was scheduled for May 8, 2017. Prior to the hearing, the matter was settled and the member was returned to work.

Coxsackie Correctional Facility: The member pled guilty to a Petit Larceny charge. A hearing in this matter was scheduled for April 25, 2017, before Arbitrator Samuel Butto. Prior to the hearing, the member resigned.

Department of Labor: On or about October 25, 2016, the member was served an NOD with numerous charges. Five of the seven charges were previously dismissed when the arbitrator granted our Motion to Dismiss. Subsequently, at the hearing on April 13, 2017, we made a motion that the suspension was not in compliance with Article 8.4(a)(2) of the 2009-2016 collective bargaining agreement as there were no details outlining the basis for the suspension without pay. The Arbitrator, at the hearing, directed that the member be placed on the payroll effective April 13, 2017, and reserved the question of back pay to the member's first day of suspension. By Decision dated June 12, 2017, the arbitrator granted the Union's motion to reimburse the grievant for all lost time associated with his unpaid

suspension. The arbitrator invalidated the member's unpaid suspension beginning October 25, 2016, and directed that the grievant be reimbursed for all lost time at his then straight time rate. The State was also directed to replenish all paid leave time taken by the grievant during the suspension period. Such action by the State was ordered to take effect no later than Monday, June 26, 2017. The second hearing date for this matter is July 11, 2017.

Department of Labor: On April 19, 2017, the member in the above entry received a second NOD. We filed for disciplinary expedited arbitration. Arbitrator J. Roger Rice has been appointed to hear this matter. A hearing is scheduled on July 12 and 13, 2017.

Department of Labor: A hearing in this matter was scheduled for May 25, 2017, before Arbitrator Patack. This case involved allegations that the member consumed alcohol at work and failed to report the presence of a controlled substance, among other charges. This matter was settled at the hearing.

Downstate Correctional Facility: The NOD alleges that the member failed to maintain his State-issued Thermal Imaging Thermometer on his person and return it to Tunnel Command Headquarters at the conclusion of his tour, and failed to provide the combination for his personally-owned combination lock to the DSS. The arbitration in this matter was scheduled for May 18, 2017. This NOD and another pending NOD were settled prior to arbitration for a \$1500 fine paid in bi-weekly increments of \$50 through payroll deduction.

Downstate Correctional Facility: This member received a NOD for failing to detect that an inmate was not living/breathing during his security rounds. Hearings were held before Arbitrator Lande on March 29, 2017, and May 18, 2017. Briefs are due on June 30, 2017. At the hearing, we made a motion to lift the suspension and place the member back on the payroll until a final award was issued. By Amended Interim Decision as to lifting the suspension dated June 9, 2017, Arbitrator Lande affirmed his May 18, 2017, ruling lifting the suspension imposed on November 10, 2016, effective May 19, 2017, pending the issuance of his Opinion and Award in the matter.

Downstate Correctional Facility: The member was charged with four (4) counts of inappropriate use of force and failing to properly supervise the use of force as well as making a false and misleading statement to the Office of Special Investigations and Bureau of Labor Relations. Four (4) days of hearings were held in this matter before Arbitrator Ira Lobel. On April 7, 2017, closing briefs were submitted in this matter. On April 27, 2017, Arbitrator Lobel dismissed all of the charges against the member. Subsequently, we were advised that the Notices of Discipline issued to four (4) additional members were withdrawn by DOCCS.

Eastern Correctional Facility: A hearing in this matter was scheduled for April 25, 2017, before Arbitrator Douglas. This case involved allegations that the member was insubordinate after a supervisor asked him to handle other officers' time cards. The matter was settled for a fine equal to three (3) days' suspension.

Edgecombe Correctional Facility: The member was charged with engaging in an unreported and unauthorized romantic relationship with a former inmate and parolee. This matter was scheduled before Arbitrator Louis Patack for an arbitration hearing on May 11, 2017. Prior to the hearing, the member resigned.

Elmira Psychiatric Center: The NOD alleges failure to follow proper protocol in the restraint of a patient. This hearing was scheduled for arbitration before Arbitrator Ronald Kowalski on June 1, 2017. Because of a conflict with schedules with union representatives, we adjourned the matter and have a conference call with the Arbitrator in order to schedule a new date.

Fishkill Correctional Facility: The NOD alleges that the member committed the criminal charge of obstructing governmental administration. The matter is scheduled for arbitration on October 20, 2017, before Arbitrator Lise Gelernter.

Fishkill Correctional Facility: The first hearing was held on February 10, 2017, in Fishkill. The second and third days were held on May 11 and 12, 2017, in Fishkill. This case involves an allegation that the member arranged and/or facilitated two inmates to fight and then lied in an Inmate Misbehavior Report. The record did not close and both sides may present further evidence. The return date is August 22, 2017.

Fishkill Correctional Facility: The NOD alleges that the member provided false and misleading statements regarding a use of force. A hearing is scheduled for September 28, 2017, before Arbitrator Dennis Campagna.

Franklin Correctional Facility: The member was charged with being in an inappropriate location (i.e. "off post") and involving himself in an incident. The Department is not seeking termination. A hearing in this matter is scheduled for July 20, 2017, before Arbitrator Patack. A prep meeting is scheduled for July 6, 2017.

Hale Creek Correctional Facility: The NOD alleges that the member kicked an inmate in the leg during a pat frisk. The matter is scheduled for arbitration on August 30, 2017, before Arbitrator Samuel Butto.

Kirby Forensic Psychiatric Center: A hearing is scheduled for October 3, 2017, before Arbitrator Dennis Campagna. The NOD alleges use of an improper restraint technique by placing hands on a patient's neck.

New York City Children's Center: The NOD alleges that the member provided inaccurate information in facility logbooks and failed to timely respond to a Bosch activation. The hearing was scheduled for June 16, 2017, before Arbitrator Larry Dais. At the hearing, the parties settled the matter and the member was returned to work.

Otisville Correctional Facility: This member received an NOD for being arrested while in uniform for actions which occurred at an elementary school when she dropped off her children. The hearing was scheduled for June 16, 2017. Prior to the hearing, the arbitrator

met with the parties and the matter was resolved whereby the member agreed to a penalty of a suspension to date and a three-year General DEP.

Rochester Psychiatric Center: The member was charged with failing to perform his duties by not inspecting all of the fire extinguishers on a certain unit, and for falsifying documentation indicating that he completed those inspections. This matter was scheduled for arbitration, but has since settled.

Rochester Psychiatric Center: The NOD alleges that the member was insubordinate and committed an act of workplace violence during a formal counseling. The matter has been appealed to expedited arbitration.

Sing Sing Correctional Facility: The member was served with an NOD charging her with submitting false or inaccurate records. Specifically, she is charged with altering or causing to be altered a doctor's note. The member is also charged with making false and misleading statements during an official interrogation. The first day of hearing was held on March 10, 2017, before Arbitrator Lise Gelernter. A second arbitration hearing date has been scheduled for June 23, 2017.

Sing Sing Correctional Facility: The member was charged with failing to conduct an appropriate security round and inmate count on August 26, 2016. A hearing in this matter was scheduled for May 2, 2017, before Arbitrator Dennis Campagna. Prior to the hearing, the member entered into a settlement agreement where she was returned to duty after serving a suspension from December 9, 2016, to May 1, 2017. The member received eighty (80) hours of annual leave accruals.

Sing Sing Correctional Facility: The member was charged with using unnecessary and excessive force for beating an inmate with a baton. The first hearing day was held on December 21, 2016, and the second and third days were held on January 16 and 20, 2017. Closing Briefs were submitted on March 17, 2017. On April 14, 2017, we received the Award from Arbitrator Lobel. Arbitrator Lobel found the member guilty and terminated his employment. We succeeded in showing that the inmate was not telling the truth. Unfortunately, the Arbitrator decided that this case was not about who was the least credible. The Arbitrator did not believe the member's testimony. The decision was based on the fact that the member said that he swung the baton overhand, from in front of the inmate, but all of the injuries were the inmate's back and the back of his head. The Arbitrator could not reconcile the member's testimony with the location of the inmate's injuries.

Sing Sing Correctional Facility: On June 12, 2017, we submitted our brief following three (3) days of hearings before Arbitrator David Lande. The member is accused of: (1) failing to make proper security rounds on the day Head Cook Iqbal was locked in the mess hall overnight; and (2) failing to provide truthful answers in his Q&A. We await the Arbitrator's determination.

South Beach Psychiatric Center: This matter was scheduled for arbitration on June 16, 2017. The NOD alleged that the member was insubordinate by refusing a direct order from a supervisor. After multiple conversations on the matter, the State withdrew the NOD.

Washington Correctional Facility: The member received a NOD for allegedly using unnecessary or excessive force on an inmate. The hearing is scheduled for August 2 and 3, 2017.

Washington Correctional Facility: A hearing is scheduled for September 11 and 12, 2017, before Arbitrator Patack. The NOD alleges excessive force, failure to report, failure to report employee misconduct, and proving false and misleading statements during his interrogation.

Justice Center

Capital District Psychiatric Center: A hearing in this matter was held May 11, 2017, in Schenectady. This case involves a substantiated Category 3 allegation that the member failed to report reportable incidents involving a service recipient to the Vulnerable Persons Central Register in a timely manner. We await a recommendation from the ALJ and a decision from the Justice Center.

Central New York Psychiatric Center: A hearing is scheduled for July 11, 2017, in Utica. This is a substantiated Category 3 allegation. This case involves the allegation these two (2) SHTAs failed to provide proper supervision in that a service recipient inserted foreign objects into her body.

Central New York Psychiatric Center: A hearing is scheduled for June 22, 2017. This is a substantiated Category 3 allegation. The case involves an allegation that the member did not properly monitor a patient (neglect) and, as a result, the patient was able to swallow a piece of a sweatshirt, compromising her airway.

Central New York Psychiatric Center: A hearing was held on May 23, 2017, and the record closed. This is a substantiated Category 3 allegation. The case involves an allegation that the member improperly pushed or deflected a service recipient's wheelchair, causing the wheelchair to strike the service recipient. We await a decision.

Kirby Forensic Psychiatric Center: A hearing was held on March 8, 2017. This was a Substantiated Category 2 allegation. The Justice Center alleges that on July 4, 2015, the member abused a patient when he conducted a restraint with excessive force and improper technique, which included grabbing the patient by his shirt, lifting him up, and pushing him to the floor. The record was closed on March 8, 2017. The Justice Center found that the member applied an inappropriate restraint on the patient when he pulled him by his shirt across floor to remove him from the incident. We are moving forward with an article 78 proceeding.

Mid-Hudson Forensic Psychiatric Center: A Category 2 report of neglect was issued on March 17, 2017. The report alleges that the member fell asleep or was less than alert while on duty, and/or otherwise failed to provide a service recipient with proper supervision. We submitted a request for amendment to the Justice Center Administrative Appeals Unit, which was denied on May 30, 2017. We now await a notice regarding the pre-hearing conference in this matter.

Mid-Hudson Forensic Psychiatric Center: A Category 3 report of neglect was issued on March 29, 2017. The report alleges that the member failed to provide proper supervision to a service recipient by not calling for assistance or a nurse in a timely manner. We have submitted a request for amendment to the Justice Center Administrative Appeals Unit and await a determination.

Mid-Hudson Forensic Psychiatric Center: The administrative hearing in this matter was held on April 27, 2017, in Schenectady, before Judge Jean Carney. The Category 2 report of abuse and/or neglect alleges that the member conducted a restraint with excessive force and improper technique, which included applying pressure on and twisting a service recipient's neck and head while on a restraint bed. This hearing was a consolidated hearing with another member. The record was closed on April 27, 2017, and we await a decision.

Mid-Hudson Forensic Psychiatric Center: A Category 2 report of neglect was issued on March 17, 2017. The report alleges that the member fell asleep or was less than alert while on duty, and/or otherwise failed to provide a service recipient with proper supervision. We submitted a request for amendment to the Justice Center Administrative Appeals Unit, which was denied on May 30, 2017. We now await a notice regarding the pre-hearing conference in this matter.

Mid-Hudson Forensic Psychiatric Center: A Category 3 report of neglect, abuse, and physical abuse was issued on March 29, 2017. The report alleges that the member failed to provide proper supervision to a service recipient by escalating his behavior or by not calling for assistance or a nurse in a timely manner. The report further alleges that the member struck a service recipient or restrained him with excessive force or improper technique. We have submitted a request for amendment to the Justice Center Administrative Appeals Unit and await a determination.

Mid-Hudson Forensic Psychiatric Center: A Category 3 report of neglect, abuse, and physical abuse was issued on March 29, 2017. The report alleges that the member failed to provide proper supervision to a service recipient by escalating his behavior or by not calling for assistance or a nurse in a timely manner. The report further alleges that the member struck a service recipient or restrained him with excessive force or improper technique. We have submitted a request for amendment to the Justice Center Administrative Appeals Unit and await a determination.

Mid-Hudson Forensic Psychiatric Center: The administrative hearing in this matter was held on April 27, 2017, in Schenectady, before Judge Jean Carney. The Category 2 report of abuse and/or neglect alleges that the member conducted a restraint with excessive force

and improper technique, which included applying pressure on and twisting a service recipient's neck and head while on a restraint bed. This hearing was a consolidated hearing with another member. The record was closed on April 27, 2017, and we await a decision.

Rochester Psychiatric Center: We represented the member at a Justice Center hearing in Rochester, New York, on April 6, 2017. On or about May 25, 2017, we received a favorable Determination from Administrative Law Judge John T. Nasci and the Justice Center regarding the above member. The Determination indicated that "[t]he request . . . that the substantiated report dated October 30, 2014, be amended and sealed is granted. The Subject has not been shown by a preponderance of the evidence to have committed abuse (deliberate inappropriate use of restraints) and physical abuse."

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, and 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 has been scheduled on the matter with ALJ Ellen Mitchell for July 18, 2017.

Statewide – DOCCS (Clear Bag) (U-35624): This charge was filed challenging the unilateral implementation of the new "clear bags" by DOCCS. Specifically, on March 13, 2017, DOCCS issued a memorandum regarding new front gate procedures, primarily indicating that effective May 1, 2017, employees would only be able to enter a correctional facility with one Department-issued clear bag, which is limited in size. The Improper Practice charge alleges that this is a new work rule, which impacts discipline and employee comfort and convenience, and thus must be negotiated with the union. Currently, the charge is slated to proceed through the normal course of the PERB process. We had a conference with the ALJ on May 18, 2017, and the matter was immediately set down for a hearing, to commence on August 22, 2017. If we are granted the injunctive relief requested below, then this IP will be heard in an expedited manner.

Statewide – DOCCS (Clear Bag) – Application for Injunctive Relief: We appeared before Justice Hartman on June 19, 2017, to be heard on oral arguments regarding the application for injunctive relief in the clear bags IP. This is the required step after PERB issued its decision finding a sufficient showing for an injunction and formally authorizing NYSCOPBA to petition the Supreme Court for a preliminary injunction. The papers for this application were previously submitted to the Court. The appearance on June 19, 2017, was for oral arguments. We now await the decision of Justice Hartman.

Statewide – DOCCS (Directive 4936 – Staff Allowable List): On July 19, 2017, we are scheduled to appear at a conference in front of ALJ Sargent regarding this Improper Practice charge alleging that the "Staff Allowable Items List" contained in the revised

Directive #4936 is a unilateral change in a mandatory subject of bargaining. Specifically, we alleged that employees are now prohibited from bringing in items that were previously allowed, or are now limited in the quantity of certain items, where previously they were not. These items, such as food, clothing, and personal items (lotion, sunscreen, toothpaste, etc.), all involve employee comfort and convenience, and therefore we allege that this new work rule is a mandatory subject of bargaining. We have received the State's Answer in response to this charge.

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 until July 26, 2017. During that time, the Union will review various assault alert forms completed by members in order to ascertain whether they received medical treatment or were ignored by facility physicians.

Green Haven Correctional Facility (U-35566): On Monday, April 10, 2017, a conference was held before ALJ William Weisblatt regarding this charge. This charge alleges that Green Haven Correctional Facility unilaterally changed the procedures used when the facility needed to permanently change the start time and end time of a shift of a plot plan post, held by an officer pursuant to a bid. The practice at this facility has been to put the position up for re-bid when the shift was to be changed. In this instance, the posts were not put up for re-bid. The State, in their Answer, is contesting the described practice, and alleging waiver/duty satisfaction arguments. At the conference, NYSCOPBA also conveyed the fact that the local had specifically asked for time to poll the membership regarding this issue, which was denied by the Superintendent. The Parties discussed this further at the conference, and the ALJ ultimately convinced DOCCS that it was in everyone's best interest to allow the union to do a poll, as originally requested, to determine how the local wishes to proceed with respect to this practice. The poll took place at the end of April and based on the results, the Improper Practice Charge has been withdrawn.

Sing Sing Correctional Facility (U-34606) (Retaliation/Interference): On May 22, 2017, we filed our brief in this case, following two (2) days of hearings. The charge alleges that the member was removed from his long-time bid job as trainer at Sing Sing in retaliation for having offered expert testimony in use of force procedures on behalf of another member at a disciplinary arbitration proceeding. We now await the administrative law judge's determination.

Sing Sing Correctional Facility (U-35737) (Retaliation/Interference – Q&A): PERB has scheduled a conference in this case for July 12, 2017. The charge alleges that facility administration denied a timely request to reschedule the pass day of a steward planning to represent a member at a Q&A in Albany on the steward's pass day. We contend that the denial was contrary to the long-standing practice at Sing Sing and that it was motivated by a desire to interfere with, and retaliate against, NYSCOPBA.

Watertown Correctional Facility (U-35560) (Witness Intimidation): This office filed an Improper Practice charge regarding DOCCS' contacting one of NYSCOPBA's witnesses prior to a disciplinary arbitration. The charge alleges that DOCCS improperly attempted to persuade a member not to testify at a disciplinary arbitration on behalf of another member. Participating in a disciplinary arbitration is a protected union activity. A conference with ALJ Brittany Sergent took place on April 5, 2017, at PERB, with counsel and regional/local union representation present. No resolution was reached at that time. This matter has been scheduled for a hearing on August 1, 2017, before ALJ Sergent, in Albany.

Contract Enforcement

Appeals to Arbitration: We received sixteen (16) requests from NYSCOPBA's grievance department to appeal contract grievances to arbitration during the months of April and May, 2017. We have reviewed the grievance files and drafted and submitted arbitration appeals to the Governor's Office of Employee Relations (GOER).

Statewide – Class Action – Opt-Out Program: On June 6, 2017, the Arbitrator issued his award denying this grievance. Under the contractual opt-out program, employees receive a \$1,000 payment for opting out of individual coverage and \$3,000 for opting out of family coverage. In 2015, the State determined that employees who opt out of family coverage in favor of their spouse's insurance, where the spouse has non-state NYSHIP coverage (e.g., a municipality or a school district), are only entitled to the \$1,000 payment. The State's logic is that NYSHIP rules prohibit spouses from having "two family coverages," and that being in the opt-out program itself constitutes family coverage from the State, resulting in two family coverages when the spouse has family coverage through a municipality or school district. Because having one individual and one family coverage is not prohibited, the State allows the \$1,000 payment in those circumstances. We contended that the contractual provisions contain no such limitation and supersede NYSHIP's rules. The Arbitrator, however, found the State's position to be consistent with the contractual language.

Central New York Psychiatric Center: Expedited Arbitration was held on June 16, 2017. During the conference, the matter settled. The member claimed that the facility improperly placed him on Leave Without Pay Status for one day. The settlement allowed the member to charge sick leave for that day.

Kirby Class Action (Triborough Bridge Tolls): On May 11, 2017, this contract grievance was heard at full arbitration before Arbitrator Jacqueline Drucker. The issues are whether the Office of Mental Health, specifically, Kirby Forensic Psychiatric Center and Manhattan Psychiatric Center, violated Article 17.3 of the Contract when it mandated employees to pay the up-front cost for work-related passage over the Triborough Bridge, and whether the grievance was timely filed. NYSCOPBA argued, among other things, that the facility's reimbursement program violates the clear contract language providing for

work-related passage “without cost” for car tolls to employees. The hearing record is closed and the parties will submit closing briefs by June 26, 2017.

Marcy Correctional Facility: Expedited Arbitration was held on April 7, 2017. This case involved the improper denial of use of five (5) DRL days before the member retired. The State contends that the member forfeited any unused DRL days upon retirement. The arbitrator found that the member could recover for the five (5) denied DRL days. He directed further hearing on whether the state had operational needs which warranted the denials.

St. Lawrence P.C.: An expedited hearing in this matter was held on May 5, 2017, before Master Arbitrator Joel Douglas. In this case, we alleged a violation of the Contract where the agency: (1) approved the member for less “release time” than requested to attend an interrogation; (2) required documentation of his presence at the interrogation; and (3) charged him accruals when no documentation was provided. Briefs were submitted on June 5, 2017. We await the Arbitrator’s decision in this matter.

Taconic Correctional Facility: Full Arbitration was held on May 3, 2017. This case involves the administrative transfer of the member from Taconic CF to Fishkill CF, based upon twenty-four (24) allegations of sexual misconduct. Most were unsubstantiated; four (4) minor allegations were substantiated. The State argued the move was done for “safety” reasons. We argued that it was a violation of the Contract, specifically unjust disciplinary action (Article 8.7), to involuntarily reassign the member. Briefs are due on July 10, 2017.

Wende Correctional Facility: Expedited Arbitration was held on April 21, 2017. This case involves an alleged improper requirement for the member to obtain medical documentation relating to light duty. The member could not perform light duty, but the facility required the documentation anyway. The arbitrator denied her grievance.

Retirement

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 (2) 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 the member, however, the System overlooked the fact that the member is required to work mandatory overtime which takes him inside of the facility. The Scheduling Information Form was filed with the Retirement System on June 14, 2017. We are now waiting for a hearing date.

Greene Correctional Facility: The member's disability retirement application was denied and we are in the process of reviewing this matter. The Retirement System's Orthopedic Surgeon found that the member had limitations that made it dangerous for him to work as a corrections officer but stated that he could not determine if the member was permanently disabled, because he has refused surgeries that might make it possible for him to perform his duties. The member's medical records show that he has refused surgery on his lower back, right knee, and right shoulder. We are looking at whether the member's doctors are able give opinions that surgery would not improve his prognosis. At this time, we are not able to produce a doctor who will testify that the member is permanently disabled from performing his duties. On May 23, 2017, we filed the Scheduling Information Form to proceed on medical records. The member is having an MRI and other tests in an effort to determine if he is permanently disabled.

Moriah Shock Correctional Facility: On November 28, 2016, we received a decision from the Retirement System denying the disability retirement application on the basis that the member was not injured by the act of an inmate. Surprisingly, the Hearing Officer found that the member was not struck in the knee by a branch released by the inmate. The member was injured when an inmate let go of a branch that struck the member in the knee. The Retirement System denied the member's application for disability retirement, pursuant to Retirement and Social Security Law Section 507-b, on the grounds that the incident was not inmate related. The hearsay statements of two inmates, in light of the member's contradictory, sworn testimony should not constitute substantial evidence. We commenced an Article 78 proceeding on January 5, 2017, which was returnable on February 3, 2017. After the return date this matter was transferred to the Appellate Division, Third Department. On April 10, 2017, our Record and Brief were filed in the Appellate Division. The System's Brief was filed on June 5, 2017. The case has been scheduled for the October, 2017, Term of the Appellate Division, Third Department.

Sullivan Correctional Facility: On April 11, 2017, we reviewed the member's medical records and prepared and filed with the Retirement System a Scheduling Information Form. The member's application for inmate-related disability retirement was denied on the grounds that he was not permanently disabled from performing the duties of a correction officer. We are now waiting for the Retirement System to Schedule a hearing.

General

Bedford Correctional Facility (Davis Hall): We were notified that a problem was occurring at Davis Hall whereby the facility would, in the future, only allow individuals who lived outside a certain mile radius to utilize the housing facilities at Davis Hall. We contacted Associate Commissioner Robert Kennedy to discuss this matter. Per our conversation, he advised that Bedford Hills Correctional Facility will follow the 1981 Stipulation of Settlement, which does not require a mileage requirement to be eligible to live at Davis Hall.

Bedford Hills Correctional Facility (EHS): The member was terminated after a one year absence due to a workers' compensation injury in January, 2017. Just prior to her termination date, she did receive notice and had submitted a proper medical note and requested an EHS exam. Unfortunately, that EHS exam found her unfit for duty, which led to her termination. The member submitted an appeal to DOCCS on her own. DOCCS contacted our office regarding scheduling of a hearing and we made contact with the member. The member's desire is to submit a new return to work and be re-evaluated (and not proceed with her hearing). We are working with DOCCs on this request. The member has had difficulty getting the proper note from her physician. We are hoping that she will be re-evaluated, found fit, and return to duty. In the meantime, her hearing, contesting the original determination regarding fitness is scheduled for June 1, 2017.

Constitution and By-Laws Committee: On May 17, 2017, we attended a Constitution and By-Laws Committee meeting.

FOIL Requests re: New York Times Article: In October 2016, we made a FOIL request to DOCCS for any and all FOIL requests, responses, and responsive documents pertaining to inmate Jonathan Rosado since September 1, 2015. In January 2017, our FOIL request was denied. We appealed this decision to DOCCS Counsel's Office in February 2017. On May 1, 2017, DOCCS Counsel's Office advised that they would disclose sixty-one (61) pages of records responsive to our request. On May 25, 2017, we received the requested documents and are in the process of reviewing the response.

Legal Opinion re: Pension Protection Act: On June 5, 2017, we provided a legal opinion to Bill Naylor concerning whether retired SHTAs would be considered "retired public safety officers" for purposes of the Pension Protection Act of 2006, which permits retirees meeting that definition to deduct up to \$3,000 in income from payments for health and certain other types of insurance when payments are made directly from a retirement account. We concluded that although there are arguments to be made in support of that position, they are tenuous given that the OMH Commissioner has at this point declined to confer peace officer status on SHTAs.

Make-A-Wish Donation: This office attended a meeting between members of the Publicity & Meetings Committee and a representative and counsel for Make-A-Wish Foundation of Northeastern New York to discuss legal barriers to fundraising on behalf of and donating to Make-A-Wish.

Roswell Park Cancer Institute: After multiple labor/management meetings regarding RPCI's plans to move members from unarmed titles to armed titles, the parties have agreed on the terms of the transition and are in the process of finalizing language of the draft Memorandum of Understanding for review by NYSCOPBA. This office has submitted to RPCI a final version of the MOU for approval.

Wende Correctional Facility Investigation: We represented four (4) COs and one (1) Sergeant in potential interviews with the District Attorney of Erie County. As discussed below, we cancelled the interviews. The meetings were in connection with potential prosecution of two (2) additional members regarding the use of force on an inmate. The meetings were to occur June 12-16, 2017. One member received an NOD, prevailed at arbitration, and was placed on administrative leave, with pay. The other member has not received an NOD, but was identified by the inmate as involved. However, the DA did not agree to use a proffer agreement (use immunity attaches). Instead, the DA wanted a sworn, transcribed statement of the members. Such statement has no immunity and may be used in any proceeding for any purpose. This exposed the members to risk without any benefit. Because the members were not receiving any immunity, we declined the interviews. If the DA wants to interview these members now, they must serve subpoenas, which will result in immunity.

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



Lippes Mathias Wexler Friedman LLP

Attorneys at Law

APRIL 2017 LEGAL REPORT TO THE EXECUTIVE ASSEMBLY

This is our report to the April 2017 Executive Assembly regarding the recent developments in some of the cases and legal matters we are handling for NYSCOPBA.

Legislative

Since our most recent Legislative Developments memorandum, in addition to having reviewed thousands of bill introductions to determine any potential impact on the union, we have also been closely monitoring the Executive Budget negotiations between the Legislature and the Governor's office. We have reviewed not only the Governor's original budgetary proposal and his subsequent constitutionally authorized 30-day amendments, but we have also reviewed and summarized for the Executive Board the Legislature's revised budget proposals.

We have had several meetings with leadership in both Houses to discuss our concerns about the Executive Budget proposal and have sought the inclusion of certain proposals within the Public Protection General Government Article VII budget bill. Specifically, we met with Majority Leader Flanagan, IDC Leader Klein, and Speaker Heastie to discuss NYSCOPBA's "Death Gamble" proposal. We also discussed our concerns with the manner in which OMH has implemented the union's "Assault Reporting" proposal that was enacted last year.

Despite the union's efforts, the Legislature failed to include our "Death Gamble" proposal in any Article VII language. We have had several meetings with the sponsors of this proposal (Senator Ritchie and Assembly Member Jenne) and have received assurances that this bill will be a priority for each legislator during the course of the 2017 Legislative Session.

As stated above, we expressed concern to the leadership of the Legislature regarding OMH's preparation of its first quarterly assault report. We also met with Senator Ortt and Assembly Member Gunther who were the sponsors of the enacted proposal last year and conveyed NYSCOPBA's extreme displeasure about the report. At the request of Senator Ortt, we drafted a letter for his signature that conveyed these frustrations to Commissioner Sullivan and received assurances from the Senator that he would sponsor remedial legislation, if necessary. We have also begun discussions with Senator Ortt and Assembly Member Gunther about the potential introduction of legislation to remove the four (4) forensic facilities from the oversight of the State's Justice Center. In this regard, we have drafted this legislation and will be seeking introduction in both Houses.

We have ensured the introduction of all of NYSCOPBA's priority legislative proposals for 2017 and will continue to advocate for the passage of these bills. We have had countless

meetings with various legislators and staff members since the inception of the 2017 Legislative Session and continue to maintain a presence on the hill each and every day for the benefit of NYSCOPBA.

Litigation

Albion Correctional Facility (L.W. v. State, Claim 122880)(50-A Motion): In this case, an inmate is suing the State of New York for injuries resulting from sexual abuse while being in custody. The only defendant in this Court of Claims case is the State of New York; the member is not a defendant. However, the lawsuit alleges that the member sexually abused the inmate while in custody. The Claimants are seeking full access to the member's personal history folder. The Attorney General has objected to the disclosure. The Judge ordered a hearing on February 15, 2017, in Rochester. We appeared on behalf of the member. After submission of briefs and argument, the Judge denied full access to the member's personnel records, but directed that certain documents be provided to the Court for review to determine whether to provide the documents to Claimant's attorney. The documents to be reviewed by the Court are the following: the member's Departmental Training Records and the Notice of Discipline, dated May 6, 2013, which is the subject of the litigation. The Court will review the documents to determine if they are relevant and probative to the case. After that, we will have another chance to argue that they should not go to the Claimant and/or should be redacted to remove any personal information. If any of these documents are eventually provided to the Claimant's attorney, we already have a protective order in place which prevents disclosure to anyone, other than Claimant's attorney.

Mid-Hudson Forensic Psychiatric Center: On January 24, 2017, we received the decision in this case, denying the relief requested and dismissing the petition for failure to exhaust administrative remedies, specifically the outcome of the Justice Center hearing. This is a CPLR 78 proceeding in Orange County to have the member reinstated as an SHTA. The member had Justice Center charges filed against him in regard to an altercation with a patient, and based upon those charges, the member's employment was terminated. We contended that the member was assaulted. In her decision, the judge did not address the merits of the petition for reinstatement. Instead, the Judge found that the Justice Center appeal process was not yet completed—the member had not received a hearing—therefore, the petition was premature. We filed a notice of appeal to preserve appellate rights.

Retiree Health Insurance Litigation (NYSCOPBA v. State, et al., USDC, NDNY, 11-CV-1523): On February 22, 2017, we participated in a scheduling and discovery conference before Magistrate Judge Hummel. The Court re-scheduled the pretrial deadlines for the parties to complete all discovery by November 22, 2017, and scheduled a case status conference for September 6, 2017, to address any discovery issues that may arise prior to the expiration of discovery. On March 1, 2017, union plaintiffs served a Notice of Deposition and Subpoena upon GOER to testify at a deposition scheduled for March 15, 2017, regarding record retention and custody of all related collective bargaining agreements and MOU's concerning the 1982-1985 negotiations and agreements for health

insurance. After much wrangling by the State regarding witness availability, GOER will produce a qualified witness to be deposed on April 26, 2017, regarding record retention, custody, and identification of all documents, notes, and records concerning the 1982–1985 collective bargaining negotiations and agreements for health insurance. While the State continues to produce numerous documents in response to our discovery demands, it has failed to identify and produce relevant documents regarding the 1982–1985 negotiations that led to the contract language that we argue created a member’s right to a continuation of the health insurance premium contribution rates in retirement, at the same rate in effect on the date that the employee retired (i.e. 10%/25% [currently 16%/31%]).

Rochester Psychiatric Center (NYSCOPBA, et al v. OMH, Rochester PC, et al): We filed an Article 78 petition to challenge Rochester PC’s unlawful summary termination of the member. Rochester PC terminated the member’s employment based on his probationary status, but an argument can be made that the member had completed his probationary period. The Petition seeks his reinstatement. We filed the Petition and received the State’s Answer, we then submitted our Reply and a Supplemental Reply. On March 2, 2017, we appeared on behalf of the member in Supreme Court, Monroe County, before Judge William Taylor. We recently received a decision from the judge, which denied and dismissed our petition because the judge found that the member was not qualified to hold the title of SSO Trainee on his first day of work and his probation could not have started until he was qualified. Therefore, according to the judge, the member was properly summarily terminated within his probationary period. The Board voted to appeal this decision. This office filed a Notice of Appeal the week of April 3, 2017, and the matter will be heard before the Appellate Division, Fourth Department. This office is currently researching and drafting the additional legal documents necessary to perfect and pursue the appeal.

Southport Correctional Facility: We are representing the member at a Civil Rights 50-a hearing on April 26, 2017. In this case, an inmate is suing the State of New York for injuries sustained during a use of force. The only defendant in this Court of Claims case is the State of New York; the member is not a defendant. The Claimants are seeking full access to the member’s personal history folder. The Attorney General has objected to the disclosure. The Judge ordered a hearing on April 26, 2017, in Binghamton. We are objecting to any disclosure of the member’s records.

SUNY College of Optometry: As you may recall, the member, in an arbitration award, was placed on a one-year disciplinary probation. SUNY treated the member as a regular (new hire) probationary employee and terminated his probationary employment. We treated his probationary discharge as an NOD (letter imposing discipline because he was fired) and filed a disciplinary grievance. SUNY rejected the grievance stating that the member was not disciplined, and we filed a demand for arbitration.

We commenced an Article 75 proceeding to compel arbitration and, in the alternative, sought relief under Article 78 contending that the member’s employment was terminated in bad faith. The Supreme Court converted the proceeding into a proceeding to confirm

the arbitration award and remanded the matter back to the arbitrator. The arbitrator correctly concluded that he was without the power to modify, or clarify, his award.

We appealed and SUNY cross-appealed. The Appellate Division, Third Department, granted our petition to compel arbitration in 3-2 decision.

SUNY appealed to the Court of Appeals, and the Court of Appeals, by letter dated July 27, 2016, advised us that the matter was being considered under the expedited procedure set forth in Section 500.11 of the Court Rules.

On February 14, 2017, we received the Memorandum Decision from the Court of Appeals which reversed the Order of the Appellate Division, Third Department. The basis for the reversal was the dissenting opinion in the Appellate Division which found that the letter terminating the member's employment did not impose discipline and was not subject to arbitration under Article 8 of the CBA. The Court remanded the case back to the Appellate Division to consider the issues that were raised but not determined. We are again awaiting a decision from the Appellate Division.

Ulster Correctional Facility: In July, 2014, the member, a correction officer at Ulster Correctional Facility, was charged with using inappropriate and excessive force alleging that he kicked an inmate in the groin, causing him to suffer serious permanent injury.

During the arbitration hearing, the member denied that he had kicked or injured the inmate and did not notice any signs that the inmate was injured. A hearing was held where the arbitrator sustained all five (5) charges of misconduct but, reduced the penalty from termination to a 120-day suspension. DOCCS refused to comply with the reduced penalty and did not permit the member to return to duty. We filed an Article 75 Petition to confirm the arbitration award, which was denied by the Supreme Court. We appealed the determination to the Appellate Division, Third Department. The case was argued on January 20, 2017. The Appellate Division issued its determination on March 16, 2017, finding that the penalty of suspension – which would return the member to his prior position after 120 days, with unlimited direct contact with inmates and continued responsibilities for the care, control, and discipline – creates an explicit conflict upon the face of the award with a strong, specific, and absolute public policy against the use of unjustified physical force or corporal punishment “for any purpose and under all circumstances.” This is because the Court found that the member not only unquestionably engaged in such prohibited conduct, but also repeatedly lied about his actions, thus evidencing the failure to acknowledge the magnitude of his misconduct. The Court took no position as to penalty, and we will be going back before Arbitrator Dais for a determination of penalty consistent with the guidance of the court. Because the Court did not issue a final determination, our research indicates that it is not appropriate at this time to appeal this matter to the Court of Appeals. It is also important to note that this determination was unanimous by the Appellate Division, Third Department.

CPLR § 5602 (1)(a)(ii) provides a direct appeal to the Court of Appeals, in certain circumstances where an appeal to the Court of Appeals is not guaranteed as of right. We

have contacted the member and will be contacting DOCCS to schedule the matter before Arbitrator Dais.

Discipline

Interrogations: For the months of February, 2017, and March, 2017, we represented ninety-eight (98) members who were interrogated by DOCCS.

Auburn Correctional Facility: Hearing is scheduled for May 22, 2017. The member is suspended. This case involves unsecured items, including a baton and DOCCS manuals found in an unsecure locker. This case also involves a rifle and ammunition found in his car on facility grounds. This NOD does NOT involve any allegations that he planted weapons on inmates. That investigation continues.

Auburn Correctional Facility: The member was served with a Notice of Discipline charging him with five (5) counts of misconduct relating to his involvement with the Syracuse Hearing Aid Center and his plea to a Petit Larceny charge. Three (3) days of hearings were held before Arbitrator Samuel Butto. On April 7, 2017, the parties submitted closing briefs in this matter. We are awaiting Arbitrator Butto's award in this matter.

Bare Hill Correctional Facility: Hearing was scheduled on February 13, 2017, in Plattsburgh. This is the second day of the hearing. This case involves an allegation that the member planted a weapon on an inmate who was "flirting" with his significant other, who was also a Correction Officer at Bare Hill CF. The record is closed and briefs were submitted March 28, 2017.

Bedford Hills Correctional Facility: The member was given a NOD alleging that he showed to other officers nude photographs of a female officer and a video of him and the female officer engaging in sexual activities. On February 13, 2017, we submitted to the arbitrator a motion to dismiss the NOD on the basis that the NOD was time-barred. This matter was settled on February 14, 2017.

Bedford Hills Correctional Facility: On November 28, 2016, we attended the disciplinary grievance arbitration for the member. The member was charged with allowing the inmates to have a birthday party and logging in security rounds that he did not actually make. On March 28, 2017, we received the Award from Arbitrator Dais. The member was given a suspension to date and returned to duty.

Brooklyn DDSO: This matter was heard at expedited arbitration on February 7, 2017. The member received a Notice of Discipline for making Facebook posts on November 9, 2016, (the morning after the election) directed to "all my friends in red voting states" which said things such as I want you dead, I want your families dead, and not just dead, but horrible painful deaths. Closing briefs were submitted on March 10, 2017. On March 20, 2017, we received the Award from Arbitrator Trachtenberg, which found the member guilty of some

of the Charges and determined that an eight-month (8) suspension was the appropriate penalty.

Central New York Psychiatric Center: The arbitration in this matter has been scheduled for June 7, 2017, before Arbitrator Patack. The allegation in the Notice of Discipline is that the member failed to monitor the cameras and intercom system in the Monitor Room and failed to grant staff entrance into the building, which caused an interruption in State services.

Central New York Psychiatric Center: The NOD alleged issues related to time and attendance. The matter was scheduled for arbitration on March 28, 2017, before Arbitrator Judith La Manna. This matter has since been settled for loss of three days of accruals and a nine-month (9) disciplinary evaluation period.

Clinton Correctional Facility: Hearing was held on March 14 and 15, 2017, in Plattsburgh. This case involves an allegation that the member used excessive force on an inmate, specifically multiple baton strikes after the inmate had been restrained. The inmate sustained a broken fibula. The record was closed on March 15, 2017. Stenographic record of the hearing was received on April 3, 2017. Briefs are due April 25, 2017.

Coxsackie Correctional Facility: The member was accused of failing to return to Coxsackie Correctional Facility to submit to a urinalysis test while on vacation. Briefs were submitted to Arbitrator Gaba on February 10, 2017. On February 22, 2017, Arbitrator Gaba issued an award finding that Grievant was guilty of the charges but determining that the proposed penalty of termination and loss of annual accruals was not appropriate. He awarded a six-month suspension without pay.

Coxsackie Correctional Facility: Hearing is scheduled for May 8, 2017. The member is suspended. This case involves alleged sexual contact with his minor children.

Coxsackie Correction Facility: The member pled guilty to a Petit Larceny charge. A hearing in this matter has been scheduled for April 25, 2017, before Arbitrator Samuel Butto.

Creedmoor Psychiatric Center: On December 16, 2016, we attended the disciplinary grievance arbitration for the member at Creedmoor P.C. The member was charged with allowing persons entry to a secure area of the facility without verifying their identities. The member was also charged with delaying the vacation re-bid, because she did not allow the Chief Nursing Officer and the Associate Director of Nursing access to the same secure area. On February 13, 2017, we received the Award and Opinion of the Arbitrator finding the member not guilty of all charges.

Downstate Correctional Facility: The arbitration in this matter has been scheduled for May 18, 2017, before Arbitrator Patack. The allegation in the Notice of Discipline is that the member failed to maintain his State-issued Thermal Imaging Thermometer on his

person and return it to Tunnel Command Headquarters at the conclusion of his tour, and failed to provide the combination for his personally-owned combination lock to the DSS.

Downstate Correctional Facility: The hearing in this matter is scheduled for March 29, 2017, before Arbitrator David Lande. The member is accused of conducting an inadequate and less than thorough security round when he allegedly failed to detect that an inmate was deceased.

Downstate Correctional Facility: The member was charged with four (4) counts of inappropriate use of force and failing to properly supervise the use of force as well as making a false and misleading statement to the Office of Special Investigations and Bureau of Labor Relations. Four (4) days of hearings were held in this matter before Arbitrator Ira Lobel. On April 7, 2017, closing briefs were submitted in this matter and the parties are awaiting a determination from Arbitrator Lobel.

Eastern Correctional Facility: A hearing in this matter is scheduled for April 25, 2017, before Arbitrator Douglas. This case involves allegations that the member engaged in insubordination.

Edgecombe Correctional Facility: The member is charged with engaging in an unreported and unauthorized romantic relationship with a former inmate and parolee. This matter is scheduled before Arbitrator Louis Patack for an arbitration hearing on May 11, 2017.

Fishkill Correctional Facility: Hearing was held on February 10, 2017, in Fishkill. That was the first day of the hearing. This case involves an allegation that the member arranged and/or facilitated two (2) inmates to fight. The next dates for hearing are May 11 and 12, 2017, in Fishkill.

Greene Correctional Facility: Hearing was scheduled for March 9 and 10, 2017, at the training academy. This case involves many allegations that the member used a cell phone while on duty/within the facility. This case has settled.

Mid-Hudson Forensic Psychiatric Center: A one-day hearing on this matter was held on January 5, 2017, before Arbitrator Lise Gelernter. The member allegedly possessed a personal cell phone while on duty. Closing briefs were submitted to Arbitrator Gelernter. We recently received a decision from Arbitrator Gelernter finding the member not guilty of the charges. Arbitrator Gelernter instructed OMH and MHFPC to remove the NOD from the member's personal history folder.

NYS Department of Labor – Brooklyn N.Y.: The member was charged with seven (7) counts relating to his failure to properly supervise and failure to detect marijuana and alcohol use at his worksite. We filed a motion seeking dismissal of five (5) of the seven (7) charges, as they were too broad and did not meet the specificity requirements of the collective bargaining agreement. On April 3, 2017, Arbitrator Dennis Campagna granted our motion to dismiss five (5) of the seven (7) charges. A hearing is scheduled on April

13, 2017, regarding the remaining two (2) charges of the Notice of Discipline relating to alleged possession of, or use of, a controlled substance (marijuana) in the work place and failure to report items prohibited in the work place.

Rochester Psychiatric Center: The member has been charged with failing to perform his duties by not inspecting all of the fire extinguishers on a certain unit, and for falsifying documentation indicating that he completed those inspections. This matter is scheduled for arbitration before Arbitrator Lise Gelernter on May 5, 2017, at Rochester PC.

Sing Sing Correctional Facility: The member is accused of altering or causing to be altered a doctor's note. The hearing in this matter is scheduled for March 10, 2017, before Arbitrator Lise Gelernter at Sing Sing Correctional Facility.

Sing Sing Correctional Facility: The member is charged with failing to conduct an appropriate security round and/or inmate count on August 26, 2016. A hearing in this matter has been scheduled for May 2, 2017, before Arbitrator Dennis Campagna.

Sing Sing Correctional Facility: The member is charged with using unnecessary and excessive force for beating an inmate with a baton. The first hearing day was held on December 21, 2016, and the second and third days were held on January 16 and 20, 2017. Closing Briefs were submitted on March 17, 2017. We await the decision.

Sing Sing Correctional Facility: The member is charged with submitting Workers' Compensation notes for days on which she allegedly did not have doctor's appointments. This matter was scheduled for arbitration on February 22, 2017. On February 20, 2017, this case was settled.

Sing Sing Correctional Facility: On March 24, 2017, the third and final hearing date in this case was held before Arbitrator David Lande. The member is accused of failing to make proper security rounds on the day Head Cook Iqbal was locked in the mess hall overnight. Briefs are due to be postmarked on May 10, 2017.

South Beach PC: This matter is scheduled for arbitration on June 16, 2017. The NOD alleges that the member was insubordinate by refusing a direct order from a supervisor.

Staten Island DDSO: The member was arrested for assault as the result of striking a police officer with her car. As a result of this arrest, the member received a Notice of Discipline. This matter was scheduled for a hearing on February 8, 2017. The hearing has been rescheduled for April 24, 2017.

Sullivan Correctional Facility: The NOD alleges that the member engaged in felony activity by selling narcotics. The member has since resigned from his position as a Correction Officer.

Justice Center

Capital District Psychiatric Center: A hearing in this matter is scheduled for May 11, 2017, in Schenectady. This case involves a substantiated Category 3 allegation that the member failed to report reportable incidents involving a service recipient to the Vulnerable Persons Central Register in a timely manner.

Central New York Psychiatric Center: On April 3, 2017, we filed an appeal for a Justice Center substantiated charge on behalf of the member. The charge alleged that the member neglected and abused a patient by using inappropriate language toward that patient.

Central New York Psychiatric Center: Hearing is scheduled for May 23, 2017. This is a substantiated Category 3 allegation. The case involves an allegation that the member improperly pushed or deflected a service recipient's wheelchair, causing the wheelchair to strike the service recipient.

Kirby Forensic Psychiatric Center: We received a decision in this matter on March 22, 2017. In this case, the Justice Center alleged that the member assaulted a patient in a "time out" room after the patient refused to take a shower. The Justice Center had previously substantiated the Category 3 charges. The ALJ determined that the Justice Center did not meet its burden of showing by a preponderance of the evidence that the member committed the physical abuse alleged. The Justice Center agreed with the ALJ's recommendation and ordered the substantiated report amended and sealed.

Kirby Forensic Psychiatric Center: Hearing was held on March 8, 2017. This is a Substantiated Category 2 allegation. The Justice Center alleges that on July 4, 2015, the member abused a patient when he conducted a restraint with excessive force and improper technique, which included grabbing the patient by his shirt, lifting him up and pushing him to the floor. The record was closed on March 8, 2017. We await the decision.

Mid-Hudson Forensic Psychiatric Center: A Category 2 report of neglect was issued on March 17, 2017. The report alleges that the member fell asleep or was less than alert while on duty, and/or otherwise failed to provide a service recipient with proper supervision. We have submitted a request for amendment to the Justice Center Administrative Appeals Unit and await a determination.

Mid-Hudson Forensic Psychiatric Center: The administrative hearing in this matter has been scheduled for April 27, 2017, in Schenectady before Judge Jean Carney. A Category 2 report of abuse and/or neglect alleges that the member conducted a restraint with excessive force and improper technique, which included applying pressure on and/or twisting a service recipient's neck and/or head while on a restraint bed.

Mid-Hudson Forensic Psychiatric Center: A Category 2 report of neglect was issued on March 17, 2017. The report alleges that the member fell asleep or was less than alert while on duty, and/or otherwise failed to provide a service recipient with proper supervision. We

have submitted a request for amendment to the Justice Center Administrative Appeals Unit and await a determination.

Mid-Hudson Forensic Psychiatric Center: On April 3, 2017, we filed an appeal for a Justice Center substantiated charge on behalf of the member. The charge alleged that she was sleeping while observing a patient.

Mid-Hudson Forensic Psychiatric Center: The administrative hearing in this matter has been scheduled for April 27, 2017, in Schenectady before Judge Jean Carney. A Category 2 report of abuse and/or neglect alleges that the member conducted a restraint with excessive force and improper technique, which included applying pressure on and/or twisting a service recipient's neck and/or head while on a restraint bed.

Rochester Psychiatric Center: The member was charged with a Category 2 violation. On April 6, 2017, we represented the member in Rochester, New York, before Administrative Law Judge Naci. The case was completed and we are currently awaiting a decision from Judge Naci.

Improper Practice Charges

Statewide – DOCCS (clear bag) (U-35624): On March 21, 2017, an Improper Practice charged was filed challenging the unilateral implementation of the new "clear bags" by DOCCS. Specifically, on March 13, 2017, DOCCS issued a memorandum regarding new front gate procedures, primarily indicating that effective May 1, 2017, employees would only be able to enter a correctional facility with one Department issued clear bag which is limited in size. The Improper Practice charge alleges that this is a new work rule, which impacts discipline and employee comfort and convenience, and thus must be negotiated with the union. A conference in this matter is scheduled at PERB for May 18, 2017. Prior to the conference we will receive the State's formal answer to the charge.

Statewide – DOCCS (clear bag) – Application for Injunctive Relief: On Friday, March 31, 2017, we filed an application for injunctive relief with PERB relative to the above-referenced improper practice charge. This application to PERB is a required first step toward petitioning the Supreme Court for injunctive relief. The application was submitted, along with supporting affidavits, alleging that: (1) there is a reasonable belief that an improper practice occurred; and (2) that without an injunction, individuals will face injury, loss, or harm that cannot be later remedied by an award following the adjudication of the charge. The State submitted their response to the application on Wednesday, April 5, 2017. This office received a decision on the application on Monday, April 10, 2017, finding a sufficient showing for an injunction and formally authorizing NYSCOPBA to petition the Supreme Court for a preliminary injunction. This office will now petition the Supreme Court, Albany County, for a temporary restraining order and injunctive relief to prevent DOCCS from implementing the clear bags until resolution of the underlying improper practice charge.

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 until March 23, 2017. During that time, the Union will review various assault alert forms completed by members in order to ascertain whether they received medical treatment or were ignored by facility physicians.

Green Haven Correctional Facility (U-35566): On Monday, April 10, 2017, a conference was held before ALJ William Weisblatt regarding this charge. This charge alleges that Green Haven Correctional Facility unilaterally changed the procedures used when the facility needed to permanently change the start time and end time of a shift of a plot plan post, held by an officer pursuant to a bid. The practice at this facility has been to put the position up for re-bid when the shift was to be changed. In this instance, the posts were not put up for re-bid. The State, in their Answer, is contesting the described practice, and alleging waiver/duty satisfaction arguments. At the conference, NYSCOPBA also conveyed the fact that the local had specifically asked for time to poll the membership regarding this issue, which was denied by the Superintendent. The Parties discussed this further at the conference, and the ALJ ultimately convinced DOCCS that it was in everyone's best interest to allow the union to do a poll, as originally requested, to determine how the local wishes to proceed with respect to this practice. The IP has been placed on hold to allow this poll to occur.

Kingsboro Psychiatric Center (U-35374): On February 27, 2017, an initial conference was held regarding this Improper Practice charge before Administrative Law Judge Ellen Mitchell. This charge alleges that the facility unilaterally changed the policies and procedures with respect to attendance taking during pre-shift briefing. Specifically, management introduced "pre-shift briefing forms" which include daily announcements and a sign-in sheet for SSOs. The State submitted its answer denying the allegations and asserting affirmative defenses. During the conference, the State argued that "pre-shift briefing forms" have been in practice since October 2015 and therefore, the improper practice charge is untimely. The parties discussed possible amicable resolutions to this charge, such as removing the sign-in section of the form. This charge is currently on hold for 30 days in order to give the parties an opportunity to resolve it.

Rochester Psychiatric Center (U-35319): On February 6, 2017, we appeared at the conference at PERB for this Improper Practice charge alleging that the facility unilaterally changed the policies and procedures with respect to "mutual exchanges" for individuals in the SSO titles. Specifically, the changes place limitations on the number and frequency of mutual exchanges allowed and provide for more types of employer denials. These changes limit the ability for SSOs to take time off through the use of mutual exchanges. At the conference, the State raised a few affirmative defenses and also alleged that there is no substantial change in practice. With that said, the State also indicated that the facility

would be willing to discuss negotiating a specific policy. The Union has begun putting together the terms it desires in the policy. The matter is on hold in order to discuss.

Sing Sing Correctional Facility (Retaliation and Interference): On February 8, 2017, a second hearing day was held. The charge alleges that the member was removed from his long-time bid job as trainer at Sing Sing CF in retaliation for having offered expert testimony in use of force procedures on behalf of another member at a disciplinary arbitration proceeding. The hearing is now completed and briefs are due on April 24, 2017.

Watertown Correctional Facility (U-35560) (Witness Intimidation): This office filed an Improper Practice charge regarding DOCCS' contacting one of NYSCOPBA's witnesses prior to a disciplinary arbitration. The charge alleges that DOCCS improperly attempted to persuade a member not to testify at a disciplinary arbitration on behalf of another member. Participating in a disciplinary arbitration is a protected union activity. A conference with ALJ Brittany Sergent took place on April 5, 2017, at PERB, with counsel and regional/local union representation present. No resolution was reached at that time. This matter has been placed on hold for thirty (30) days.

Contract Enforcement

Appeals to Arbitration: We received ten (10) requests from NYSCOPBA's grievance department to appeal contract grievances to arbitration during the months of February, 2017, and March, 2017. We have reviewed the grievance files and drafted and submitted arbitration appeals to the Governor's Office of Employee Relations (GOER).

Statewide – All Agencies - Class Action: On March 1, 2017, a full arbitration hearing was held before Arbitrator Timothy Taylor in this grievance of the member concerning the contractual opt-out program, under which members receive a \$1,000 payment for opting out of individual health insurance coverage and \$3,000 for opting out of family coverage. The State has determined that employees on the family plan who opt out and are covered by their spouse's insurance, where the spouse has non-state NYSHIP coverage (in the member's case, his wife works for a school district), are only entitled to the \$1,000 payment. The State's logic is that NYSHIP rules prohibit "two family coverages," and that the opt-out program itself constitutes family coverage from the state, thereby resulting in two family coverages. Because a family maintaining one individual and one family coverage is not prohibited, the State's view is that the member and others similarly-situated are entitled to a \$1,000 payment even though covered under a family plan. The hearing was completed on March 1, 2017, and briefs are due on April 21, 2017.

Albion Correctional Facility: This matter is scheduled for expedited arbitration on March 10, 2017. This grievance demands payment of pre-shift briefing pay while the member was absent from work pending an EHS examination. The EHS physician found her fit for duty. She was returned to work with full restoration of her accruals. DOCCS did not pay her for pre-shift briefing while she was absent.

Albion Correctional Facility: On February 24, 2017, we settled the grievance of the member, who claimed that DOCCS improperly placed him on AWOL status and denied his workers' compensation leave.

Franklin, Sullivan, Woodbourne (Sergeants' Incidental Grievances): We entered agreements with the State dated March 29, 2017, resolving seven (7) grievances from these three (3) facilities related to Sergeants' incidental time off. The parties had previously negotiated the terms of these agreements, and now that they are fully executed, the corresponding grievances will be withdrawn and the negotiated terms implemented at these facilities.

Greene Correctional Facility: The expedited arbitration in this matter was held on February 10, 2017. Master Arbitrator Joel Douglas found that the grievance was timely filed. However, he denied the grievance finding that the State did not violate Article 15.1 of the 2009-2016 SSU Agreement when it denied the member the opportunity to work voluntary overtime for eight-hour(8) shifts on thirty-six (36) dates commencing May 23, 2014, through July 28, 2014.

Marcy Correctional Facility: Expedited Arbitration was held on April 7, 2017. This case involved the improper denial of use of five (5) DRL days before the member retired. The State contends that the member forfeited any unused DRL days upon retirement. We await the decision.

Mid-State Correctional Facility: On February 23, 2017, the retired member was paid in full on his grievance and we discontinued the proceeding to confirm the arbitration award. The member filed a grievance contending that he was improperly pay-docked for two (2) days when he appealed his workers' compensation return to work decision. The master arbitrator found in his favor, but payment was delayed. On November 4, 2016, we brought a proceeding to confirm the award and he was paid in full on February 23, 2017.

Taconic Correctional Facility: Full Arbitration is scheduled for May 3, 2017. This case involves the administrative transfer of the member from Taconic CF to Fishkill CF, based upon unsubstantiated allegations of sexual misconduct. We contend that there was no lawful basis to transfer the member.

Watertown Correctional Facility: A full arbitration is scheduled for April 12, 2017, in this contract grievance. This grievance alleges that the State violated Articles 14 and 27 (Civil Service Time and Attendance Rules) by failing to allow a member (now retired) to use vacation accruals for a workers' compensation absence, prior to using the six (6) months contractual leave at full pay. The member wished to do this in order to avoid losing vacation accruals over the maximum amount. The union alleges that the contract language and the civil service rules allow a member to make this choice and the denial was a violation of the CBA.

Wende Correctional Facility: Expedited Arbitration is scheduled for April 21, 2017. This case involves an alleged improper requirement for the member to obtain

medical documentation relating to light duty. The member could not perform light duty, but the facility required the documentation anyway.

Retirement

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 has been continued for the testimony of the System's neurologist.

Ulster Correctional Facility: On January 25, 2017, we attended the final hearing date in this case on which the System's doctor testified. Closing briefs were submitted on March 24, 2017. By way of background, on May 28, 2015, the member's treating orthopedic surgeon testified. The doctor testified that the member's injuries were caused by the April 3, 2011, inmate incident and that the member was permanently disabled from performing the duties of a correction officer. The case has been continued for the testimony of the System's IME physician. We initially reviewed the member's medical records and wrote to him on December 11, 2013. The member contends that on April 3, 2011, he injured his lower back, both knees, his right hand and his right wrist in a use of force. None of the documents in the medical records reviewed by the Retirement System explained how these injuries occurred. The member's chiropractor's records indicate that he has a documented herniated disc. None of the MRI reports we reviewed showed any disc herniation. The System denied the member's application on the grounds that he was not permanently disabled from performing his duties. The first hearing day was held on March 12, 2014. In retirement cases, the hearing officer has the discretion to choose between conflicting medical opinions.

General

Constitution and By-Laws Committee: On March 23 and 24, 2017, we attended NYSCOPBA's Constitution and By-Laws Committee meeting.

Executive Board Elections-American Arbitration Association: We spoke with Scott Boswell who is the Director of Elections at the American Arbitration Association regarding providing access to the daily tally of incoming ballots to the NYSCOPBA Membership Director regarding the Board of Director of Elections. On March 15, 2017, we sent a side letter of agreement regarding release of the voting tallies, which was signed by Mr. Boswell.

FOIL Requests re: New York Times Article: On October 18, 2016, we made a FOIL request to DOCCS for any and all FOIL requests, responses, and responsive documents pertaining to inmate Jonathan Rosado since September 1, 2015. On January 9, 2017, our FOIL request was denied pursuant to various state and federal laws, including Public

Officers Law 87(2) and Civil Rights Law 50a. We appealed this decision to DOCCS Counsel's Office by letter dated February 21, 2017. We await a final determination on our appeal.

Legal Defense Fund/Rainy Day Fund: We have been working with NYSCOPBA Treasurer Dave Viddivo and Mary Mlock from the BST firm regarding NYSCOPBA's Legal Defense Fund as well as the Rainy Day Fund. The Legal Defense Fund was submitted to the ERISA Attorney Brian Goldstein for his review and approval. We anticipate the Rainy Day Fund to also be submitted to Mr. Goldstein in the very near future for his review and approval.

NYSCOPBA Annual Audit: On February 23, 2017, we submitted to NYSCOPBA's auditors our response to their questions concerning litigation and claims involving NYSCOPBA, in relation to the audit of NYSCOPBA's financial statement.

Roswell Park Cancer Institute: This office again met with management at RPCI and members from NYSCOPBA Law Enforcement, on March 23, 2017, regarding RPCI's plans to move members from unarmed titles to armed titles. The parties have agreed on the majority of the terms of the transition and are in the process of finalizing language for review by NYSCOPBA.

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



Lippes Mathias Wexler Friedman LLP

Attorneys at Law

FEBRUARY 2017 LEGAL REPORT TO THE EXECUTIVE ASSEMBLY

This is our report to the February 2017 Executive Assembly regarding the recent developments in some of the cases and legal matters we are handling for NYSCOPBA.

Legislative

The 2017 Legislative Session has commenced. Since the inception of the 2017 Session, we have reviewed thousands of bill introductions to determine any potential impact on the union and have apprised the board of several developments on the legislative front.

Shortly after the commencement of the 2017 Legislative Session, we arranged for a meeting between President Powers and the new Chair of the Assembly Corrections Committee, Assemblyman David Weprin. The meeting afforded NYSCOPBA an opportunity to hit the ground running with the new Chair and discuss issues of primary concern to the organization. We have had several follow-up meetings with Assemblyman Weprin and his staff, as well as meetings with program and counsel staff, and it is quite clear that we are in a much better position with Weprin than we were with the former Chair.

In the evening on Tuesday, January 17, 2017, Governor Cuomo issued his proposed Executive Budget for fiscal year 2017-2018. As we do with each and every proposed Executive Budget, we reviewed the entire proposed budget—both appropriation bills and Article VII bills—and composed a memorandum summarizing the pertinent parts of the Governor's financial plan for 2017-2018. In furtherance of NYSCOPBA's political and legislative agenda, we have already had meetings with several members of the Legislature and their key staff members regarding various provisions of the Executive Budget proposal. For example, we met with the Chairs of the Corrections Committee in each House of the Legislature (Senator Gallivan and Assemblyman Weprin) to discuss staffing issues, a proposed overhaul of the maximum secure visitation program, and the Governor's "Raise the Age" initiative.

We have successfully drafted new versions of the union's "Death Gamble" proposal and have had the proposal introduced in both Houses and have secured Senate sponsorship of the union's "notice of subpoena" bill. We have had discussions with both Houses regarding several Law Enforcement proposals including an SHTA retirement re-opener bill and other bills that would impact SSOs and SHTAs.

Finally, most recently, we assisted in drafting the union's testimony for the Public Protection Joint Legislative Budget Hearing that was presented by President Powers. As of this writing, we are currently assisting with the preparation of formal written testimony to be presented by NYSCOPBA to the Health and Mental Hygiene Joint Legislative Budget Committee.

We have had dozens of meetings with various legislators and staff members since the inception of the 2017 Legislative Session and continue to maintain a presence on the hill each and every day for the benefit of NYSCOPBA.

Litigation

Albion Correctional Facility (L.W. v. State, Claim 122880)(50-A Motion): In this case, an inmate is suing the State of New York for injuries resulting from sexual abuse while being in custody. The only defendant in this Court of Claims case is the State of New York; the officer is not a defendant. However, the lawsuit alleges that the officer abused the inmate while in custody. The Plaintiffs are seeking access to the officer's personnel folder. The Attorney General has objected to the disclosure. The Judge has ordered a hearing on February 15, 2017 in Rochester. We are appearing at the hearing to represent the officer.

Central New York Psychiatric Center (NYSCOPBA, et al. v. OMH and CNYPC): In this appeal, NYSCOPBA challenged the manner in which CNYPC terminated the member; specifically, CNYPC failed to send a proper and timely termination letter as required by the Civil Service regulations. NYSCOPBA brought an Article 78 proceeding which was dismissed by the Supreme Court. NYSCOPBA appealed this decision to the Appellate Division, Fourth Department, and submitted briefs in support of the appeal. On December 8, 2016, we attended oral argument at the Appellate Division, Fourth Department, before a panel of five judges. Unfortunately, the Appellate Division affirmed the decision of the Supreme Court, effectively denying NYSCOPBA's appeal. The Court issued an order rather than a detailed decision, and so the reasoning behind the Court's decision is not explained. Because this was a unanimous decision, there is no appeal as of right to the Court of Appeals. Furthermore, a motion for leave to appeal to the Court of Appeals in this instance is unlikely to be successful. The member continues to have reinstatement rights pursuant to Civil Service Law Section 71.

Mid-Hudson Forensic Psychiatric Center: On January 24, 2016, we received the decision in this case, denying the relief requested and dismissing the petition for failure to exhaust administrative remedies, specifically the outcome of the Justice Center hearing. This is a CPLR 78 proceeding in Orange County to reinstate the member as an SHTA. The member had Justice Center charges filed against him in regard to an altercation with a patient, and based upon those charges, the member's employment was terminated. We contended that the member was assaulted. In her decision, the judge did not address the merits of the petition for reinstatement. Instead, the Judge found that the Justice Center appeal process was not yet completed—the member had not received a hearing—therefore, the petition was premature.

Retiree Health Insurance Litigation (NYSCOPBA v. State, et al., USDC, NDNY, 11-CV-1523): We have negotiated a confidentiality agreement and protective order with the State Attorney General's Office, that favorably resolves our discovery disputes and allows

for the broad subject matter use of documents during depositions that the State had previously claimed were privileged documents. On February 21, 2017, we are hosting a conference call with all public employee union counsel in the related cases to discuss joint discovery strategy, identify potential State deponents, and individuals we should contact to determine if they have any recollection of the State's negotiation of continued employee health insurance contribution rates in retirement based upon the 1983-1984 collective bargaining agreements and MOU emanating from the Joint Committees on Health and Dental Benefits.

Rochester Psychiatric Center (NYSCOPBA, et al. v. OMH, Rochester PC, et al): We filed an Article 78 petition to challenge Rochester PC's unlawful summary termination of an SSO. Rochester PC terminated the officer's employment based on his probationary status, but an argument can be made that the officer had completed his probationary period. The petition seeks his reinstatement. We filed the Petition and recently received the State's Answer. We are drafting and submitting our Reply. An appearance is scheduled for March 2, 2017 in Supreme Court, Monroe County.

Southport Correctional Facility: On February 3, 2017 we filed an Article 75 application in Supreme Court, Albany County, seeking to confirm the arbitration award in the disciplinary case involving these members, who received twelve-month suspensions without pay. The purpose of this proceeding is to attempt to recover an additional month of pay for the members, based on DOCCS's erroneously stated suspension date in the NODs, which the arbitrator relied on in identifying the date the suspensions would end.

SUNY College of Optometry: The arbitration award in this matter placed the member on a one-year disciplinary probation. SUNY treated the member as a regular (new hire) probationary employee and terminated his probationary employment. We treated his probationary discharge as an NOD (letter imposing discipline because he was fired) and filed a disciplinary grievance. SUNY rejected the grievance stating that the member was not disciplined, and we filed a demand for arbitration.

We commenced an Article 75 proceeding to compel arbitration and, in the alternative, sought relief under Article 78 contending that the member's employment was terminated in bad faith. The Supreme Court converted the proceeding into a proceeding to confirm the arbitration award and remanded the matter back to the arbitrator. The arbitrator correctly concluded that he was without the power to modify, or clarify, his award.

We appealed and SUNY cross-appealed. The Appellate Division, Third Department, granted our petition to compel arbitration in 3-2 decision.

SUNY appealed to the Court of Appeals, and the Court of Appeals, by letter dated July 27, 2016, advised us that the matter was being considered under the expedited procedure set forth in Section 500.11 of the Court Rules. SUNY's letter brief was due 25 days after July 27 letter.

We received SUNY's Brief on October 13, 2016, which is the same day the Brief was received by the Court of Appeals. On October 20, 2016, we received an Order from the Court of Appeals, which dismissed the Appeal, because SUNY's Brief was not timely filed. SUNY has now been ordered to arbitrate the termination of the employment of the member. SUNY has filed a motion in the Court of Appeals to be relieved of its default. On December 18, 2016, the Court of Appeals vacated its order dismissing the State's appeal. We filed our brief with the Court of Appeals on December 22, 2016. We are now awaiting a decision.

Ulster Correctional Facility: On January 20, 2017, oral argument was held before the Appellate Division, Third Department. We await a decision from the Court.

Negotiations

Over the past month, we have attended the informational meetings held around the State by the Collective Bargaining Committee. We also prepared salary charts showing total compensation increases for the various corrections and law enforcement titles over the term of the proposed five-year agreement.

Discipline

Interrogations: For the months of December, 2016, and January, 2017, we represented eighty-eight (88) members who were interrogated by DOCCS.

Auburn Correctional Facility: On January 31, 2017, we attended a third day of hearing before Arbitrator Samuel Butto. Both the State and NYSCOPBA rested. Briefs are due to the arbitrator two (2) weeks after the parties receive the transcript, unless additional time is needed.

Bare Hill Correctional Facility: The hearing on this matter is scheduled for February 7, 2017, in Plattsburgh. This is the second day of the hearing. This case involves an allegation that the officer planted a weapon on an inmate who was "flirting" with his significant other, who was also a Correction Officer at Barehill CF.

Bare Hill Correctional Facility: This matter was settled with DOCCS, after resolution of his criminal charges. The settlement agreement includes a suspension-to-date (approximately three months) and a one-year disciplinary evaluation period for same or similar conduct.

Bedford Hills Correctional Facility: The officer was charged with, when speaking to a sergeant, referring to a fellow officer as a "nigger." The expedited disciplinary grievance arbitration was held on December 28, 2016. Arbitrator Trachtenberg found the officer guilty and terminated his employment.

Bedford Hills Correctional Facility: The officer was suspended on November 17, 2016. The charges in the Notice of Discipline alleged that the officer failed to conduct complete security rounds on multiple occasions, engaged in unauthorized communication with an inmate, failed to make a medical/ psychiatric services referral for said inmate and made false statements during an OSI interrogation. The officer accepted a settlement on January 11, 2017, for suspension to date, completion of a reassignment request selecting Downstate Correctional Facility, reassignment to Downstate Correctional Facility upon being reached via DOCCS's reassignment program, no reassignment to Bedford Hills, Taconic, or Albion Correctional Facilities without written permission from DOCCS, and withdrawal of three (3) charges in the Notice of Discipline.

Brooklyn DDSO: This matter is scheduled for expedited arbitration on February 7, 2017. The officer received a Notice of Discipline for making Facebook posts on November 9, 2016, (the morning after the election) directed to "all my friends in red voting states" which said things such as I want you dead, I want your families dead, and not just dead, but horrible painful deaths.

Cape Vincent Correctional Facility: On December 16, 2016, the officer was suspended without pay stemming from actions leading to his arrest on or about June 13, 2016. On December 29, 2016, we settled this matter for suspension-to-date, a two-year disciplinary evaluation period, one-and-a-half years' proof of monthly counseling, and no job assignment to any post requiring driving a state vehicle or carrying a weapon for two years. The officer returned to duty on December 30, 2016.

Central New York Psychiatric Center: The hearing on this matter, involving allegations of allowing a patient to swallow a battery, had been scheduled for January 5 and 6, 2017. However, the hearing has been adjourned. The member is applying for Disability Retirement.

Clinton Correctional Facility: The arbitration in this matter was scheduled for January 10, 2017, before arbitration Sam Butto. The officer was suspended in August 2016 and DOCCS opted out of expedited arbitration. The charges in the Notice of Discipline alleged that the officer committed Family Medical Leave Act (FMLA) fraud pertaining to medical documentation that he submitted to Clinton Correctional Facility. The officer resigned prior to the scheduled arbitration.

Clinton Correctional Facility: The hearing on this matter is scheduled for March 14 and 15, 2017, in Plattsburgh. This case involves an allegation that the officer used excessive force on an inmate, specifically multiple baton strikes after the inmate had been restrained.

Coxsackie Correctional Facility: The officer is accused of failing to return to Coxsackie CF to submit to a urinalysis test while on vacation. On January 25, 2017, we attended the second day of hearing at Lincoln Correctional Facility. Testimony was received before Arbitrator Richard Gaba. Briefs are scheduled to be submitted on February 10, 2017.

Coxsackie Correctional Facility: This matter was settled with DOCCS, after resolution of the officer's criminal charges. The settlement agreement includes a suspension-to-date (approximately four months) and one-year disciplinary evaluation period for same or similar conduct.

Creedmoor Psychiatric Center: On December 16, 2016, we attended the disciplinary grievance arbitration for the officer at Creedmoor P.C. The officer was charged with allowing persons' entry to a secure area of the facility without verifying their identities. The officer was also charged with delaying the vacation re-bid, because she did not allow the Chief Nursing Officer and the Associate Director of Nursing access to the same secure area. The hearing was completed on December 16, 2016, and we are awaiting a decision from the arbitrator.

Downstate Correctional Facility: The charges in the Notice of Discipline alleged insubordination on the part of the officer after he declined to temporarily work off of his bid job. The officer accepted a settlement agreement forfeiting three (3) days of annual leave accruals.

Fishkill Correctional Facility: The hearing on this matter is scheduled for February 10, 2017, in Fishkill. This is the first day of the hearing. This case involves an allegation that the officer arranged and/or facilitated two (2) inmates to fight.

Greene Correctional Facility: The hearing on this matter is scheduled for March 9 and 10, 2017, at the Training Academy. This case involves many allegations that the officer used a cell phone while on duty/within the facility.

Mid-Hudson Forensic Psychiatric Center: A one-day hearing on this matter was held on January 5, 2017. The member allegedly possessed a personal cell phone while on duty. Closing briefs have been submitted to Arbitrator Gelernter and we await the arbitrator's decision.

Moriah Shock Incarceration Correctional Facility: Arbitrator Babiskin issued a decision dated December 16, 2016, finding that termination was appropriate in this case. However, the Arbitrator also stated in his decision that the officer should have the opportunity to resign or retire by December 31, 2016, and that if he did so, the Department should treat the matter as sealed and indicate that the resignation or retirement was "for personal reasons" in response to any inquiry. The officer chose to resign before December 31, however the Department has indicated that they believe the Arbitrator exceeded his authority and will not treat the matter as sealed. We are exploring the available options.

Riverview Correctional Facility: We began preparing for the expedited arbitration scheduled to be heard on February 3, 2017, before Arbitrator Taylor. Upon review of the case, particularly the documents and the witness list, it was determined that there was a conflict with our office handling the case and we arranged for the officer to be represented by an outside attorney.

Shawangunk Correctional Facility: On April 6, 2016, the officer received an NOD, and was suspended, for allegedly using unnecessary and excessive force on an inmate on July 15, 2015. The NOD was served two (2) days before the incident would have been timed out. The first two (2) days of this arbitration were held July 14 and 15, 2016. The third hearing day was held on August 11, 2016, and the arbitration was completed on September 7 and 8, 2016. Closing Briefs were submitted on November 9, 2016. On December 5, 2016, we received a decision from Arbitrator Butto finding the officer guilty of all charges and terminating his employment. We do not believe that there is any factual support in the record for this determination. Unfortunately, the factual findings of an Arbitrator are not reviewable by a court and there is no basis for filing a petition to vacate. A meeting with the officer occurred on January 11, 2017, at the NYSCOPBA Office.

Sing Sing Correctional Facility: The arbitration in this matter was scheduled for December 20, 2016, before Arbitrator Joel Douglas. The charges in the Notice of Discipline alleged that the officer absented herself from duty on numerous occasions in a state vehicle and engaged in non-work related activities. The officer resigned prior to the scheduled arbitration.

Sing Sing Correctional Facility: The officer was accused of agreeing to engage in a one-on-one fight with an inmate, creating a false and inaccurate document for filing, and providing a false statement to the OSI as set forth in the Notice of Discipline issued to him. A second day of hearing was scheduled before Arbitrator Sirefman on December 13, 2016. Prior to the second day of hearing at Sing Sing Correctional Facility, the officer indicated that he wished to accept a Letter of Reprimand. The settlement agreement provided that upon receipt of the Letter of Reprimand, the officer may submit a written rebuttal if he chooses to do so.

Sing Sing Correctional Facility: The officer was charged with using unnecessary and excessive force for beating an inmate with a baton. The hearing took place on December 21, 2016, January 16, 2017, and January 20, 2017.

Sing Sing Correctional Facility: The officer received a Notice of Discipline for allegedly filing false paperwork in her Workers' Compensation case. This matter is scheduled for arbitration on February 22, 2017.

Sing Sing Correctional Facility: The officer is accused of failing to make proper security rounds on the day the head cook was locked in the mess hall overnight. The first hearing day was December 9, 2016. Additional hearing dates of February 28, 2017, and March 17, 2017, have been scheduled in this case.

South Beach Psychiatric Center: The officer is accused of allegedly allowing a patient to leave South Beach PC. The patient did not have off-grounds privileges. A hearing was scheduled for February 8, 2017, before Arbitrator Joel Douglas. We have been involved in numerous discussions with OMH regarding this matter. On February 3, 2017, we were advised that South Beach PC was withdrawing the Notice of Discipline.

Staten Island DDSO: The officer was arrested for assault as the result of striking a police officer with her car. As a result of this arrest, the officer received a Notice of Discipline. This matter is scheduled for a hearing on February 8, 2017.

Upstate Correctional Facility: We received a decision from Arbitrator James Cooper on February 1, 2017. This case involved an allegation that the officer failed to feed an inmate over a six-day period in violation of numerous policies and laws, and also an allegation that the officer provided a false statement when questioned by OSI. Arbitrator Cooper found the officer guilty of only two (2) of the Employees' Manual sections listed, and dismissed the rest of the charges in the NOD. DOCCS sought termination in this case, but the Arbitrator determined that termination was not an appropriate penalty; rather, he decided that a 90-day suspension was appropriate. The Arbitrator also found that the Department's suspension of the officer without pay was inappropriate under Article 8.4 of the parties' collective bargaining agreement.

Watertown Correctional Facility: All three (3) of these Notices of Discipline alleged misconduct due to an arrest for criminal charges stemming from allegations of falsifying records relative to the amount of time actually worked while acting as a trainer. In December, 2016, all of the criminal charges against the officers were dismissed. Subsequently, each of the officers signed a settlement agreement whereby they returned to duty, with a suspension to date (approximately 11 months) and are restricted from being a weapons training officer for the remainder of their career, but can return as a general topics instructor after one year (with a one year DEP if/when they chose to be a general topics instructor).

Justice Center

Central New York Psychiatric Center: On January 9, 2017, we received the final determination in the member's Staff Exclusion List matter before the New York State Justice Center. As indicated in the decision, the hearing officer substantiated the Category "1" allegations that the member sexually abused female patients at CNYPC. This means that the member will be barred from working with vulnerable people in New York State.

The member had been employed as an SHTA at Central New York Psychiatric Center. In a prior Article 8 disciplinary arbitration, the arbitrator found him guilty of sexually abusing female patients, and based upon that, terminated his employment with CNYPC on April 27, 2015. In addition to the disciplinary action, the Justice Center commenced a Staff Exclusionary List proceeding by substantiating a report of abuse. We filed a request to have the report of abuse amended and demanded a hearing. Hearings were held on December 8, 9, 10, and 23, 2015.

A final determination by the Justice Center may be challenged under Article 78 of the Civil Practice Laws and Rules (CPLR).

While we disagree with the analysis and findings, it is most likely that a court will find that there was substantial evidence of sexual contact. The court does not perform a brand new review of the decision, but only looks to see if the determination is supported by substantial evidence. The decision may be based on inferences drawn from evidence produced at a hearing that are reasonable and plausible, even if not necessarily the most probable. We believe that the service recipients' testimony sufficiently "shores up" the administrative decision.

Kirby Forensic Psychiatric Center: The hearing on this matter is scheduled for March 8, 2017. This is a Substantiated Category 2 allegation. The Justice Center alleges that on July 4, 2015, the member abused a patient when he conducted a restraint with excessive force and improper technique, which included grabbing the patient by his shirt, lifting him up and pushing him to the floor.

Mid-Hudson Forensic Psychiatric Center: This is a Justice Center Staff Exclusion List Case that we appealed. At the pre-hearing conference, held on December 8, 2016, the member decided to withdraw her appeal.

Improper Practice Charges

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 hurt 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 until March 23, 2017. During that time, the Union and OMH have been tasked with compiling a running list of instances where members have been hurt on the job and denied facility physician treatment.

Rochester Psychiatric Center (U-35319): On February 6, 2017, a PERB conference was held before ALJ Burritt regarding this Improper Practice charge. This charge alleges that the facility unilaterally changed the policies and procedures with respect to "mutual exchanges" for individuals in the SSO titles. Specifically, the changes place limitations on the number and frequency of mutual exchanges allowed and provide for more types of employer denials. These changes limit the ability for SSOs to take time off through the use of mutual exchanges. The State has submitted its answer denying the allegations and asserting some affirmative defenses.

Sing Sing Correctional Facility (Retaliation and Interference): A second hearing date is scheduled for February 8, 2017 in this case. The charge alleges that the officer was removed from his long-time bid job as trainer at Sing Sing in retaliation for having offered expert testimony in use of force procedures on behalf of another officer at a disciplinary arbitration proceeding. The hearing began on December 6, 2016.

State Education Department (U-35226): This charge alleges that the SED unilaterally changed certain aspects of employees' post descriptions which involve changes to the length of the employees' day and impacts the ability to take previously required breaks. Subsequent to filing the charge, SED returned to the prior practice with respect to the time the employees were to remain on post, affecting the length of the employees' day. In further discussions with the State, the parties agreed to return to the prior existing language with respect to employee breaks. The post descriptions were revised accordingly and re-issued. Based on the return to the prior existing practice with respect to the issues in the charge, the charge has been formally settled and withdrawn.

SUNY at Albany (U-34867): SUNY Albany implemented a new work schedule without NYSCOPBA's agreement. SUNY Albany also dealt directly with NYSCOPBA members. NYSCOPBA filed an Improper Practice Charge with PERB. As a result of the parties entering into a statewide agreement, discussed above, with SUNY on February 1, 2017, NYSCOPBA withdrew the Improper Practice Charge on February 2, 2017.

Watertown Correctional Facility (Witness Tampering): This office is drafting an Improper Practice charge regarding DOCCS' contacting one of NYSCOPBA's witnesses prior to a disciplinary arbitration.

Contract Enforcement

Appeals to Arbitration: We received ten (10) requests from NYSCOPBA's grievance department to appeal contract grievances to arbitration during the months of December, 2016, and January, 2017. We have reviewed the grievance files and drafted and submitted arbitration appeals to the Governor's Office of Employee Relations (GOER).

Central New York Psychiatric Center (Class Action): On December 16, we received the decision in the referenced case. In the grievance, we alleged that the State violated the Agreement by failing to pay a class of employees their performance advancement, despite those employees meeting all contractual requirements required by Article 11 of the Agreement. Specifically, Article 11.3 provides that an employee is eligible to receive a performance advancement payment effective April 1st of each year, provided that the employee had one hundred (100) workdays of actual service in the grade during the preceding fiscal year. The performance advancements are increases to the members' pay to bring them up to the job rate. In this case, the Grievants had the requisite number of workdays in the preceding fiscal year to be eligible for the performance advancement. However, the State categorized these employees as non-graded, non-statutory employees (aka "temporary" or "per diem"), even though they held a title of Security Hospital Treatment Assistant (SHTA) and did the same duties as their SHTA-graded counterparts. A hearing was held on August 4, 2016. Following the hearing and the submission of briefs, the arbitrator denied our grievance. In his award, the Arbitrator found he was constrained to find that at all times relevant to the grievance, the State designated the referenced positions as "non-statutory" and therefore not "in grade." Based on the language of the

Parties' Agreement, the Arbitrator could not "go beyond that language," and that he was required to conclude that the grievance cannot be sustained.

Five Points Correctional Facility: The Expedited Arbitration in this matter was held on January 13, 2017. This grievance involves alleged improper AWOLS for incomplete medical documents. The grievance settled.

Mid-State Correctional Facility: A Summary Arbitration proceeding was held on January 26, 2017. This matter involves a broken zipper on the officer's service jacket. The officer is claiming reimbursement of \$35.00 to have the zipper repaired.

Orleans Correctional Facility: An expedited arbitration in this matter was held on December 14, 2016. In this case, the facility improperly utilized the mandatory overtime list without first exhausting the voluntary list, in violation of local agreement pursuant to Article 15 of the collective bargaining agreement. We await a decision from Arbitrator Douglas.

Otisville Correctional Facility: On December 2, 2016, we appeared before Arbitrator Joel Douglas with NYSCOPBA Grievance Director Bob Cronin who was NYSCOPBA's only witness in this case. The Stipulated Issue before the arbitrator was: (1) did the State of New York (DOCCS – Otisville C.F.) violate Article 24.2 of the 2009-2016 SSU Agreement when it did not award the job posted on or about 9/30/14 to Grievant on or about 10/29/14? Bob Cronin testified that the sole issue in this matter relates to Article 24.2 which requires all permanent vacancies to be bid by seniority in every case, except for two exceptions (WTO and FSO), which requires a "prequalification". NYSCOPBA's position is that except for the WTO and FSO positions, the senior bidder receives the bid. The arbitrator sustained the grievance and found that the State did violate Article 24.2. The award stated that the Grievant shall be placed into Job #007 forthwith.

Retirement

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 was scheduled to testify on February 3, 2017.

Moriah Shock Correctional Facility: On November 28, 2016, we received a decision from the Retirement System denying the disability retirement application on the basis that the officer was not injured by the act of an inmate. The Hearing Officer found that the officer was not struck in the knee by a branch released by the inmate. The officer was injured when an inmate let go of a branch that struck the officer in the knee. The Retirement System denied the officer's application for disability retirement, pursuant to Retirement and Social Security Law Section 507-b, on the grounds that the incident was not inmate related. The hearsay statements of two inmates, in light of the officer's contradictory,

sworn testimony should not constitute substantial evidence. We commenced an Article 78 proceeding on January 5, 2017, which is returnable on February 3, 2017. After the return date this matter will be transferred to the Appellate Division, Third Department.

Ulster Correctional Facility: On January 25, 2017, we attended the final hearing date in this case on which the System's doctor testified. Closing briefs will be due thirty (30) days after receipt of the transcript. On May 28, 2015, the member's treating orthopedic surgeon testified. The doctor testified that the member's injuries were caused by the April 3, 2011, inmate incident and that the member was permanently disabled from performing the duties of a correction officer. The case has been continued for the testimony of the System's IME physician. We initially reviewed the member's medical records and wrote to him on December 11, 2013. The member contends that on April 3, 2011, he injured his lower back, both knees, his right hand, and his right wrist in a use of force. None of the documents in the medical records reviewed by the Retirement System explained how these injuries occurred. The member's chiropractor's records indicate that he has a documented herniated disc. None of the MRI reports which we reviewed showed any disc hernias. The System denied the member's application on the grounds that he was not permanently disabled from performing his duties. The first hearing day was held on March 12, 2014. In retirement cases, the hearing officer has the discretion to choose between conflicting medical opinions.

Wende Correctional Facility: On December 12, 2016, we received the Final Determination denying Ms. Graham's applications for both ordinary and inmate-related disability retirement benefits. There was conflicting medical testimony between the System's IME physicians and the Ms. Graham's doctors on the issue of permanent disability. Where there is conflicting medical testimony, the Hearing Officer has the discretion to credit the testimony of one expert over that of another as long as the credited opinion is fact-based.

Civil Service Law – Employee Health Services

Sullivan Correctional Facility: The Department placed the officer on involuntary leave pursuant to Civil Service Law 72(5). We have appealed that determination. In the meantime, the officer submitted new medical documentation to her facility and Employee Health Services found her fit for duty. She returned to duty on November 19, 2016, and the appeal is still pending.

General

Bedford Hills Correctional Facility: This member had a domestic incident whereby the court ordered that she is not allowed to carry a weapon. We have been in contact with the member, her NYSCOPBA representatives, DOCCS, and her criminal attorney providing guidance on what language is necessary to allow her to receive a Certificate of Relief of

Civil Disabilities allowing her to carry a firearm and utilize ammunition while on duty as a New York State Corrections Officer.

Criminal Defense Fund: On December 19, 2016, we attended a meeting with NYSCOPBA Executive Vice President Tammy Sawchuk, NYSCOPBA Treasurer Dave Viddivo and Dave Yule, CPA, to discuss the Rainy Day and Legal Defense Fund with Mary Mlock from the BST firm. Subsequent to the meeting, we worked with Dave Viddivo and Ms. Mlock on suggested revisions to the Summary Plan for the Legal Defense Fund. The Summary Plan is being submitted to the ERISA attorney, Brian Goldstein, for his review and approval.

Community Foundation: On January 26, 2017, we attended a meeting at NYSCOPBA to learn about the Community Foundation of the Capital Region to see if they can be of assistance to NYSCOPBA. Present at the meeting were Executive Vice President Tammy Sawchuk, NYSCOPBA Treasurer David Viddivo and Public Relations Director James Miller. Jackie Mahoney and Jenna Cuilla attended on behalf of the Community Foundation. The pros and cons of the Community Foundation will be discussed by the NYSCOPBA Executive Board.

Freedom of Information Law: On January 10, 2017, we received a response to our FOIL request seeking all information relative to cell phone monitoring and subpoenas for cell phone records. The department denied our request stating that it would interfere with law enforcement activities. On February 6, 2017, we appealed that decision.

Green Haven Correctional Facility (Change of Start Time for Certain Bids): We are addressing an issue where the start time for certain bid positions was changed. Specifically, in practice at this facility, if a change in shift needed to occur with respect to a post, even a filled post, the union would have the opportunity to weigh in regarding whether they wanted the position to be put up for bid based on the change. Recently, the shift of a few bids was changed and the union was not provided an opportunity for input regarding whether it should have been re-bid, despite a practice at this facility of re-bidding for any time change. We are reviewing for a potential Improper Practice charge.

Institutional Safety Officers: On January 12, 2017, we attended a statewide Labor/Management meeting with DOCCS on behalf of the members in the ISO title. Prior to attending the meeting with DOCCS, we met at NYSCOPBA with the attendees for NYSCOPBA to review and address the talking points contained in the agenda.

Marcy Correctional Facility (Sergeants' Vacation): We have been working with the local at Marcy CF, Staffing Specialist Mike Marro, and the Sergeants' Representative to address an issue occurring with sergeant' vacation time, particularly with respect to incidental days off. Based on a prior contract grievance, there is a settlement, in the form of a letter, which addressed the amount of block vacation leave for sergeants, as well as a continuation of the practice of providing one incidental leave day per day. Recently, the DSS attempted to change what was established by the agreement from the previous contract

grievance, as well as the practice since that date. We have been working with GOER to get this resolved pursuant to the prior agreement.

Outside Employment: We reviewed a draft revision to the DOCCS Directive regarding outside employment. This draft was provided by DOCCS to NYSCOPBA for comment. There are two significant changes, which we argue are unnecessary and restrictive. We drafted a letter for NYSCOPBA, responding to the draft and objecting to the changes. The letter also notes that we believe the changes cannot be implemented unilaterally, as policies and procedures regarding outside employment is a mandatory subject of bargaining.

Roswell Park Cancer Institute: Attorneys from this office traveled to Buffalo to meet with NYSCOPBA Law Enforcement and executive staff from Roswell Park Cancer Institute (RPCI) to discuss our concerns with RPCI arming our SSOs through pistol permits. During the meeting, we argued that the proper way to arm security staff is to have RPCI pursue legislation granting our members the ability to carry while on duty. The main concern is that pistol permits in New York are difficult to acquire and easy to lose, and our members' employment status will be tied to the vulnerable nature of the pistol permits. RPCI argued that pursuing legislation would take too long and that they are seeking to arm our members right away. RPCI also did not believe that pistol permits were difficult to obtain and maintain. Furthermore, we argue that RPCI cannot require current employees, in the existing title, to have a new qualification. Although RPCI can, as it has its own civil service entity, create a new title with the pistol permit as a qualification. NYSCOPBA objects to any requirements that the current employees seek employment in any newly created title. Overshadowing the whole conversation was the fact that our members at RPCI are considered provisional employees, which means they can be terminated at will and/or abolish the existing title. We have scheduled a second meeting with RPCI for later in February, 2017.

SUNY: The SUNY Universities and Colleges throughout the State work various work schedules. Some universities/colleges work an 8-hour day while others work a 10- or 12-hour day. This information was never previously provided to NYSCOPBA. We assisted Law Enforcement Vice President John Harmon, as well as Al Christian and Doug Trotter, with entering into an agreement on February 1, 2017 whereby SUNY acknowledges its obligations under Public Employees' Fair Employment Act (the "Taylor Law"), and will refrain from direct dealing and will negotiate with NYSCOPBA regarding mandatory subjects of bargaining under the Taylor Law. Additionally, prior to any changes in any mandatory subject of bargaining, SUNY will notify NYSCOPBA's President and Law Enforcement Vice President of the mandatory changes the individual university and/or college wishes to implement. Once advised, NYSCOPBA will discuss with the individual SUNY campus the manner in which the parties wish to negotiate the changes. The agreement also provides that an employee who works a 16-hour shift shall be entitled to a minimum of 7-1/2 hours off between shifts, absent a declared state of emergency.

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