

Grievance Training Packet Table of Contents

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What Makes A "Good" Grievance

A grievance is a legal document which alleges a breach of contract by an employer. It is imperative that the writer of a grievance treat the grievance with the same respect as any other LEGAL instrument. The following are some of the key components of a "good" grievance.

THE CHARGES

It is extremely important to list the correct charges on a grievance. Make absolutely sure the Articles of the Contract that are cited are appropriate for the incident described. Don't try to put a square peg in a round hole. If an Article doesn't fit the incident, don't cite it. If you're not sure, seek advice from more experienced officials. Spend time on research in order to file an accurate grievance

THE FACTS

Describe the incident in such a fashion that a person who has never been in your facility will be able to visualize the events leading up to and during the incident. Describe why the actions described violate the Articles cited in the charges. Stick to the facts and don't use window dressing. **If you refer to documents, such as Labor/Management agreements, medical documentation / receipts, pay stubs etc..., submit a copy of those documents with the grievance.** This is valuable evidence to be considered by the hearing officers. It is too late to run around and try and obtain this documentation when a grievance reaches Step 2 or Step 3. Do your homework before filing the grievance.

THE TRUTH

This is basic common sense. If you get caught exaggerating and/or lying on any part of the grievance, you might as well go home – it's all over!

TIMELINESS

Know the time limits in Article 7 and use them to your advantage. Do your research, get the supporting documentation and write a complete presentation, but do not exceed your time limits. **You have 20 calendar days from the date of the occurrence to file your grievance.** Also, if you lose at Step 1, immediately forward the grievance, the step 1 response and all supporting documentation to the NYSCOPBA Grievance Department so it may be appealed to step 2 in a timely manner. Please contact your Vice President or Business Agent for your regions method of getting the grievance to NYSCOPBA.

Guidelines for Investigating and Writing Grievances

The hallmark of the competent Law Enforcement Officer is the ability to record his or her statement of events in a clean, concise and readily understandable manner. This skill should be employed when writing grievances as well. Grievance reports are the spark that fires the other components of the grievance process into action. It invokes due process of the contract and all New York State laws. Accordingly, it should not be approached in a lax or haphazard manner.

The grievance report should be professional, clear, concise and perfectly understandable. Consequently, when you sign your name on the bottom of your grievance, you tell every person who reads it the type of person you are and the type of organization you represent. An incoherent grievance leaves the reader wondering, "What is he/she trying to tell me?".

Confused, vague or ambiguous grievances result from a failure to think through the facts and circumstances, which will ultimately make up the body of your grievance. The desired result will be lost if you cannot or will not take the time to document the grievance in a way that is clear and understandable.

Think through each portion of your grievance from beginning to end....then write. This will eliminate the need for future "translation". Strive for coherence. "Coherence" is the quality of logic and order. If the grievance lacks a logical sequence... if the events are recorded out of logical order... the reader will have the difficult, if not impossible, chore of figuring out what actually took place.

The practice of outlining a grievance before writing it invariably strengthens your report writing. It is a way to organize the information in your possession before beginning to write. You will get results by putting effort into your report and back it up with documentation: directives, contracts, NY State laws, etc. Explain how they have been violated.

Subjective writing expresses the writer's personal feelings or emotions, opinions, biases or prejudices, and does so generally without regard to verifiable facts, contractual arguments (contract) and evidence.

Objective writing records the facts and circumstances without reference to the writers personal feelings concerning the event, without emotion, and most importantly, without any implication of bias or prejudice.

Each paragraph should be limited to one idea. That central statement should either be elaborated in the beginning of the paragraph, if not the first sentence itself. Clarity and unity of thought is then achieved by relating all other details of the paragraph to the central statement.

These are the questions to ask yourself about your grievance report:

"Does this make sense? Does it report what actually happened? Is it coherent? Will someone else understand this? Does this report adequately or recreate the scene? Is it capable of being misunderstood?"

Double-check the contents of the grievance with another officer or grievance coordinator.

If you follow these guidelines, the result will be a report which is more consistent, more detailed, and much more effective....a report which displays a degree of professionalism.

Updated August 15, 2013

Documentation Can Make or Break a Grievance

Too often, the strongest written grievances suffer the most disappointing losses due to the simple fact that the documentation needed to support the claims of the grievance is not provided or included with the grievance. Labor Relations, GOER and arbitrators view undocumented grievances as unsubstantiated claims- denying them nearly 100% of the time.

The burden of proof in the grievance process lies with the grievant and the Union, thus any claim that is made in a grievance should be able to be backed up with some form of documentation. When the Union can illustrate their claim in black and white, the employer must refute the grievant's claim with equal or greater compelling proof to support their position.

For example, simply attaching a copy of a time card or pay check to a grievance can bolster an unpaid overtime claim. Similarly, making a claim that management violated a labor management agreement means nothing, unless a copy of said labor management is included with the grievance.

Documentation establishing correspondence between management and the grievant or the Union is the most necessary and often the most omitted documentation. Likewise, when a member or the Union makes a request of management to take action on an issue, it should be put in writing, including a request for a written response from management.

Written correspondence serves three purposes: 1. It can show that the Union and the grievant have attempted to resolve an issue prior to initiating the grievance. 2. It can give insight to management's thought process regarding an issue, which may assist the Union in developing a game plan for refuting management's position. 3. It can establish management's failure or unwillingness to work with the Union to resolve an issue. This is particularly helpful as the grievances progresses through the steps.

Lastly, but of extreme importance, **the grievant and Union must be vigilant in their effort to make sure that the appropriate documentation accompanies the grievance through each step of the process.** We must be our own advocates and ensure that we maximize every opportunity to win each grievance. Do your part by making sure the necessary documentation is provided.

issue presented and shall confine the decision solely to the application and interpretation of the Agreement.

All fees and expenses of the arbitration shall be divided equally between the parties except that each party shall bear the cost of preparing and presenting its own case. Cost for the cancellation of a hearing date shall be borne by the party seeking cancellation.

7.3 Representation

(a) The Employer shall recognize the following grievance representatives at each step of the grievance procedure and shall release such representatives from normal duties to process grievances and conduct necessary relevant investigations providing that such absence from work will not interfere with proper conduct of governmental functions: steward and chief sector steward.

On the Union's prior written request at least 48 hours in advance, the Employer will make every effort to reschedule shift assignments so that meetings fall during working hours of Union representatives.

The Union shall furnish the Employer with a list of all employee representatives, Union Vice Presidents and Union staff authorized to represent the Union in the grievance process pursuant to this Article 60 days from the date of execution of the Agreement.

(b) Statewide elected union officers and Union staff may be present at each step of the grievance procedure.

7.4 General Provisions

(a) As used in this Article, all references to days shall mean calendar days. All of the time limits contained in this Article may be extended by mutual agreement of the parties and shall be confirmed in writing.

(b) Grievances resolved at Step 1 shall not constitute a precedent for any other facility, institution, division, or region, or at Step 2 for any other agency unless a specific

GRIEVANCE FORM

(Please Type or Print)



Revised: March 1, 2003

LOCAL Grievance Number: _____

Facility (or Agency): Example Correctional Facility

Aggrieved Employee: John Smith

LOCAL Union Rep: John Doe

DO NOT WRITE IN THIS BOX
NYSOPBA Grievance Number: CON

Phone Number/ext. On File

Date Submitted: 1/3/18

Date of Occurrence: 1/1/18

Contract Article Violation(s): Article 15

STATEMENT OF FACTS: On January 1, 2018, 3 officers were hired to work overtime on the 3-11 shift.

Officer John Smith appeared 2nd on the overtime list (see attached), but was skipped and not given the opportunity to work overtime. Officer Jones (1), Officer Johnson (3) and Officer Williams (4) were given the opportunity to work overtime on the 3-11 shift on January 1, 2018.

REMEDY SOUGHT: Officer John Smith be rescheduled for overtime work the next time comparable overtime work is required.

Aggrieved Employee's Signature: John Smith

Example Correctional Facility CO Volunteer OT List

January 1, 2018

- | | |
|----------------|-------|
| 1. E. Jones | Hired |
| 2. J. Smith | |
| 3. O. Johnson | Hired |
| 4. T. Williams | Hired |

ARTICLE 15

Overtime, Recall and Scheduling

Certain terms of this Article apply only to employees who are ineligible for Interest Arbitration pursuant to Civil Service Law Section 209(4) on the date of the execution of this Agreement, indicated by (Interest Arbitration ineligible employees only).

15.1 Overtime

(a) Overtime eligible employees shall receive overtime compensation for authorized time worked beyond 40 hours in the scheduled workweek consistent with applicable law and the overtime compensation rules and regulations of the Director of the Budget.

Overtime work shall be offered to employees on the basis of seniority and shall be equitably distributed among employees who normally perform such work. Each employee shall be selected in turn according to his place on the seniority list by rotation provided, however, that the employee whose turn it is to work possesses the qualifications and ability to perform the work required.

(b) An employee requesting to be skipped when it becomes his turn to work overtime shall not be rescheduled for overtime work until his name is reached again in orderly sequence and an appropriate notation shall be made in the overtime roster.

(c) In the event no employee wishes to perform the required overtime work, the Employer shall by inverse order of this seniority list assign the necessary employees required to perform the work in question.

(d) The Union recognizes that work in progress shall be completed by the employee performing the work at the time the determination was made that overtime was necessary.

(e) An overtime roster shall be available for inspection by representatives of the Union at each institution or facility.

(f) If an employee is skipped or denied an opportunity to work overtime in violation of this Agreement, he shall be rescheduled for overtime work the next time overtime work is required, in accordance with paragraph 15.1(a) above. However, at such skipped or denied employee's option he may await the next available comparable shift and work assignment. Instances of repeated occurrences shall be brought to the attention of management at the Step 1 level of the grievance procedure.

(g) Time during which an employee is excused from work because of vacation, holidays, personal leave, sick leave at full pay, compensatory time off or other leave at full pay shall be considered as time worked for the purpose of computing overtime.

(h) Training programs conducted during other than regular working hours shall be scheduled for a minimum two-hour period.

(i) Nothing in paragraphs 15.1(a), 15.1(b), and 15.1(c) above shall prevent the establishment of mutually agreed to local arrangements regarding the method by which overtime is offered to employees.

15.2 Recall

Any employee who is recalled to work unscheduled overtime including court appearances after having completed his scheduled work period and left the facility grounds shall be guaranteed a minimum of one-half day's overtime compensation. If an employee lives on the facility grounds and is recalled from their residence to work unscheduled overtime including court appearances after having completed his/her scheduled work period, he/she shall be guaranteed a minimum of one-half day's overtime compensation. Employees called back as a result of riot, prison break, fire or escape and not put to work shall be guaranteed one-quarter day's overtime compensation.

GRIEVANCE FORM

(Please Type or Print)



Revised: March 1, 2003

LOCAL Grievance Number: _____

Facility (or Agency): Example Correctional Facility

Aggrieved Employee: John Smith

LOCAL Union Rep: John Doe

DO NOT WRITE IN THIS BOX
NYSCOPBA Grievance Number: CON

Phone Number/ext. On File

Date Submitted: January 5, 2018 Date of Occurrence: 12-21-17 - Ongoing

Contract Article Violation(s): Article 15, Article 18

STATEMENT OF FACTS: On December 4 2017, Officer John Smith was hired for Overtime and worked the full 3-11 shift in A Dorm. When I received my paycheck dated December 21, 2017, I did not receive payment for the Overtime worked on December 4, 2017. When I spoke to the payroll clerk, Jackie, she told me that I should have received the overtime pay, but that it may not show up until the January 4, 2018 paycheck. When I received the January 4, 2018, paycheck, the overtime was not included. When I talked to Jackie again, she told me to see if it was in the next paycheck dated January 18, 2018.

REMEDY SOUGHT: Officer John Smith be made whole for overtime worked on December 4, 2018 and for overtime payments to be made in a timely manner per the contract.

Aggrieved Employee's Signature: John Smith

To: Supt. Shallremain Nameless, Example Correctional Facility

From: John Doe, NYSCOPBA Rep

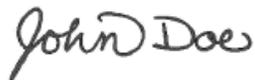
Re: Agreement to Extend filing time frame of grievance for non-payment of OT
for CO John Smith

Date: December 24, 2017

Sir,

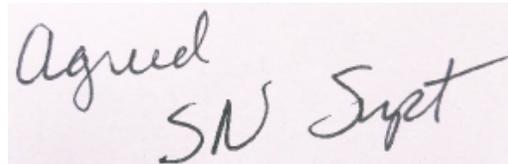
Per our conversation, and per Article 7.4(a) of the CBA, NYSCOPBA and the Administration of Example Correctional facility, agree to extend the time limit to file this grievance to January 10, 2018, to allow for possible resolution of the grievance.

Sincerely,

A handwritten signature in black ink that reads "John Doe". The letters are cursive and slightly slanted.

John Doe

NYSCOPBA Representative

A handwritten signature in black ink on a light-colored rectangular background. The text reads "Agreed" on the top line, "SN" on the middle line, and "Supt" on the bottom line. The handwriting is cursive.

NAME John Smith

PAY PERIOD 11/23/17-12/6/17

NEW YORK STATE DEPT. OF CORR.

THURS	FRI	SAT	SUN	MON	TUE	WED
30 - 14:42	1-14:35	2- 14:37		4-14:40	5-14:41	6- 14:36
30-23:03	1-23:02	2- 23:07		4 - 23:05	5- 23:01	6- 23:02
			RDO	RDO		
11/30/17	12/1/17	12/2/17	12/3/17	12/4/17	12/5/17	12/6/17
1 st DAY	2 nd DAY	3 rd DAY	4 th DAY	5 th DAY	6 th DAY	7 th DAY

TOTAL HOURS SHOWN IS CORRECT

EMP. 516

SUPV. 516

OCF #1652

Thomas P. DiNapoli State Comptroller		John Smith		Total Gross Fed Taxable Gross	
				Current YTD	3,422.25 2,988.38
Advice # 00701510 Advice Date 12/21/2017	Pay Start Date 11/23/17 Pay End Date 12/6/17	Negotiating Unit 01 Retirement System ERS	Net Pay 1,756.25		
Department ID 10070	NYS EMPLID		Pay Rate		
EARNINGS			TAX DATA		
Current Hrs/Days Earnings		YTD Hrs/Days Earnings		Federal	State NYC Yonkers
Regular Pay Salary Employee Expanded Duty Pay BU01 Location Pay Pre Shift Briefing Final SSU 01 DRP Repayment			Tax Status M M Allowances 0 0 Addl. Amt.		
			TAXES		
			Current		YTD
			Fed Withholding 362.49		8,518.01
			Medicare 46.59		1,080.31
			Social Security 199.23		4,619.28
			NY Withholding 160.02		3,758.14
BEFORE TAX DEDUCTIONS		Current	YTD	AFTER TAX DEDUCTIONS	
Deferred Comp 224.93 Regular Before Tax Health 208.92				Deferred Comp ERS Retirement After Tax NYSCOPBA NYSCOPBA Short Term Disability NYSCOPBA Term Life NYSCOPBA Accidental Death Metropolitan Property/Casualty Norvst Fin Serv Critic Illness ERS Loans	

December 21, 2017

Advice No. 00701510

Deposited in the Account(s) of John Smith

Direct Deposit Distribution		Account Number(s) not displayed to protect your privacy	
Transit #	Account Type	Deposit	
	Checking	225.00	
	Checking	1,531.25	
Total		1,756.25	

NON-NEGOTIABLE

NET DISTRIBUTIONS	
Advice # 00701510	1,756.25
Check #	
Total	1,756.25

Thomas P. DiNapoli State Comptroller	John Smith		Total Gross	Fed Taxable Gross	
			Current YTD	3,422.23	2,988.38
Advice # 00701510 Advice Date 01/4/2018	Pay Start Date 12/7/2017 Pay End Date 12/20/2017	Negotiating Unit 01 Retirement System ERS	Net Pay 1,756.25		
Department ID 10070	NYS EEMPLID		Pay Rate		
EARNINGS			TAX DATA		
		Current YTD	Federal	State	NYC Yonkers
Hrs/Days Earnings Hrs/Days Earnings					
Regular Pay Salary Employee Expanded Duty Pay BU01 Location Pay Pre Shift Briefing Final SSU 01 DRP Repayment			Tax Status M Allowances 0 Addl. Amt.	M 0	
			TAXES		
				Current	YTD
			Fed Withholding	362.49	8,518.01
			Medicare	46.59	1,080.31
			Social Security	199.23	4,619.28
			NY Withholding	160.02	3,758.14
BEFORE TAX DEDUCTIONS			AFTER TAX DEDUCTIONS		
		Current YTD			Current YTD
Deferred Comp 224.93 Regular Before Tax Health 208.92			Deferred Comp ERS Retirement After Tax NYSCOPBA NYSCOPBA Short Term Disability NYSCOPBA Term Life NYSCOPBA Accidental Death Metropolitan Property/Casualty Norvst Fin Serv Critic Illness ERS Loans		

January 4, 2018

Advice No. 00701510

Deposited in the Account(s) of John Smith

Direct Deposit Distribution Account Number(s) not displayed to protect your privacy		
Transit #	Account Type	Deposit
	Checking	225.00
	Checking	1,531.25
Total		1,756.25

NON-NEGOTIABLE

NET DISTRIBUTIONS	
Advice # 00701510	1,756.25
Check #	
Total	1,756.25

ARTICLE 15

Overtime, Recall and Scheduling

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(b) An employee requesting to be skipped when it becomes his turn to work overtime shall not be rescheduled for overtime work until his name is reached again in orderly sequence and an appropriate notation shall be made in the overtime roster.

(c) In the event no employee wishes to perform the required overtime work, the Employer shall by inverse order of this seniority list assign the necessary employees required to perform the work in question.

(d) The Union recognizes that work in progress shall be completed by the employee performing the work at the time the determination was made that overtime was necessary.

(e) An overtime roster shall be available for inspection by representatives of the Union at each institution or facility.

(f) If an employee is skipped or denied an opportunity to work overtime in violation of this Agreement, he shall be rescheduled for overtime work the next time overtime work is required, in accordance with paragraph 15.1(a) above. However, at such skipped or denied employee's option he may await the next available comparable shift and work assignment. Instances of repeated occurrences shall be brought to the attention of management at the Step 1 level of the grievance procedure.

(g) Time during which an employee is excused from work because of vacation, holidays, personal leave, sick leave at full pay, compensatory time off or other leave at full pay shall be considered as time worked for the purpose of computing overtime.

(h) Training programs conducted during other than regular working hours shall be scheduled for a minimum two-hour period.

(i) Nothing in paragraphs 15.1(a), 15.1(b), and 15.1(c) above shall prevent the establishment of mutually agreed to local arrangements regarding the method by which overtime is offered to employees.

15.2 Recall

Any employee who is recalled to work unscheduled overtime including court appearances after having completed his scheduled work period and left the facility grounds shall be guaranteed a minimum of one-half day's overtime compensation. If an employee lives on the facility grounds and is recalled from their residence to work unscheduled overtime including court appearances after having completed his/her scheduled work period, he/she shall be guaranteed a minimum of one-half day's overtime compensation. Employees called back as a result of riot, prison break, fire or escape and not put to work shall be guaranteed one-quarter day's overtime compensation.

ARTICLE 18

Payroll Computation

18.1 The Employer shall calculate employees' salary payments on an appropriate ten working-day basis.

18.2 The Employer agrees that paychecks issued to employees will be delivered no later than Thursday following the end of the next succeeding payroll period.

When employees leave State service, their final salary check shall be issued at the end of the payroll period next following the payroll period in which their service is discontinued. This final salary check shall be paid at the employee's then-current salary rate.

18.3 Overtime and holiday pay authorized to be compensated for in cash shall be paid to employees by the close of the second biweekly payroll period following the payroll period during which it was earned.

GRIEVANCE FORM

(Please Type or Print)



Revised: March 1, 2003

LOCAL Grievance Number: Bad Grievance 101

Facility (or Agency): Example Correctional Facility

Aggrieved Employee: John Smith

LOCAL Union Rep: John Doe

DO NOT WRITE IN THIS BOX
NYSOPBA Grievance Number: CON

Phone Number/ext. On File

Date Submitted: 1/5/18

Date of Occurrence: 1/5/18

Contract Article Violation(s): Preamble, BOR, Articles 3, 8, 22, 27 Directive 4960 Workplace Violence

STATEMENT OF FACTS: On January 5, 2018, I, CO Smith was approached by Sgt. Wannabe in an aggressive and very mean manor who gave me an order that I was assigned to the S-Blk for the day for training because I needed to get better at doing my rounds. I do my rounds the same as Officer Busybody yet Sgt Wannabe never sends Busybody for training. I am being discriminated against. There is a long history of this singling out, unprofessional behavior and harassment from Sgt Wannabe toward me, and I feel unsafe working in the same area or having Sgt. Wannabe as my supervisor. I also feel that Sgt Wannabe is retaliating against me, and treats me in a threatening manner. This is unfair discipline and the Department is not following directive 4960 Workplace Violence.

REMEDY SOUGHT: Sgt Wannabe should receive 12 wks suspension, must attend Anger Management classes, Drug and Alcohol testing/Rehab, De-escalation training, Meditation techniques, Employee Management training, Mental Health Referral, Supervisor Training, Assistance through EAP, Behavior Risk Solutions training. Sgt Wannabe should be terminated.

Aggrieved Employee's Signature: John Smith

Why this is not a good grievance?

1. Contract is between State and Union. Grievances should address issues between Employee and Employer, not between Union members.
2. Harassment is not addressed in contract anywhere.
3. Contractual discrimination must surround differential treatment of an employee under a contractual item based on protected class in article 3 – not based on “he/she doesn’t like me”. An example of a potentially viable discrimination contract grievance is one where an employee is denied an overtime opportunity (article 15) due to gender. These cases, frequently referred to as BFOQ cases, deal with issues related to whether the post or overtime assignment at issue is validly “gender specific.” Additionally, discrimination is dealt with through Diversity Management, EEOC or Division of Human Rights.
4. The grievance exposes 2 other employees/members (Sgt Wannabe and Co Busybody)
5. Unprofessional behavior is to be dealt with by the employee’s supervisor, not through the grievance process.
6. Workplace violence has its own process under Directive 4960. Workplace violence does not fall under Article 22 Safe Working Conditions.
7. Directives are not a law, rule or regulation covered by Article 27.
8. This is not discipline under Article 8.
9. All remedies are unattainable under the contract – Mostly, the grievance process cannot institute discipline on another employee.

Note: Members have the right to file a grievance at step 1 per Article 7 – the Union can’t stop that. Also, filing this type of grievance can serve the purpose of notifying management of the issue in writing and exhausting all avenues to try to resolve such an issue. But the member should still be made aware that the best avenue to address this type of issue is Diversity Management, EEOC or the Division of Human Rights. Also, the Grievant must be made aware that this is a poor grievance and will most likely not be successful, and will eventually be recommended for closure by the NYSCOPBA Grievance Department.

Contractual Aspects of Discrimination and Harassment Claims

Although allegations of discrimination and work-place harassment are often linked, many members incorrectly consider them identical topics. The treatment of these issues is separate and distinct when addressed through the Collective Bargaining Agreement (CBA), and the grievance process. Although it may be difficult to accept that such practices still occur in this day and age, the fact remains that not only does such treatment exist and it negatively affects the entire work-place environment on every level. These unacceptable practices must be addressed; but how?

First we will consider the claim of discrimination. Article 3 (Nondiscrimination) of the contract is very specific that inequitable application of the CBA because of a member's "age, race, creed, color, national origin, sex, disability, marital status and political affiliation..." or union activity is considered discrimination, and a violation of the Contract. The most common example is when the Employer denies a member's rights to a post bid award because of their gender.

An abundance of documentation and a great deal of time and effort is needed to establish differential treatment of a member under Article 3. Also, the Union is often required to prove a diminishment of a member's rights provided in, or outside of the contract, as a direct result of the differential treatment. The Union has been very successful in processing "true" discrimination grievances.

However, members often mistake a claim of work-place harassment as a discriminatory act as outlined in Article 3. Harassment claims are often made in grievances when a member feels that a supervisor has improperly issued a counseling, informal or formal; or when a supervisor appears to "ride" one particular employee more than others. Members usually claim violations of Article 8 (Unjust Discipline) Article 27 (Preservation of Benefits) and Appendix C in these instances.

While these claims may seem discriminatory in nature, they do not satisfy the specific requirements of discriminatory treatment under Article 3. Appendix C establishes that counselings are not considered as disciplinary action against the Employee under Article 8, and therefore do not inherently diminish a member's rights within or outside of the contract. Appendix C only addresses the method by which counselings can be given; in private with an opportunity for the member to provide a rebuttal to counseling memos. It does not address whether or not the counseling itself is appropriately required.

Grievances claiming harassment often seek to exact discipline on another individual, often a supervisor, and even fellow union members. Some remedies seek to demand or invoke an apology from the accused individual. These remedies, although commonly sought, cannot be granted through the grievance process.

Keep in mind that the contract is negotiated between the Union (NYSCOPBA and its members as one unit) and the Employer (DOCCS / New York State and its representatives acting on its behalf). The CBA governs only that discipline which is

administered from the Employer to an Employee, and does not provide remedies demanded by one individual or another. Further, the contract does not provide an avenue through which one member can seek to diminish the rights of another.

Factually, there are no articles in the contract that either address work-place harassment or which provide a remedy for the same. The proper venues to address such claims are through the Diversity Management Office, the Equal Employment Opportunity Commission or the Division of Human Rights Office. It is also suggested that the member notify and discuss these issues with the local Union, Management and the local Employee Assistance Program representative in an attempt to resolve these issues.

Out Of Title Grievance Information

Article 9 claims of out of title work and out of title grievances are handled differently under the CBA compared to Article 7 contractual violation claims. Therefore, it is required that claims of out of title work be filed on the proper designated out of title grievance form, example in this section of the training manual. Historically, grievances submitted on a "regular" Article 7 grievance form have been automatically dismissed as improperly filed.

It is important to understand that the review of these claims are based on duties specific to Civil Service recognized classification standards of a title, and are not merely based on the "that's not in my job description" claim. For that reason, it is recommended that the classification standard of both the title you are in and the title you claim to be doing the work of, are included in the supporting documentation of the grievance.

It is also recommended that the grievant create an itemized list of the duties which they are actually performing, especially those which are specifically relevant to the title which they are claiming the duties belong. You cannot simply state "My supervisor was absent for two months and I was designated as 'acting chief' or 'Captain' and performed all of his duties in his absence." Specific details of the duties performed are required. This list must be presented as supporting documentation to the grievance. Do not limit your list or explanation to the two lines available on the form. Attach additional paperwork as is necessary.

Important Note: NYSCOPBA out of title grievances are processed different than CSEA, PEF and other bargaining unit's out of title grievances, however, most facilities do not realize this and need reminding. NYSCOPBA out of title Grievances still must be submitted locally to the facility and heard. They are then appealed to Step 2 (Agency Level) and should receive an answer. **Unlike other bargaining units, per Article 9, NYSCOPBA out of title grievances are not referred to Civil Service Classification and Compensation until NYSCOPBA appeals the grievance to Step 3.** Often agencies refer the grievances to CS when it is appealed to the agency. This is not the process negotiated in the NYSCOPBA contract and stewards should be vigilant to make sure that agencies follow the NYSCOPBA procedure properly.

Once an out of title grievance is appealed to Step 3, all the information needed to meet the Union's burden of proof must be included in the grievance supporting documentation, and all the information is forwarded to Civil Service Classification and Compensation for their review and recommendation. No Step 3 review with the Governor's Office of Employee Relations is held. CS then makes a recommendation whether or not the grievance should be sustained or denied, and that recommendation is always adopted by GOER.

Out of title grievances cannot be advanced to arbitration. As a final step, it is technically possible to bring these grievances to a "triage" meeting between attorneys from NYSCOPBA and GOER. However, these meetings are informal with no hearing conducted, and no decision issued unless both parties agree. History has shown that GOER will not reverse the findings from Civil Service once they were accepted at Step 3 which inevitably results with the closure of the file without further discussion or hearing.

**NEW YORK STATE / NYSCOPBA
OUT-OF-TITLE WORK GRIEVANCE FORM**

Date Submitted _____

Grievant(s) Name		Social Security Number
Home Address		
Grievant(s) Title		Line Number
Department/Facility	Division/Bureau/Region	Shift
Work Address		
Supervisor's Name and Title		

**STATEMENT OF FACTS
(USE ADDITIONAL SHEETS IF NECESSARY FOR QUESTIONS 1-4)**

1. Reason for Grievance:

- a. Who directed you to perform these tasks, their name and title? _____
- b. What caused this assignment, did someone get sick, go on leave, get reassigned? _____

- c. Were you filling in for your supervisor, if so how often? _____
- d. Were you performing all of the duties of your supervisor at that time? _____
- e. Who supervised you when you performed these tasks (who did you report to)? _____
- f. What title did you feel should normally be assigned these duties? _____
- g. What were the dates of the assignment, number of days or weeks? _____

2. Specific tasks performed which you believe to be out-of-title and approximate percentage of time spent on each: _____

NOTE: If the duties are appropriate to your present job title, an out-of-title work grievance is not applicable, and this grievance form should not be used

3. State the title and grade that you believe are more appropriately assigned these duties: _____

4. If relevant, list your supervisory responsibilities, along with names and titles of staff supervised by you: _____

5. Date(s) of occurrence: _____

6. Remedy sought: Compensation/Monetary Relief Cease and Desist

7. Signature of Aggrieved Employee or Union Officer and Title: _____

STEP 1 – FACILITY/REGIONAL LEVEL REVIEW

Date Grievance Received by Certified Mail	Date Decision Issued
Union File Number	Agency File Number

1. Facility/Regional Level Management Decision: _____

2. Facility/Regional Reviewer: _____

STEP 2 – AGENCY LEVEL REVIEW

Date Grievance Received by Certified Mail	Date Decision Issued
---	----------------------

Agency Decision _____

Agency Reviewer _____

GOVERNOR’S OFFICE OF EMPLOYEE RELATIONS (GOER) REVIEW (STEP 3)

GOER File Number _____

All appeals to GOER must include a legible copy of the grievance form and agency opinion, and specific reasons for disagreement with step 2 decision

Date Grievance Sent by Certified Mail: _____

Signature of Aggrieved Employee or Union Officer: _____

**NEW YORK STATE
OUT-OF-TITLE WORK GRIEVANCE FORM
INSTRUCTIONS**

It is especially important for you to supply as much information as possible so that your grievance will not be delayed by a request for additional information.

You should contact your local grievance representative to assist you in filling out this form and to assist you in determining whether the particular circumstances you are grieving are appropriate to the out-of-title work grievance procedure.

You should state the specific tasks that you performed which you believe to be out of title. These are tasks not contained in the job standard or tasks not normally associated with your title.

Any attachments must be included with the grievance form at each step.

Grievance Procedure Summary: under Article 7 in the contract.

STEP I

- 1.** Employee and/or and or Union files a grievance within 20 calendar days of occurrence. (Unless a written agreement to extend the time frame to file is completed – see attached example)
- 2.** Union and Employee meet with local management meet within 10 calendar days.
- 3.** Local management issues a written decision within 10 calendar days.
- 4.** If Management does not meet contractual time frames, grievance can be auto-progressed to Step 2 per Article 7.2 and 7.2 (a).
- 5.** The union may place a grievance on hold to pursue resolution of the grievance, but no financial liability will accrue after 30 days of the hold period.

STEP II

(From this point forward the Union owns the grievance)

- 1.** Union files appeal to Agency Labor Relations within 15 days.
- 2.** Meeting with Labor Relations and Union within 10 days.
- 3.** Labor Relations issues decision within 10 days.
- 4.** NYSCOPBA evaluates whether or not to forward grievance to next step (see Grievance Appeal Procedure). NYSCOPBA may appeal Step II decision to Governor's Office of Employee Relations within 60 days.
- 5.** If Management does not meet contractual time frames, grievance can be auto-progressed to Step 3 per Article 7.2 and 7.2 (a).
- 6.** The union may place a grievance on hold to pursue resolution of the grievance, but no financial liability will accrue after 30 days of the hold period.

STEP III

- 1.** Step III appeal and written summary statement sent to GOER. Union may request a meeting to discuss a grievance. If no meeting requested, GOER issues decision within 30 days of appeal. If meeting requested, GOER issues decision within 30 days after the meeting.
- 2.** Health and safety issues may be referred to Health and Safety Committee for review.
- 3.** Out of Title grievances referred to Civil Service Classification and Compensation for review. No Step III Review Meeting held. Supporting documentation may be submitted prior to appeal to Civil Service.
- 4.** GOER issues decision or recommends resolution within 30 days.
- 6.** NYSCOPBA evaluates whether or not to forward grievance to next step (see Grievance Appeal Procedure). NYSCOPBA may appeal Step III decision to Step IV within 60 days.
- 7.** If Management does not meet contractual time frames, grievance can be auto-progressed to Step 4 per Article 7.2 and 7.2 (a).
- 8.** The union may place a grievance on hold to pursue resolution of the grievance, but no financial liability will accrue after 30 days of the hold period.

STEP IV

1. Appeal to Alternate Dispute Resolution Process or Arbitration may take several paths:
 - a. **Triage** - Discussion between NYSCOPBA and State legal counsel (resolution conference) to determine if grievance can be resolved or if it can be best addressed through Expedited or Full Arbitration. Master Arbitrator is involved in discussion.

- b. **Expedited Arbitration** – NYSCOPBA and State legal counsel present verbal case summaries (no written briefs) before a Master Arbitrator. Arbitrator renders decision, usually within 7 days. **Expedited Awards are non-precedential unless the parties agree otherwise.**
- c. **Full Arbitration** – NYSCOPBA and State legal counsel present verbal and written testimony, including written briefs, before a mutually agreed to Arbitrator. Decision is usually issued within 30 days. **Full Arbitration awards are precedential unless otherwise agreed to by the parties or expressly indicated by the arbitrator.**



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

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



To: Roland Larkin, Superintendent Eastern CF

From: Mike Marro, NYSCOPBA Grievance Department

Re: Extension request to file grievance regarding C.O. [REDACTED]
DRP/DRL calculation, monetary and time deductions and credits.

Date: October 10, 2012

Per our phone conversation today, I am currently working to attempt to resolve issues regarding the monetary and leave credit and deduction of Deficit Reduction Leave (DRL) for [REDACTED] under the agreed to DRP program. However, my contact at DOCCS payroll has informed me that she will not be available to address this issue until she returns to work on October 15, 2012. As a result, I am requesting an extension of the 20 day limit to file a grievance at step 1 on this matter to October 31, 2012; in hopes these issues can be resolved prior to the need arising to file said grievance.

I am requesting your cooperation and agreement in this matter and respectfully request a signed written response.

Please feel free to contact me with concern or questions at 518-427-1551, and thank you for your anticipated cooperation in this matter.

Michael A Marro

Approved
[Signature]
Sept
15/9/12



New York State Correctional Officers & Police Benevolent Association



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To: Abbie Ferreira, Assistant Director, GOER
From: Robert Cronin, Grievance Department, NYSCOPBA
Re: Grievances to be heard at Step 3, **December 11, 2017** at 10:00 a.m.
Date: November 28, 2017

The grievances to be heard at Step 3 on the above date are listed below.

TO GRIEVANT: If you wish to participate in the meeting (allowed by telephone only), please call the NYSCOPBA Grievance Department at (518) 427-1551, Extension 259 no later than 4:00 p.m., December 8, 2017 and leave a number where you can be reached on the day of the meeting. Information may be left on my voice mail. If you are on duty at the time, you should be allowed a relief per Article 7.4(d) of the collective bargaining agreement.

<u>Grievant</u>	<u>Facility</u>	<u>NYSCOPBA #</u>	<u>Agency #</u>	<u>Subject</u>
[REDACTED]	Sullivan CF	CON17-0471	L-6-17C	All Health & Safety
[REDACTED]	Riverview CF	CON17-0458	L-1-17C	Miscellaneous Overtime
[REDACTED]	Auburn CF	CON16-0296	N/A	Counseling
[REDACTED]	Auburn CF	CON16-0374	N/A	All Others
[REDACTED]	Auburn CF	CON16-0415	N/A	Miscellaneous Monetary
[REDACTED]	Gowanda CF	CON17-0404	L-3-17C	All Health & Safety
[REDACTED]	Gowanda CF	CON17-0462	L-4-17C	Shift Differential & Location Pay

cc: **Mid-Hudson Region Office**
Northern Region Office
Western Region Office
Sullivan CSS
Riverview CSS
Auburn CSS
Gowanda CSS
Jocelyn Gleason, Health & Safety / WC
File

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF NEW YORK

AND

THE NEW YORK STATE CORRECTIONAL OFFICERS AND POLICE BENEVOLENT ASSOCIATION, INC.

(NYSCOPBA)

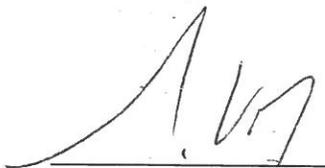
GRIEVANCE PROCEDURE CHANGES

This is to confirm the agreement between the parties regarding Article 7, Grievance Procedure, to assist the parties in the good faith processing and review of grievances.

The parties agreed to make this pilot permanent in the 2011-16 contract but mistakenly only changed the language of Article 7.2(a).

Under the present contract language, specifically Article 7.2(b)(1), the union must make a demand for ADR/Arbitration within 15 days from the day the union receives the Step 3 decision. However, the parties agreed to extend this time period as well, and therefore, those 15 days shall be extended to 60 days.

This shall be the only change made in Article 7 unless otherwise agreed upon by the parties. Once a successor agreement to the 2011-16 contract is reached, the parties agree to memorialize this change in that successor agreement.



Michael N. Volforte Date
Acting General Counsel
For Governor's Office of
Employee Relations, State of New York

10-22-13

Donn Rowe Date
President
For NYSCOPBA

Vincent Blasio Date
Recording Secretary
For NYSCOPBA

Automatic Progression of Step 1 Grievances for Local Stewards

What happens when the Employer doesn't answer the grievance in the time frames under the Contract?

One of the most frequently asked questions we receive from local NYSCOPBA stewards is, "What should I do when the Employer fails to answer a grievance in a timely manner?" Contrary to contractual mythology, the contract does not provide for the Union or the Employee to win a grievance simply because the Employer does not meet to discuss or answer a grievance in time. The correct answer is found in the first paragraph of Article 7.2 and under the Automatic Progression (AP) section as outlined at the very end of Article 7.2 (a) of the Collective Bargaining Agreement (CBA).

Article 7.2 -Upon failure of the Employer to provide a decision within the time limits provided in this Article, the Union may appeal to the next step of the grievance procedure. The grievance will not revert back to the previous step where it was originally untimely unless mutually agreed to by both parties.

Article 7.2(a) - Automatic Progression. If the Employer fails to meet with the Union on a timely basis or render a timely decision, the Union may treat the grievances as having been denied at the level at which the delay occurred and may then appeal the grievance to the next level.

NOTE: It is important to note that time limits may be extended as provided in article 7.4 (a) of the CBA: As used in this Article, all references to days shall mean calendar days. All of the time limits contained in this Article may be extended by mutual agreement of the parties and shall be confirmed in writing.

The steward must understand that the most operative word in this section of the CBA is "**may**", which poses a challenging question to the Union and to the steward - "Do I simply Automatically Progress every grievance that isn't answered on time, or is there a more effective manner to exercise the Union's right to use Automatic Progression?"

Before we can address when the appropriate times to use Automatic Progression are, we must first understand the time limits to submit, meet and discuss the grievance with the Employer, and how long the Employer has to answer step 1 grievances under Article 7.2 the CBA.

STEP I

- Employee and/or and or Union files a grievance within 20 calendar days of occurrence. (Unless a written agreement to extend the time frame to file is completed)

- Union and Employee meet with local management meet within 10 calendar days.
- Local management issues a written decision within 10 calendar days.

The local Steward should analyze each grievance circumstance individually in determining if Automatic Progression is appropriate. For example, if at the step 1 meeting, management advises the local union steward that they are attempting to resolve the issue in the Union's favor but they need a little more time to do so before they can issue the answer, then it would be in the Union's best interest to not Automatically Progress the grievance after it immediately surpasses the time limits for an answer.

However, if it appears that local management has no regard for time limits, and no respect for the grievance process, then it may be in the Union's best interest to Automatically Progress grievances as soon as they become untimely. This would also apply for those local administrations that repeatedly miss meeting time limits with no valid reason.

Of course, the local Steward must also keep in mind that it is extremely important to establish a good working relationship with management and that there may be circumstances when the Union needs additional time to address an issue as well, so the local Union should heavily weigh the need for using automatic progression. Local Stewards should contact their regional NYSCOPBA Business Agent or Vice President if they are unsure how they should handle an Automatic Progression of a grievance.

NYSCOPBA Suggestion: Use memos (*example attached*) to remind the Employer of their time limit obligations, and give them the opportunity to correct the "oversight" before using Automatic Progression. If the Employer fails to correct the oversight, then use the attached Automatic Progression memo to advance the grievance to step 2. These documents become instrumental in establishing the Union's recognition of management's position in the grievance process, and reinforces the Union's desire to work with management in that process.

Do I file a grievance against Management for not answering the grievance?

If the Employer establishes a pattern of disregarding the time limits under the grievance procedure, then a separate Article 7 grievance outlining multiple examples of the Employer failing to meet the time limits is recommended. It is also recommended that all memos attempting to arrange a meeting or to facilitate a response, as well as memos indicating automatic progression be included in that grievance file as supporting documentation.

Grievance Time Frame Reminder to Employer Memo Example

To: Employer Representative

From: NYSCOPBA Local Sector

Re: Grievance Time Limit Reminder

Date:

A grievance for (Employee name) was submitted to and received by the Employer on (Date) citing violations of (Articles Cited) – (Local grievance number assigned if available.) See copy attached. As of the date of this memo:

The Employer has not met with the Employee and the Union in a step 1 meeting within 10 calendar days of the receipt of the grievance as per Article 7.2 of the CBA.

The Employer has failed to render a decision in writing within 10 days from the date of the step 1 meeting (Date) as per Article 7.2.

In the interest of preserving a harmonious working relationship in the grievance procedure process, NYSCOPBA requests that you respond in writing within 10 days indicating when this oversight will be corrected. Thank you.

Automatic Progression Request Memo Example

To: NYSCOPBA Grievance Department

From: NYSCOPBA Local Sector

Re: Request for Automatic Progression of Grievance

Date:

A grievance for (Employee name) was submitted to and received by the Employer on (Date) citing violations of (Articles Cited) – (Local grievance number assigned if available.) See copy attached. As of the date of this memo:

- The Employer has not met with the Employee and the Union in a step 1 meeting within 10 calendar days of the receipt of the grievance as per Article 7.2 of the CBA.

- The Employer has failed to render a decision in writing within 10 days from the date of the step 1 meeting (Date) as per Article 7.2.

The Employer has failed to meet the time limits set forth in Article 7.2 and 7.2(a) of the Collective Bargaining Agreement. Therefore, the Union is treating this grievance as having been denied at step 1, the level at which the delay occurred, and is appealing this grievance to Step 2 under the Automatic Progression portion of Article 7.2 and 7.2(a)4 of the current CBA.



New York State Correctional Officers & Police Benevolent Association

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Grievance/Legal Assistance Committee **GRIEVANCE REVIEW POLICY** (As adopted December 12, 2007)

1. STATEMENT OF POLICY: Article 7 "*Grievance and Arbitration*" of the collective bargaining agreement provides that NYSCOPBA may take an appeal of a grievance that is not satisfactorily resolved. It shall be the policy of the New York State Correctional Officers & Police Benevolent Association, Inc. ("NYSCOPBA") that the determination to take any such appeal shall be made in accordance with the procedures described herein.
2. INITIATION OF GRIEVANCES: NYSCOPBA, or a person or persons represented by NYSCOPBA ("grievant") may submit a grievance to Step 1 as provided by Article 7 of the collective bargaining agreement.
3. GRIEVANCES NOT SATISFACTORILY RESOLVED: A determination by NYSCOPBA that it is not in the best interest of NYSCOPBA to appeal a grievance to the next step in the grievance process is subject to review only as provided by this policy and the procedures specified herein.
4. REQUEST FOR REVIEW OF A DECISION OF NYSCOPBA: If NYSCOPBA determines that a grievance not satisfactorily resolved at Steps 1 or 2 will not be appealed to the next step of the grievance procedure, the grievant or the Sector Steward representing said grievant may request a review of this determination by the Grievance/Legal Assistance Committee established pursuant to Article XI of the NYSCOPBA Constitution. The procedure for this review shall be as follows:
 - a. The grievant will be notified by NYSCOPBA in writing of this determination. A copy of this notice shall also be provided to the Vice-President and the Chief Sector Steward representing the grievant.

Members of the Committee:

Steven Groom (Great Meadow CF); Robert Cronin (Mt. McGregor CF); Todd Masca (Mid-State CF);
Ricky Smith (Rockland Psychiatric Center); John Ward (Bedford CF); Jim Sonko (Fishkill CF)

Committee Chair:

Michael Mazzella (Mid-Hudson Vice President)

- b. The notice to the grievant shall include the reasons why NYSCOPBA determined that the grievance should not be appealed to the next step. This notice may include any information, which supports the decision of NYSCOPBA including past grievance decisions, arbitration decisions, etc.
 - c. The notice to the grievant shall state, "In the event you do not agree with this determination to close this grievance, you may request in writing that this determination be reviewed by the Grievance/Legal Assistance Committee. This request must be made within thirty (30) days following receipt of this notice. Your request for review must include specific relevant additional information that NYSCOPBA did not possess that might have affected the determination to close the grievance. The request for review by the Grievance/Legal Assistance Committee should be sent by email to grievance@nyscopba.org or mailed to 'NYSCOPBA Grievance Department, 102 Hackett Blvd., Albany, NY 12209-1543.' If a written request for review is not received within thirty (30) days, the grievance will be closed."
 - d. The Grievance Department will forward a request for review to the Grievance/Legal Assistance Committee. The committee will review the written submission, and may call witnesses, may consult with legal counsel and/or request additional information from any person possessing information believed to be relevant. NYSCOPBA shall notify the grievant of the date and time when the committee will consider their request for a review. The grievant may participate via a telephone conference call or may appear in person at his or her expense. Their Sector Steward or Vice-President may represent the grievant in this review. In the event a good faith effort has been made to contact the grievant and the grievant cannot be contacted, the Grievance/Legal Assistance Committee may go forward with the review and render a decision thereon.
 - e. The Grievance/Legal Assistance Committee will render a decision within thirty (30) days after the review is considered. The Grievance/Legal Assistance Committee will notify the grievant in writing that either the grievance will be closed or that the grievance will be appealed to the next step. The decision of the Grievance/Legal Assistance Committee will be final and binding and cannot be appealed.
5. GRIEVANCES NOT SATISFACTORILY RESOLVED AT STEP 3: If NYSCOPBA or Legal Counsel designated pursuant to Article XIX of the NYSCOPBA Constitution and Bylaws determines that it is not in

the best interest of NYSCOPBA to pursue a grievance beyond Step 3, the following shall occur:

- a. Only when the Grievance/Legal Assistance Committee has not previously reviewed the grievance as described in section 4 of this policy, the grievant, the Sector Steward and the Vice-President representing the grievant will be provided the opportunity for such review as provided by section 4(a) to section 4(d).
- b. If the Grievance/Legal Assistance Committee agrees with the determination that it is not in the best interest of NYSCOPBA to pursue the grievance beyond Step 3, the grievance will then be closed. This decision will be final and binding and cannot be appealed.
- c. If the Grievance/Legal Assistance Committee does not agree with the determination that it is not in the best interest of NYSCOPBA to appeal the grievance beyond Step 3, the grievance will be submitted to the Executive Board.
- d. The Executive Board shall then decide that the grievance will be pursued beyond Step 3, or the grievance will be closed, or the grievance will be referred to the Executive Assembly. This decision of the Executive Board will be final and binding and cannot be appealed.
- e. The decision of the Executive Board, or of the Executive Assembly if the grievance is referred to them by the Executive Board, that the grievance will be pursued beyond Step 3 or that the grievance will be closed will be final and binding and cannot be appealed.

**Grievance Review Policy & Procedure
Adopted by NYSCOPBA EA 12-12-07**

