



MARCH 2021 LEGAL REPORT
TO THE EXECUTIVE ASSEMBLY

This is our March 2021 Legal Report to the Executive Assembly regarding recent developments in some of the cases and legal matters we are handling for NYSCOPBA. For the matters cited, we have described activity occurring since the last report and scheduled future activity.

**** MONTHLY SPOTLIGHT ****

General Matters:

Anderson v. Osborne, et al (SDNY 17 CV 539): NYSCOPBA was recently made aware of a decision issued in a federal civil rights lawsuit out of the Southern District of New York. An inmate, formerly incarcerated at Green Haven Correctional Facility, filed a lawsuit against many DOCCS employees, including four current or former NYSCOPBA members, alleging that they used excessive force against the inmate in April 2015. The Attorney General's office represented the defendant correction officers and correction sergeant at trial in February 2020. The jury trial resulted in a verdict in favor of the inmate: compensatory damages in the amount of \$75,000, as well as punitive damages of \$275,000, \$125,000, \$125,000, and \$50,000, against the individual defendants. Neither NYSCOPBA nor the law firm had been involved in this matter because DOCCS never disciplined the sergeant or officers for the alleged April 2015 incident. Criminal charges were never filed. Only this civil lawsuit was filed. DOCCS Acting Deputy Commissioner and Counsel, Cathy Sheehan, contacted our office last month and advised that DOCCS would *not* be indemnifying the sergeant and officers for the jury awards, leaving them personally liable for the damages awards. We had extensive communication with DOCCS about this issue and began drafting a lawsuit against DOCCS seeking the indemnification of these officers and sergeant. The threat of a lawsuit, coupled with concrete examples of DOCCS indemnifying in similar situations in the past, and targeted pressure on the AG's office, resulted in DOCCS changing course and agreeing to indemnify the officers and sergeant. Therefore, the defendants will no longer be personally responsible for the damages awarded by the jury.

FAQ - Know Your Rights: When You've Been Civilly Sued by an Inmate: We drafted a FAQ after NYSCOPBA learned of the *Anderson v. Osbourne et al* indemnification issues. The FAQ document covers members' rights to representation and indemnification under New York Public Officer's Law § 17 if they have been civilly sued by an inmate, including how to invoke those rights and in what circumstances those rights are limited. It also covers recommended questions for members to ask the Assistant Attorney General assigned to represent them, and how to request a private attorney under certain circumstances.

Workers Compensation Regulations: On December 15, 2020, NYSCOPBA provided a public comment in response to proposed regulations regarding requests for prior approval for medical

treatment and care and the DME fee schedule in workers' compensation cases. This public comment was drafted and submitted with the assistance of Al Mothershed (Western Region BA), NYSCOPBA's Workers' Compensation Department, and our office. Most notably, NYSCOPBA opposed a proposed language change which removes notification to the claimant's legal representative from notices of approval and denial or partial denial, as well as a change to the regulations which would allow the Medical Director's Office to have the authority to render a decision on a request for review of any medical decision filed by the medical provider, when there has not been an IME performed, without an option for appeal or a hearing. We await the WCB's response to the public comments.

COVID MOU at SUNY: State University of New York (SUNY) has entered into mandatory COVID testing agreements with each bargaining unit. We have assisted Executive Vice President John Harmon in negotiations with and the review of the Memorandum of Understanding (MOU) between DOCCS and SUNY. On December 31, 2020 we reached an agreement with SUNY. The terms of the agreement make sure that SUNY utilizes self-administered saliva tests, short swab rapid tests or other tests selected by the campus. If the campus elects to utilize long swab testing, employees will not be mandated but may be asked to volunteer for the test. Additionally, the testing shall be conducted without any cost to the employee.

Litigation:

NYSCOPBA et al v. DOCCS and DCS (Paid Sick Leave Litigation): On January 15, 2021, we filed a lawsuit against DOCCS and the Department of Civil Service in Albany County Supreme Court alleging that NYSCOPBA members were improperly denied paid leave without charge to earned accruals under the law in New York when they were subjected to more than one State-directed quarantine or an extended quarantine beyond 14 days for exposure to or infection with COVID-19. DOCCS has only provided, at most, one 14-day block of paid leave to NYSCOPBA members who have been quarantined. The hybrid Article 78/ declaratory judgment proceeding asks the court to declare that all employees of DOCCS are entitled to paid leave under the law for any and all state-directed mandatory or precautionary orders of quarantine or isolation and directing that effected employees be made whole for their losses. We await DOCCS and DCS's Answers.

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

on November 12, 2020. We filed our opposition papers to the Motion on October 7, 2020. On January 20, 2021, we received a Decision denying the State's Motion to Dismiss. Specifically, the court found the State's arguments that this matter should be dismissed on timeliness and standing to be unpersuasive. The court also held that we sufficiently stated our due process claims and claims pursuant to Article 78, as well as our contention that New York Executive Law § 102 was violated. Accordingly, the lawsuit will proceed, and the State was directed to Answer the Complaint within thirty (30) days. The State is considering filing a Notice of Appeal which must be filed by February 24, 2021. The State has an extension to April 7, 2021, to file its Answer.

Discipline:

Shawangunk Correctional Facility: The NOD alleges that the Member made numerous threats via social media to the Acting Commissioner of DOCCS and showed undue familiarity with numerous inmates, as evidenced by those same posts. The matter was assigned to Arbitrator Dennis Campagna, who recused himself since he would only perform a videoconference hearing. The matter was assigned to Arbitrator David Lande. Prior to the hearing, the matter settled and the Member has returned to work. The Department had initially dug in its heels demanding the Member's resignation or termination due to the severity of the charges and the public threats to the Acting Commissioner and undue familiarity with inmates. However, our defense was predicated upon the fact that the member had been suffering from a previously undiagnosed mental health issue. Since those events, the Member has been an active participant in treatment and has suffered no setbacks and was cleared by Employee Health Services to return to work. The case did present some additional unique issues: primarily that the Member had testified poorly in an interrogation while attempting to explain away his behavior without referencing his mental health issues. This would have served as a detriment to the defense of the case at the hearing. Ultimately, we presented to the Department unimpeachable mental health records and were able to convince the Department that they were going to face a tough defense and have to call in their own mental health expert to counter ours. Shortly thereafter, the case settled.

Improper Practice Charges:

PERB ALJ Kafui Aku Bediako issued a favorable decision on an improper practice charge dealing with discovery issues. This case involves a Sergeant from Sullivan CF who was issued a Notice of Discipline related to an inmate escort. We had requested materials related to the NOD – including the interrogation transcript, phone records, and video footage – after the NOD was issued and prior to the agency level hearing. DOCCS denied our request, relying on their position that records need not be provided prior to a demand for arbitration being filed. At the hearing in January of 2016, DOCCS raised some additional concerns with releasing the records, including: slowing down the disciplinary process, facility safety, and privacy/confidentiality. The ALJ deemed DOCCS' interpretation of the case law in this area as incorrect. The ALJ found that NYSCOPBA's requests for records were reasonable and that DOCCS violated sections 209-a.1(a) and (d) of the Act by refusing to provide copies of the records requested.

Civil Service Law § 71 Case:

Pilgrim Psychiatric Center: On behalf of a Safety and Security Officer at Pilgrim Psychiatric Center, we submitted a letter to OMH requesting that his Civil Service Law Section 71 leave of absence be extended from one to two years due to patient assault. In the interim, the Member was notified that he would be terminated pursuant to CSL 71 on February 19, 2021. The member has also filed a grievance on this matter. The grievance was denied at Step 1 and has been appealed to Step 2. On his behalf, we filed a Taylor Law request for discovery with Pilgrim Psychiatric Center for a copy of the 250 Crime/Incident Report. On January 21, 2021, OMH provided us with discovery in response to our Taylor Law request. They also advised in writing that OMH supports only one (1) year of leave under CSL 71. We submitted a written request for reconsideration to OMH. However, Mike Izzano, Director of Employee Relations at OMH, advised Law Enforcement Vice President John Harmon that Counsel's office would not grant the 2-year leave under CSL 71. We have decided to challenge this determination by filing an Article 78 Special Proceeding. In the interim, in conjunction with VP Harmon, we were able to secure a temporary abeyance of the Member's termination until April 8, 2021 due to delays in treatment caused by the COVID-19 pandemic.

Sing Sing Correctional Facility: On January 6, 2021, the Member was advised by DOCCS Personnel that he was terminated pursuant to CSL 71. On January 13, 2021, we wrote to DOCCS Personnel and formally requested that they rescind the Member's termination as he had been returned to full duty effective January 1, 2021 through a Workers' Compensation IME and had also been returned to work full duty by his own physician as of January 3, 2021. We argued that given that these findings pre-dated the Member's termination date, he was wrongfully terminated and should have at least had his termination held in abeyance pending an EHS examination. In response, DOCCS Personnel obtained a copy of the State Insurance Fund's IME and subsequently rescinded the Member's termination. He has since returned to work.

COVID-19 Response:

Continue to hold weekly meetings between OMH and NYSCOPBA to address various COVID-19 related issues, along with other labor relations issues, disciplinary and otherwise, that arise.

Litigation

Statewide – Retiree Health Insurance Litigation (*NYSCOPBA v. State, et al.*, NDNY): On December 15, 2020, we received a decision from the New York State Court of Appeals, accepting the certified questions from the U.S. Court of Appeals for the Second Circuit for its review in the retiree health insurance case. This case was commenced in 2011 when NYSCOPBA, along with other unions, filed an action in federal court alleging breach of the Contract when New York State unilaterally increased the percentage of contributions that retired employees are required to pay for health insurance benefits in retirement. The complaint alleged that the State impaired Plaintiffs' contractual rights under the terms of their Collective Bargaining Agreement.

In a prior decision, the Second Circuit Court *reversed the grant of summary judgment* to the State of New York and referred the case to the New York State Court of Appeals for its opinion on the

breach of contract. In *CSEA v. New York*, the U.S. Second Circuit Court reviewed the U.S. District Court's grant of summary judgment for the Defendant. The question at hand was whether New York State either breached its contractual obligation to CSEA retirees by decreasing its contribution to healthcare premiums and whether passing legislation, which reduced the State's contribution to retirees' healthcare premiums. Rather than reaching a conclusion, the Second Circuit Court of Appeals chose to reverse the grant of summary judgment and certify several questions of law for the New York Court of Appeals to consider. In doing so, the Court stated that the State of New York should be afforded the opportunity to make several of its own determinations regarding the State's obligations going forward. As indicated, the New York Court of Appeals accepted the Certification. The Court felt it was appropriate to certify these questions because all four of the factors typically considered weighed in favor of certification. Specifically, the Court considered the following factors:

- (1) whether the New York Court of Appeals has addressed the issue when other New York court decisions are insufficient to predict how the Court of Appeals would rule;
- (2) whether the plain language of the statute/CBA indicates an answer;
- (3) a decision on the merits requires value judgments and important public policy decisions better left to the Court of Appeals; and
- (4) the certified questions will control the outcome of the case.

The Court found that all four factors weighed in favor of certification.

Statewide - Civil Service Promotional Exam Fees: GOER is attempting to appeal the Appellate Division, Third Department, decision confirming PERB's decision that the Department of Civil Service violated § 209-a.1 (d) of the Act when it unilaterally began requiring employees to pay a fee for promotional/transition examinations. The Court also granted PERB a judgment to enforce its order that the State make whole employees for any fees paid. By way of background, NYSCOPBA, along with other unions, filed an IP alleging that the State unilaterally changed its policy and procedure with respect to the fees charged for promotional civil service examinations. This IP went to a PERB hearing before an ALJ, to the full Board, back to the ALJ, to the Board for exceptions and now to the Appellate Division, Third Department. The decision means that the State can no longer charge a fee to NYSCOPBA members to take promotional/transitional exams, and that a number of NYSCOPBA members are entitled to reimbursement for past examination fees already paid. The State has the affirmative obligation to make the effected members whole. On December 16, 2020, GOER filed a Motion for Reargument and/or Leave to Appeal to the Court of Appeals. The Motion for Reargument alleges that in rendering the decision favorable to NYSCOPBA, the Appellate Division made errors of law. GOER argues that the decision improperly nullifies the statutory scheme enacted by the Legislature in Civil Service Law § 50 (giving DCS and DOB the sole authority to set application fees, as opposed to GOER negotiating such fees with unions through collective bargaining), and asks the Appellate Division to reconsider its decision on that basis. GOER's motion for Leave to Appeal to the Court of Appeals is not automatic, it is discretionary, so GOER will need to convince the Appellate Division to permit an appeal on this question of law to the highest court in New York State. We submitted an Affirmation in Opposition to the State's motion on February 1, 2021, and now await a decision

from the Court.

[Member] v. DOCCS: We filed an Article 78 proceeding on behalf of a Member, who was injured during a use of force at Sing Sing CF on June 1, 2018. DOCCS terminated the Member's employment on May 27, 2020, after only one year of cumulative workers' compensation leave. The Article 78 petition challenged DOCCS' definition of 'assault' and requested that the court give the Member a two-year leave of absence because he sustained an injury as a result of an inmate assault. We received the decision from Acting Supreme Court Judge David Weinstein on December 18, 2020, who denied the petition in its entirety based upon the recent decision of the Appellate Division, Third Department, in Matter of Froehlich v. New York State Department of Corrections and Community Supervision, 179 A.d.3d 1408 (appeal dismissed 35 NY3d 1031 (2020)), in which the court held that DOCCS' definition of "assault" as "an intentional physical act of violence directed toward an employee by an inmate or parolee," was rational. Here, the court found that the facts of this case fall squarely within the holding in Matter of Froehlich.

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

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

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

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

On October 9, 2020, Plaintiff filed a Notice of Appeal in the U. S. District Court of the Northern District of New York. This was an appeal of Judge Hurd's Decision dated March 22, 2019. On October 30, 2020, the NDNY issued a Certificate to the effect that the appeal was untimely. We anticipate the Second Circuit Court of Appeals will dismiss this appeal. Additionally, Plaintiff has now filed a Motion for Writ of Mandamus in the Second Circuit. The Appellate Division, Third Department has extended Plaintiff's time to file his appeal to March 7, 2021.

[Member] v. DOCCS: We filed an Article 78 proceeding on May 27, 2020, on behalf of the Member, who was injured during a use of force at Elmira CF on February 8, 2019. DOCCS terminated the Member's employment on March 5, 2020, after only one year of cumulative workers' compensation leave. The Article 78 petition challenged DOCCS' definition of 'assault' and requested that the court give the Member a two-year leave of absence because he sustained injury as a result of an inmate assault. We received the decision from Supreme Court Justice Andrew Ceresia on December 21, 2020, who denied the petition in its entirety based upon the recent decision of the Appellate Division, Third Department, in Matter of Froehlich v. New York State Department of Corrections and Community Supervision, 179 A.d.3d 1408 (appeal dismissed 35 NY3d 1031 (2020)), in which the court held that DOCCS' definition of "assault" as "an intentional physical act of violence directed toward an employee by an inmate or parolee," was rational. Here, the court found that the facts of this case fall squarely within the holding in Matter of Froehlich.

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

[Member] v. NYS DOCCS: This is a declaratory judgment action that was commenced as a result of DOCCS' refusal to reinstate a former Member pursuant to Section 71 of the Civil Service Law. The Member was found medically fit to perform his duties, but DOCCS required the Member to undergo the psychological evaluation required of new recruits. DOCCS then found the Member

to not be psychologically suited to be a correction officer trainee. DOCCS refused to provide us with the factual basis for its determination and refused to provide any of the documents considered in reaching its determination. Our position is that a former officer, seeking reinstatement pursuant to Section 71, has a constitutionally protected property interest in his or her right to reinstatement. We argued that it is a due process violation for DOCCS to depart from the plain language of Section 71 and use Correction Law § 8 to evaluate candidates for reinstatement. We also argued that it is a due process violation for DOCCS to refuse to provide the test results to a candidate for reinstatement. DOCCS has moved to dismiss our Complaint, or, in the alternative, convert the declaratory judgment action into an Article 78 Proceeding. The motion is returnable on November 12, 2020. We filed our opposition papers to the Motion on October 7, 2020. On January 20, 2021, we received a Decision denying the State's Motion to Dismiss. The State is considering filing a Notice of Appeal which must be filed by February 24, 2021. The State has an extension to April 7, 2021, to file its Answer.

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

[Member] (Green Haven) & NYSCOPBA v. DOCCS: The Member was issued a total of three NODs (May 17, 2019, December 10, 2019, and July 16, 2020) alleging more than one hundred combined AWOLs. The second and third NODs sought termination. The hearing for the May 17, 2019 NOD was scheduled for August 4, 2020 before Arbitrator Dennis Campagna. The December 10, 2019 NOD was assigned to Arbitrator Taylor, but had not yet been scheduled for hearing. The July 16, 2020 NOD was issued and immediately included within a settlement agreement for all three NODs. The matter settled for a one (1) year DEP, with no fine or loss of accruals or swapping privileges. On August 21, 2020, Director Shipley terminated the Member for violating the terms and conditions of his DEP. We filed two letters in objection to the termination, along with supporting documentation, and held a conference call with DOCCS. Director Shipley upheld the termination on August 28, 2020. On December 15, 2020, we filed an Article 78 proceeding to challenge the termination. We are waiting for a judge to be assigned. The State submitted an adjournment request on the return date, which was granted. The updated return date on this proceeding is April 9, 2021. The State's response is due April 2, 2021.

NYSCOPBA et al v. DOCCS and DCS (Paid Sick Leave Litigation): On January 15, 2021, we filed a lawsuit against DOCCS and the Department of Civil Service in Albany County Supreme Court alleging that NYSCOPBA members were improperly denied paid leave without charge to earned accruals under the law in New York when they were subjected to more than one State-

directed quarantine or an extended quarantine beyond 14 days for exposure to or infection with COVID-19. DOCCS has only provided, at most, one 14-day block of paid leave to NYSCOPBA members who have been quarantined. The hybrid Article 78/ declaratory judgment proceeding asks the court to declare that all employees of DOCCS are entitled to paid leave under the law for any and all state-directed mandatory or precautionary orders of quarantine or isolation and directing that effected employees be made whole for their losses. We await DOCCS and DCS's response, which is due by April 9, 2021.

Discipline

Interrogations: For the months of December 2020 through February 2021, we represented fifty-seven (57) members who were interrogated by DOCCS.

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

As of March 2, 2021, of the suspension cases for which we have requested review, the Master Arbitrator overturned sixteen (16) suspensions and upheld twenty-four (24) suspensions, and thirty-two (32) cases were settled.

Auburn Correctional Facility: The termination NOD in this case alleged various charges stemming from a domestic incident. The Member was charged with Criminal Obstruction of Breathing or Blood Circulation, Criminal Mischief, and Harassment. The Member accepted a settlement that included a suspension to date (approximately three months) along with other conditions.

Clinton Correctional Facility: This officer is charged with misconduct for allegedly touching an inmate in a playful manner. Additionally, she is charged with reaching her hands towards the pocket of the inmate and other charges relating to the same incident. This matter has been assigned before Arbitrator Timothy Taylor who has tentatively scheduled this matter for a hearing on February 17, 2021. Prior to the hearing, the Member decided to resign from her position for personal reasons. She received one month of back pay.

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

Coxsackie Correctional Facility: This Member received a Notice of Discipline for calling in a false COVID positive test result. This matter was heard at expedited arbitration on December 3, 2020. Closing Briefs were submitted on December 11, 2020. On December 28, 2020, we received the arbitrator's award which found the Member guilty and terminated his employment.

Downstate Correctional Facility: The NOD alleges that the member was insubordinate in that she failed to comply with an order to provide a memorandum to a Sergeant regarding why she was not in compliance with the Uniform/Equipment/Appearance directive due to her fingernails being painted; that the member was insubordinate in that she left the Sergeant's office despite a direct order for her not to leave; and that the member was insubordinate in that she failed to speak to the Watch Commander on the telephone at the Sergeant's direction. The NOD seeks a fifteen-day suspension without pay. This matter was heard on January 7, 2021, before Arbitrator Ed Battisti. Closing briefs were submitted on February 8, 2021. We await the decision of the Arbitrator.

Downstate Correctional Facility: The Member received a NOD on October 8, 2019, following an incident that occurred on September 9, 2019. On that date, she allegedly operated a motor vehicle under the influence of alcohol during which time she struck a motorcyclist causing personal injuries and then left the scene of the accident. She has received various criminal charges, most notably felony charges for vehicular assault in the 2nd degree and leaving the scene of a serious physical injury accident. DOCCS is seeking dismissal. The Member is currently suspended without pay. This matter has not been appealed to arbitration since there has been no agency level decision as of yet. The matter will not be scheduled for a hearing until the underlying criminal charges are resolved, which may lead to automatic dismissal from service by operation of law upon a felony conviction. The Member's criminal matter remains unresolved at this point as the courts in Dutchess County were closed for a significant time due to COVID-19. In the past month, she was arraigned in Superior Court. She currently has a tentative trial schedule for April 2021; however, her criminal attorney believes it will likely be delayed further.

Edgecombe Correctional Facility: The NOD alleges that the Member engaged in an inappropriate sexual relationship with an inmate and had inappropriate and/or unauthorized contact with an inmate via telephone calls and text messages. It is also alleged that the Member failed to report another inmate that had a romantic interest in him and that he provided false/misleading information at his interrogation by OSI on March 3, 2020. He was suspended without pay effective March 31, 2020. This matter has been appealed to arbitration. Arbitrator Jay Siegel is assigned. The first day of hearing was held on February 10, 2021. The second day of hearing, scheduled for February 25, 2021, was cancelled due to a family emergency for DOCCS counsel. We are in the process of rescheduling the second day.

Fishkill Correctional Facility: The NOD alleges that the Member pushed and/or struck an inmate in the head and/or chest area and provided false documentation/testimony regarding same. The hearing was held before Arbitrator Tim Taylor on the following dates: September 3, October 19, October 23, and November 24, 2020. After the final day of hearing, the parties rested and agreed upon a briefing schedule whereby the closing briefs would be submitted to the Arbitrator by end of day on December 23, 2020. On January 28, 2021, Arbitrator Taylor rendered his decision

finding the Member guilty of all but one charge and terminated his employment with the Department. The Arbitrator determined that the Member had used unjustified and excessive force when he shoved an inmate to the floor who had been asking about a callout and then lied in his paperwork and to OSI regarding it. The use of force resulted in the housing unit being in a state of uproar that required three responses to the unit.

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

Fishkill Correctional Facility: The NOD alleges that on July 26, 2018, while on duty, the Member submitted a false and/or misleading official document regarding a Use of Force with an inmate. The matter was assigned to Arbitrator Timothy Taylor and a hearing was held on January 20, 2021 at the Albany Training Academy. The second hearing date was held on February 22, 2021. Closing arguments were heard by Arbitrator Taylor and the parties will be submitting cases to the Arbitrator, if any, by March 8, 2021.

Fishkill Correctional Facility: This Member has been charged with failing to comply with a direct order when she was ordered to work mandatory overtime and failing to comply with the directions and leaving the facility. This matter has been assigned to Arbitrator Monte Klein. The hearing has been scheduled for a virtual hearing on April 13, 2021.

Fishkill Correctional Facility: The Member received a NOD for utilizing force against an inmate without exercising caution and considered judgment in determining the amount of force that was necessary. Additionally, he was accused of submitting an inaccurate official report in violation of DOCCS' employee's manual as well as other charges relating to the basic facts of the alleged incident. Arbitrator Joel Douglas has been assigned to this case. This matter is now settled. The Member executed a settlement agreement accepting a \$2,000.00 fine and a one-year DEP, beginning on October 22, 2020.

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

Greene Correctional Facility: The Member received a Notice of Discipline, dated April 11, 2019, for not being attentive to her assigned duties. This matter was adjourned to March 25, 2021.

Greene Correctional Facility: The Member received a Notice of Discipline, dated June 6, 2019. This matter was settled at arbitration on February 11, 2021.

Green Haven Correctional Facility: The Member received a Notice of Discipline for having an inappropriate relationship with inmates. This matter was heard at arbitration on January 20, 21, and 22, 2021, and concluded on February 8, 2021. Closing briefs are due on March 12, 2021.

Green Haven Correctional Facility: The Member was issued a notice of discipline on August 3, 2020. He is currently suspended without pay. The NOD alleges that he used excessive force in striking an inmate in the back of the head with his elbow and pushing the inmate's head into steel bars while in mechanical restraints. It is also alleged that he improperly used his body worn camera, that he completed his use of force paperwork based on information given to him by other staff members, that he left the officer's station unattended, and that he provided false/misleading information to his sergeant on the date of the incident and to OSI at his interrogation. The Member was issued a separate NOD on July 22, 2020 alleging that he was AWOL from July 6, 2020 to July 20, 2020 and that he was also insubordinate on those dates for failing to comply with a supervisor's direct order for him to appear in person at the facility (he was on administrative leave at the time) to be issued paperwork. Both NODs were appealed to arbitration. The July 22, 2020 NOD was assigned to Arbitrator Jay Siegel and was scheduled for hearing on March 11, 2021. The August 3, 2020 NOD was assigned to Arbitrator Robert Reden and was scheduled for hearing on March 2, 2021. On February 8, 2021, the Member resigned for personal reasons.

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

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

Marcy Correctional Facility: On September 30, 2020, the Member was issued a Notice of Discipline alleging failure to conduct the count during his shifts on February 10-11, 2020. It is also alleged that on September 15, 2020, he was reading a book on duty, failed to complete a round, but recorded that the round had been completed, and left his assigned post without proper relief. The Member was suspended without pay on September 24, 2020. This matter has not been appealed to arbitration since there has been no agency level decision as of yet. This matter is now settled.

Marcy Correctional Facility: The Member was issued a Notice of Discipline for alleged possession of contraband on facility grounds, i.e. an M-80 or similar such device, that was found during a frisk of his personal vehicle on facility grounds. The NOD also contains charges alleging that the Member refused to cooperate with OSI in their efforts to frisk his vehicle. He was suspended without pay effective January 22, 2020. This matter is now appealed to arbitration. Arbitrator McCarthy is the assigned arbitrator. Arbitration went forward on October 30, 2020.

Briefs were submitted on December 2, 2020. On December 22, 2020, Arbitrator McCarthy found the Member guilty on all charges and awarded a nineteen (19) month suspension without pay.

The Member was issued another, related Notice of Discipline on November 4, 2020 for allegedly introducing illegal contraband into Marcy Correctional Facility and for possessing and using an illegal substance on January 16, 2020, both of which are plead in the NOD as Class A Misdemeanors. The Member was also re-suspended for this alleged conduct on October 28, 2020. This matter was appealed to arbitration and Arbitrator Gelernter was assigned. The hearing is scheduled for April 8, 2021.

Manhattan Psychiatric Center: The Member received a Notice of Discipline dated December 2, 2020 alleging that he misused his state-issued travel credit card and wrongfully obtained funds that he used to obtain personal items and services. He is also charged with failing to appear for his interrogation on three separate occasions. This matter has not been appealed to arbitration since there has been no agency level decision as of yet. The Member is currently out on Workers' Compensation leave.

Mid-Hudson Forensic Psychiatric Center: The Member received a Notice of Discipline for closing a door on a patient and causing injury to the patient. This matter was scheduled for arbitration on January 8, 2021. At the request of the Justice Center, this matter has been adjourned to April 12, 2021, and will be held via videoconference.

Mid-Hudson FPC: The NOD in this case alleges that the Member (an SHTA) used an improper technique and failed to follow proper protocols in restraining an assaultive patient and dealing with that patient's refusal to get out of bed. A hearing in this matter is scheduled for March 10-11, 2021, before Arbitrator Rice.

Mid-Hudson Forensic Psychiatric Center: The NOD, dated March 2, 2018, alleges that the Member inappropriately wrapped his arm around a patient's neck while performing a manual restraint. This matter was appealed to arbitration on August 18, 2020. Arbitrator Louis Patack was assigned but recused himself as he is only handling videoconference hearings at this point. Arbitrator Trachtenberg is now assigned. The hearing is scheduled for June 2-4, 2021.

Mid-Hudson Forensic Psychiatric Center: The NOD alleges that the Member struck the service recipient, failed to report abuse of a service recipient by other staff, failed to alert a supervisor, and failed to provide proper medical care to a service recipient. The matter has been assigned to Arbitrator Joel Douglas and was scheduled for hearing on May 11, 2020. In the midst of the stay-at-home order during the COVID-19 pandemic, it was agreed between the parties that the Member would be returned to the payroll until such time as his arbitration could be held in-person. The Member has criminal charges pending arising from the same events, including a felony charge, which remain unresolved at this time. The disciplinary matter was re-scheduled for hearing dates on November 30th and December 18th, 2020. However, the disciplinary matter settled, for a demotion and return of three (3) months of back pay, prior to the first hearing date. Following the Member's return to work, the facility attempted to implement a "safety plan" for him that included him being limited to working on wards with video cameras, preventing him from transporting patients on elevators, and requiring that he attend weekly supervisor meetings. We argued that

these conditions were never negotiated and thus, were not included in the settlement agreement. Our office worked with Vice President John Harmon to reach out to OMH on this issue, and were successful in having the “safety plan” rescinded.

Mid-State Correctional Facility: The Member received a Notice of Discipline for domestic violence. This matter was heard at arbitration on February 23, 2021. Closing Briefs are due on March 25, 2021.

New York State Museum (NYSED): The Member was issued a Notice of Discipline alleging that he improperly used his personal cell phone while on duty on multiple occasions, committed insubordination and sexually harassed a female coworker. The Member was suspended without pay and the case was submitted for suspension review. We were successful in arguing that NYSED failed to meet the probable cause standard in its suspension of the Member. As a result of this decision, the Member will be restored to the payroll and have his leave credits restored retroactive to the date of suspension. This matter is now appealed to arbitration. Arbitrator Cassidy was assigned, and the hearing is scheduled for May 11-13, 2021.

Ogdensburg Correctional Facility: The Member received a Notice of Discipline for getting involved in an off-duty incident with a civilian, while in uniform, and calling the civilian a derogatory name. The NOD also charges the Member with either leaving the Facility without authorization or using his cell phone while in the Facility. This matter was scheduled for expedited arbitration on March 24, 2021. In the interim, the Member resigned.

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

Sing Sing Correctional Facility: On October 26, 2020, the Member was issued a Notice of Discipline for allegedly falsifying medical documentation on various dates to obtain workers' compensation benefits. The NOD also includes a charge outlining that the Member has been charged criminally with nine (9) counts of Offering a False Instrument for Filing (Intent to Defraud) in the 1st Degree, which is a Class E Felony. The Member was suspended without pay on September 30, 2020. The criminal charges remained unresolved at this time. He was issued another NOD on November 16, 2020 for failing to report acquisition and disposition of a firearm. The Member has resigned from his position with DOCCS.

Sullivan Correctional Facility: The Member was issued an NOD for failing a urinalysis test on July 31, 2020. DOCCS is seeking his dismissal from service. The arbitration of this matter occurred on January 21, 2020, before Arbitrator Jay Siegel. Post-hearing briefs were submitted on February 26, 2021. We await a decision from the arbitrator.

Taconic Correctional Facility: The Member received a NOD for making telephonic contacts with two parolees. We had our first hearing on June 11, 2019. We believe that Charge 1 is timed

out and a portion of Charge 2 is timed out. DOCCS has taken the position that the officer's actions constitute the crime of official misconduct. We have made a written motion to dismiss Charges 1 and 2 on the grounds that these Charges are barred by the nine-month limitation and on the basis that the Charges lack the specificity required by Section 6.2 (a) of the CBA. The Arbitrator directed DOCCS to respond to our motion by June 21, 2019. A second hearing was held on July 9, 2019, for consideration of the motion to dismiss. Closing briefs were submitted on August 5, 2019. On September 9, 2019, we received the Arbitration Award. Arbitrator Lande dismissed Charges 1 and 2 of the NOD as untimely and for failing to meet the specificity requirements of the CBA. The Member received a 75-day suspension for lying at this Interrogation. DOCCS has not yet reinstated the Member and we have been told that the Arbitration Award is being reviewed by Counsel's Office. On September 26, 2019, we filed a proceeding, pursuant to CPLR Article 75, to confirm the arbitration award. On February 12, 2020, we received a Decision from Justice Corcoran confirming the arbitration award and dismissing the State's motion to vacate the award. DOCCS has not put the Member back to work and we were told that the Decision is at Counsel's Office for review. On June 3, 2020, the State filed its Notice of Appeal. The State's Record and Brief were due on December 15, 2020. Our Brief was filed on December 29, 2020. This case has been scheduled for the April 2021, Term of the Court.

Upstate Correctional Facility: The NOD alleges that the member made a racist statement in front of multiple coworkers. The matter was assigned to Arbitrator Samuel Butto and was heard on February 26, 2021. The member admitted to making the statement in his DOCCS memorandum; therefore, this was a penalty only hearing. After opening statements were made, the member resigned from service in exchange for one (1) month of back pay.

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

Justice Center

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

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that the Member engaged in physical abuse of a service recipient (Category 3) by grabbing and/or striking the service recipient. Our request for amendment was denied. The initial pre-hearing conference was held on March 2, 2021. This matter is scheduled for a hearing on May 6, 2021.

Mid-Hudson Forensic Psychiatric Center: The Justice Center report of substantiated finding alleged that the Member engaged in physical abuse of a service recipient (Category 2) by striking the service recipient. His prior disciplinary matter with respect to these charges was settled. The hearing in this matter was scheduled for February 24, 2021. This matter settled for a Category 3 prior to hearing.

Improper Practice Charges

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

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

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

Statewide – DOCCS Light Duty: On January 11, 2019, we attended a pre-hearing conference at PERB before ALJ Mitchell to address this Improper Practice charge filed when DOCCS began assigning light duty officers to two new types of posts, construction and one on one watches. This IP alleges that these new posts change the long-standing parameters for light duty post (i.e. – counted toward minimum staffing – not an extra). At the conference we explained the arguments in our case. DOCCS agreed to review our arguments now that they better understood them and to see if any potential settlement could be reached. The matter was placed on hold. The matter has since been transferred to ALJ Rita Strauss, who has scheduled another pre-hearing conference for April 28, 2020. This matter was scheduled for a hearing on June 11, 2020. The matter was heard by Judge Strauss via videoconference on September 24, 2020. The Union was able to present its entire case-in-chief, but the State needed additional time to present its case. The matter was heard again on February 23, 2021, during which time the State presented its witnesses and case. At the conclusion of the second day of hearing, the parties rested and the Judge decided upon a briefing schedule. The parties are to submit their closing briefs within sixty (60) days after receiving the final day's transcript.

Improper Practice Charge: PERB ALJ Kafui Aku Bediako issued a favorable decision on an improper practice charge dealing with discovery issues. This case involves a Sergeant from Sullivan CF who was issued a Notice of Discipline related to an inmate escort. We had requested materials related to the NOD – including the interrogation transcript, phone records, and video footage – after the NOD was issued and prior to the agency level hearing. DOCCS denied our request, relying on their position that records need not be provided prior to a demand for arbitration being filed. At the hearing in January of 2016, DOCCS raised some additional concerns with releasing the records, including: slowing down the disciplinary process, facility safety, and privacy/confidentiality. The ALJ deemed DOCCS' interpretation of the case law in this area incorrect. The ALJ found that NYSCOPBA's requests for records were reasonable and that DOCCS violated sections 209-a.1(a) and (d) of the Act by refusing to provide copies of the records requested.

Cancellation of Executive Assembly Meeting: On January 12, 2021 we filed an Improper Practice Charge with PERB alleging that DOCCS violated the Taylor Law by cancelling NYSCOPBA's Employee Organizational Leave (EOL) for the October Executive Assembly meeting. The allegations in the Improper Practice Charge maintain that Director Shipley's letter cancelling the meeting interferes with NYSCOPBA's right, ability and duty to pursue the best interests of its members by allowing NYSCOPBA to meet on important issues that affect its membership and undermined NYSCOPBA's communications with its members concerning the safety of DOCCS facilities and all that NYSCOPBA accomplishes to help ensure that its members are safe at work. Additionally, by cancelling the meeting six days in advance and not providing an opportunity for NYSCOPBA to have the required meeting to discuss important issues, it constitutes domination and interference in the internal affairs of the Union in violation of the Act. A conference has been scheduled before the Administrative Law Judge on May 5, 2021 at 10 am.

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

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

Coxsackie CF (Cancellation of Swaps): On December 31, 2020, we filed an improper practice charge with PERB in response to DOCCS' unilateral suspension of swapping privileges at Coxsackie CF beginning on December 26, 2020. PERB scheduled an initial conference via telephone before ALJ Linda Keller for April 8, 2021.

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

[Former Member] v. NYSCOPBA: On November 25, 2019, PERB received an improper practice charge filed against NYSCOPBA by a former Member. The former Member alleges that NYSCOPBA violated its duty of fair representation to her when, among other things, they improperly trained their union stewards on what to do if a member approaches them who has committed misconduct that might also constitute a criminal offense. We answered the charge on behalf of NYSCOPBA. We appeared for an initial conference before PERB on March 25, 2020 and then a subsequent conference on April 30, 2020. The hearing in this matter was scheduled for September 1, 2020. A pre-hearing conference was held on August 19, 2020, at which time the former Member informed Judge Brittany Sergent that she was requesting an adjournment of the hearing as she was retaining counsel and intended to amend her charge. The former Member was advised by Judge Sergent she would have to file a motion to amend the charge. The hearing was adjourned to January 20, 2021. A pre-hearing conference was held on November 5, 2020. The former Member retained private counsel. The evening prior to the pre-hearing, opposing counsel submitted a motion for leave to amend the improper practice charge. At the November 5, 2020 pre-hearing conference, the hearing scheduled for January 20, 2021 was adjourned without date pending the resolution of the motion to amend. Judge Sergent advised the parties that she would consider the motion and then provide the Union a date upon by which to respond and oppose the motion. Judge Sergent subsequently, on November 10, 2020, wrote to the parties advising that the former Member's attorney would need to make an offer of proof on the issue of timeliness for the original charge and the amended charge. The former Member's offer of proof was submitted on December 2, 2020. The Union's response was submitted on January 4, 2021. On January 12, 2021, upon reviewing the parties' papers on the offer of proof, Judge Sergent ruled that a hearing was not necessary in this matter. However, Judge Sergent provided the parties the opportunity to submit briefs on or before February 12, 2021. We filed a brief on behalf of the Union on February

12, 2021. The Charging Party's attorney declined to file a brief. We are now awaiting a decision from Judge Sergent.

Helen Hayes Hospital: On August 5, 2019, we appeared at a PERB Conference for a Member. During the conference, the ALJ stated that we had established a prima facie case that the employer terminated the Member based upon union activity. The ALJ directed the employer to investigate whether the Member could be reinstated. By way of background, on May 10, 2019, we filed an improper practice charge on behalf of the Member against Helen Hayes Hospital. The Member received a temporary appointment to the position of Security Services Assistant, Helen Hayes Hospital, effective May 15, 2015. Notwithstanding the fact that she had been a temporary appointment, the Member continued service at Helen Hayes Hospital from May 2015 through April 23, 2019, when she was abruptly discharged. The Member filed her first grievance on March 25, 2019, regarding shift selection. The Member then filed her second and third grievances on April 23, 2019 – the same date as her termination from Helen Hayes Hospital. We alleged that the termination was to interfere with, restrain, and retaliate against the Member for exercising her guaranteed rights under the *Taylor Act*. This case is on hold until April 7, 2021.

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

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

NYSED New York State Museum – Cultural Education Center: We filed an Improper Practice Charge alleging a failure to negotiate regarding a mandatory subject of bargaining. It is alleged that NYSED unilaterally transferred unit work from Security Officers represented by NYSCOPBA to non-unit, contract security officers in violation of the Taylor Law when it reassigned the duty of canvassing for overtime for unit Security Officers. Prior to August 6, 2020, only unit Security Officers canvassed for overtime for other unit Security Officers. Contract security officers did not perform those duties. This matter was sent out for filing on October 1, 2020. The State's Answer was due on December 2, 2020. The initial pre-hearing telephone conference with PERB Judge Sergent was held on December 21, 2020. This matter is currently on hold for sixty (60) days, until April 22, 2021. In the interim, we have reached tentative terms on a settlement agreement. We drafted a proposed Stipulation of Settlement, which is currently with GOER for review.

Otisville Correctional Facility: This office filed an Improper Practice Charge alleging retaliation and interference against various supervisory staff at Otisville CF for discouraging NYSCOPBA

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

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

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

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

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

Title IX: SUNY sent President Powers and Law Enforcement Vice President Harmon a letter indicating that it needed to adopt regulations relating to sexual harassment claims in order to comply with Federal regulation and not lose Federal funds. The regulation is not clear but it may change the manner in which a sexual harassment claim is processed. We helped VP Harmon with a response whereby NYSCOPBA set forth that we do not believe the regulation affects NYSCOPBA members. We requested confirmation that the Title IX regulations do not apply to members of the Security Services Unit employed at SUNY, and, if not, we requested negotiations on all matters that would affect terms and conditions of employment for NYSCOPBA members. We did make clear that NYSCOPBA does not agree to any unilateral changes in the NYSCOPBA disciplinary procedures. On December 10, 2020, we filed an improper practice charge with PERB challenging SUNY's unilateral change in terms and conditions of employment and its failure to respond to NYSCOPBA's demand to negotiate mandatory subjects of negotiation. A conference call has been scheduled on April 26, 2021 at 2 p.m. before Administrative Law Judge Linda Keller.

Contract Enforcement

From December 2020 through February 2021, one-hundred and six (106) cases were reviewed in Alternate Dispute Resolution conferences. We settled nineteen (19) cases and received decisions on seventeen (17) cases. We appealed six (6) new grievances to arbitration (in addition to COVID grievances below). We currently have ten (10) cases pending before the arbitrator, which should be decided by the next conference.

COVID Grievances (Statewide): We are working with the Grievance Department and having discussions with GOER about resolving grievances for members who were not granted leave with pay, without charge to accruals, for their first DOH or DOCCS-directed quarantine. During the month of January 2021, all COVID grievances (288) were appealed to arbitration.

Form Grievance for Multiple Quarantines: We drafted a form grievance for members who have undergone multiple State-directed quarantines but who have not received paid leave without charge to accruals after their first quarantine.

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

Overtime at COVID-19 Vaccination Sites: We assisted the Grievance Department in drafting a grievance for members assigned to perform volunteer work at DOH Mass Vaccination sites who are being paid at overtime rates below their pay grade.

Sherman Copeland (Bedford Hills CF): We investigated a memorandum issued to the officer requiring him to don a body worn camera for the entirety of his work shift. This memorandum was issued as a result of a PREA complaint. We drafted a grievance on behalf of the officer.

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 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 he is required to work mandatory overtime which takes him inside of the facility. The initial hearing was held on January 17, 2019, at which one of the Member's doctors testified. The second hearing scheduled was held on August 28, 2019, at which the Member and a second doctor testified. Closing briefs were due on November 22, 2019. On July 10, 2020, we received a final Determination finding that the Member was not permanently disabled. The medical testimony from both sides was that the Member was permanently disabled from performing the duties of correction officer. The Member, however, continued to work full duty, and the Hearing Officer held that he was not permanently disabled. The Hearing Officer disregarded the report of the System's expert finding the report was not fact based. On August 24, 2020, we filed an Article 78 Proceeding to review the administrative determination. This

proceeding was returnable on October 30, 2020. We are waiting for an Order of Transfer to the Appellate Division. On November 10, 2020, we received the order transferring this case to the Appellate Division, Third Department. Our Record and Brief must be filed by May 9, 2021.

Greene Correctional Facility: This is a disability retirement matter. The initial hearing was held on January 17, 2018. The testimony of the Member's doctor was taken on July 31, 2019. The matter has been continued for the submission of additional medical record and for the testimony of the System's doctor. The System rested without call its physician. Closing briefs were filed on November 4, 2019. On July 30, 2020, we received a Final Determination. Both the Applicant's doctor and the System's IME physician agreed that the Member was not able to perform the duties of correction officer. The Hearing Officer held that the Member, because he continued to perform his full duties, was not permanently disabled. It appears that the System is going to take the position that if an employee continues to work, that employee is not disabled from performing his or her duties. We filed an Article 78 Proceeding seeking to vacate the Final Determination on November 2, 2020. The Order of Transfer to the Appellate division was entered on January 12, 2021. Our Record and Brief must be file by July 11, 2021.

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

Civil Service Law Cases

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

Bare Hill Correctional Facility: DOCCS advised the Member that his employment will be terminated pursuant to Civil Service Law Section 71 on February 4, 2021. We submitted a letter to DOCCS personnel objecting to his termination for several reasons, and reviewed the officer's attendance and use of force records, and directed him to NYSCOPBA's retirement specialist. DOCCS terminated the Member's employment pursuant to CSL 71 on February 4, 2021.

Capital District Psychiatric Center: We reviewed this Civil Service Law Section 71 matter on behalf of the Member (a Safety and Security Officer). He received correspondence advising him that he would be terminated on February 26, 2021 due to being continuously absent on Workers' Compensation leave for a year. On Thursday, February 25, 2021, the Member returned to work light duty.

Fishkill Correctional Facility: The Member was previously retired from DOCCS and then returned to work. He was placed on leave pursuant to Civil Service Law Section 72 after he was observed limping and refused to use stairs at the facility. He was subsequently found unfit by

EHS. An appeal was filed to preserve his right to a hearing. There is no hearing scheduled as of yet.

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

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

Gowanda Correctional Facility: The Member was examined by EHS on November 27, 2020 pursuant to Section 21.3 of the Civil Services Rules and Article 14.11 of the contract. She was found unfit and timely appealed the decision. The matter has now been referred to DOCCS Labor Relations for assignment. A. Michael Braccini is the assigned labor representative. No hearing has been scheduled as of this time. The Member is currently in the process of being transferred to Wyoming Correctional Facility. She is considering a return to light duty pending upcoming surgery. We continue to monitor this case.

Ogdensburg Correctional Facility: This Member was placed on involuntary leave pursuant to Civil Service Law Section 72. Sadly, on December 27, 2020, he passed away.

Pilgrim Psychiatric Center: On behalf of the Member, we submitted a letter to OMH requesting that his Civil Service Law Section 71 leave of absence be extended from one to two years due to patient assault. The Member has been notified that he will be terminated pursuant to CSL 71 on February 19, 2021. The Member has also filed a grievance on this matter. The grievance was denied at Step 1 and has been appealed to Step 2. On his behalf, we filed a Taylor Law request for discovery with Pilgrim Psychiatric Center for a copy of the 250 Crime/Incident Report. On January 21, 2021, OMH provided us with discovery in response to our Taylor Law request. They also advised in writing that OMH supports only one (1) year of leave under CSL 71 for the Member. We submitted a written request for reconsideration to OMH and are awaiting a response. However, Mike Izzano, Director of Employee Relations at OMH, advised Law Enforcement Vice President Harmon that Counsel's office would not grant the 2-year leave under CSL 71. We have decided to challenge this determination by filing an Article 78 Special Proceeding. In the interim, in conjunction with VP Harmon, we were able to secure a temporary abeyance of the Member's termination until April 8, 2021 due to delays in treatment caused by the COVID-19 pandemic.

Rochester Psychiatric Center: The Member was placed on an involuntary leave of absence pursuant to Section 72 of the Civil Service Law after reporting a sleep disorder to the administration at RPC that would cause her to fall asleep without warning. She was evaluated by

EHS, who found her unfit for duty until such time as she could be evaluated by her sleep specialist. Her treatment has been delayed by the COVID-19 pandemic. On behalf of the Member, we appealed the involuntary leave of absence and the EHS determination, to preserve her right to a hearing. The Member submitted a return to work note on or about November 10th, 2020. She was seen by EHS on December 1, 2020 and was found fit. She has returned to work. We are in the process of scheduling a hearing on this matter. We are also engaging in settlement discussions with OMH.

Shawangunk Correctional Facility: The Member was placed on involuntary leave pursuant to Civil Service Law section 72 because of severe reaction to OC spray. The member refused to participate in OC spray training. We appealed that determination and demanded a hearing. On January 29, 2021, we received a decision denying the Member's appeal. The hearing officer found that should the Member come into contact with OC spray, during any kind of disruption, she might be incapacitated from bronchospasm and/or an angioedema attack, which would render her ineffective to assist and further that she would become a liability to her fellow officers. He found that if DOCCS returned her to duty, with her current condition, she would create an unnecessary burden of liability to herself and those who work alongside her. The hearing officer further found that the Member should remain on involuntary leave until she can produce medical evidence that she can return to duty with no limitations. We are researching a challenge to this decision; possibly a complaint under the State Human Rights Law for failure to accommodate.

Sing Sing Correctional Facility: On January 6, 2021, the Member was advised by DOCCS Personnel that he was terminated pursuant to CSL 71. On January 13, 2021, we wrote to DOCCS Personnel and formally requested that they rescind the Member's termination as he had been returned to full duty effective January 1, 2021 through a Workers' Compensation IME and had also been returned to work full duty by his own physician as of January 3, 2021. We argued that given that these findings pre-dated the Member's termination date, he was wrongfully terminated and should have at least had his termination held in abeyance pending an EHS examination. In response, DOCCS Personnel obtained a copy of the State Insurance Fund's IME and subsequently rescinded the Member's termination. He has since returned to work.

Southport Correctional Facility: The Member was placed on involuntary leave pursuant to Civil Service Law Section 72. He was found unfit at EHS on June 1, 2020. That determination has been appealed and a hearing requested. The Member attended EHS examination on September 14, 2020, after which he was once again found unfit. We appealed this determination as well on September 30, 2020. The Member is considering pursuing a hearing at this time and is in the process of speaking with his doctors to determine whether they will testify on his behalf. He may also submit another return to work note in the interim, and undergo another evaluation by EHS in the hopes of being found fit for duty.

St. Lawrence Psychiatric Center: This Member was taken out of work and placed on an involuntary leave of absence pursuant to Civil Service Law Section 72. EHS found the Member unfit for duty. He timely appealed the involuntary medical leave of absence. He submitted a return to work note. He subsequently attended an EHS examination and was returned to work. This matter is now settled.

SUNY Downstate: We were asked to review this matter on behalf of a Member that was scheduled to be terminated pursuant to Civil Service Law Section 73 on February 16, 2021 for being out of work continuously for one year on a non-occupational injury. SUNY Downstate offered a pre-termination hearing to the Member. We preserved his right to the hearing in the event he wanted to proceed. However, upon speaking with the Member, he advised us that he is unable to return to work at this time. Accordingly, he was terminated effective February 16, 2021. He may consider applying for reinstatement in the future if he recovers from his disability.

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

General

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

Anderson v. Osborne, et al (SDNY 17 CV 539): NYSCOPBA was recently made aware of a decision issued in a federal civil rights lawsuit out of the Southern District of New York. An inmate, formerly incarcerated at Green Haven Correctional Facility, filed a lawsuit against many DOCCS employees, including four current or former NYSCOPBA members, alleging that they used excessive force against the inmate in April 2015. The Attorney General's office represented the defendant correction officers and correction sergeant at trial in February 2020. The jury trial resulted in a verdict in favor of the inmate: compensatory damages in the amount of \$75,000, as well as punitive damages of \$275,000, \$125,000, \$125,000, and \$50,000, against the individual defendants. Neither NYSCOPBA nor the law firm had been involved in this matter because DOCCS never disciplined the sergeant or officers for the alleged April 2015 incident. Criminal charges were never filed. Only this civil lawsuit was filed. DOCCS Acting Deputy Commissioner and Counsel, Cathy Sheehan, contacted our office last month and advised that DOCCS would *not* be indemnifying the sergeant and officers for the jury awards, leaving them personally liable for the damages awards. We had extensive communication with DOCCS about this issue and began drafting a lawsuit against DOCCS seeking the indemnification of these officers and sergeant. The threat of a lawsuit, coupled with concrete examples of DOCCS indemnifying in similar situations in the past, and targeted pressure on the AG's office, resulted in DOCCS changing course and agreeing to indemnify the officers and sergeant. Therefore, the defendants will no longer be personally responsible for the damages awarded by the jury.

FAQ - Know Your Rights: When You've Been Civilly Sued by an Inmate: We drafted a FAQ after NYSCOPBA learned of the *Anderson v. Osbourne et al* indemnification issues. The FAQ document covers members' rights to representation and indemnification under New York Public Officer's Law § 17 if they have been civilly sued by an inmate, including how to invoke those rights and in what circumstances those rights are limited. It also covers recommended questions

for members to ask the Assistant Attorney General assigned to represent them, and how to request a private attorney under certain circumstances.

Comments to Continuity of Operations Plan for a State Disaster Emergency Involving a Communicable Disease: We are working with Executive Vice President Kevin Donnelly and Law Enforcement Vice President John Harmon preparing responses to the Departments, Agencies, Boards and Divisions' Continuity of Operations Plan for a State Disaster Emergency Involving a Communicable Disease where NYSCOPBA represents members in the Security Services Unit.

COVID-19 FAQ: We drafted a Frequently Asked Questions document for stewards and members answering various questions related to use of accruals during different types of quarantines, travel restrictions, workers' compensation, and returning to work from quarantine.

COVID MOU at SUNY: State University of New York (SUNY) has entered into mandatory COVID testing agreements with each bargaining unit. We have assisted Executive Vice President John Harmon in negotiations with and the review of the Memorandum of Understanding (MOU) between DOCCS and SUNY. On December 31, 2020 we reached an agreement with SUNY. The terms of the agreement make sure that SUNY utilizes self-administered saliva tests, short swab rapid tests or other tests selected by the campus. If the campus elects to utilize long swab testing, employees will not be mandated but may be asked to volunteer for the test. Additionally, the testing shall be conducted without any cost to the employee.

DCJS Regulations: We reviewed a letter that a former Member received from DCJS informing the former Member that his peace officer basic training certification has been invalidated. We researched the DCJS regulations on this topic. Any member who resigns or retires with a pending NOD seeking their termination from employment is categorized under the regulations as ceasing to serve DOCCS "due to incompetence or misconduct," which invalidates their peace officer basic training certification.

DOH Quarantine Guidelines: We reviewed new DOH quarantine guidelines dated December 26, 2020, and for individuals who have been exposed to COVID-19 but are asymptomatic, and the DOH permits quarantine to end after 10 days, rather than 14 days. We communicated with GOER about the guidance and GOER advised that whether DOCCS employees are directed to quarantine for 14-days or 10-days will be up to the county health department where the facility is located.

DOL Quarantine Leave Guidance: We reviewed and reported on newly released guidance by the Department of Labor regarding Quarantine Leave that appears to expand eligibility for the statutory sick leave for some instances of quarantine. We contacted DOCCS and GOER in an effort of gather more information about if and how agencies plan to implement the DOL guidance, but have not received direct answers from either entity.

Employment Verification: We investigated an employment verification letter provided by DOCCS on behalf of a Member to ensure its accuracy.

FOIL Appeal: On May 7, 2020, we submitted a FOIL request pursuant to the New York State Public Officers Law seeking information regarding the number of employees and patients at OMH

who have had or had the COVID-19 virus. We also seek information concerning the number of confirmed deaths of staff and patients at OMH institutions. On May 14, 2020, June 11, 2020, August 20, 2020, October 28, 2020 and December 28, 2020 OMH indicated to us that they were looking at this information and would be getting back to us with the status of our request. The most recent notification date is March 12, 2021. On January 22, 2021 we appealed OMH's failure to provide information and requested that the information in our May 7, 2020 letter be promptly provided. Our letter indicated that we are aware that OMH does, in fact, have this information requested in our FOIL request and that it is intentionally denying NYSCOPBA and Lippes access to this important information. The fact that OMH has taken from May 7, 2020 to December 28, 2020 is unreasonable, and under the circumstances, constitutes a denial. The appeal is necessary because, if we do not receive the information, we have exhausted our administrative remedies and we can proceed with an Article 78 proceeding. On February 11, 2021, we received a response to our FOIL request. However, it is not in the format satisfactory to NYSCOPBA. We have had communications with John Harmon and the Agency regarding providing this information in a different format.

Juneteenth Holiday: We reviewed the Executive Order and subsequent guidance relative to the Governor's order that June 19, 2020, be declared a holiday for State employees. We subsequently contacted GOER about whether the holiday falls under Article 16 of the Agreement, such that members working the holiday who opted in will receive additional compensation for the day. We worked in conjunction with the Grievance Department to file a statewide grievance on this issue. The statewide Class Action grievance was filed directly to Step 3 with GOER's agreement on June 7, 2020. We also had individuals file template grievances at local facilities regarding their individual situation. NYSCOPBA and GOER have agreed to treat June 19 ("Juneteenth") as a holiday under Article 16 of the contract beginning in 2021.

Proposed Regulations for SHU Reform: On August 28, 2019, the Department published proposed regulations (I.D. No. CCS-35-19-00001-P) regarding various reforms to its Special Housing Units. Those proposed regulations include a gradual phase-in period of reduced maximum time spent in SHU, alternative diversionary programs to SHU, and much more. The design of the proposed regulations was to decrease SHU time and increase alternative programming and structure for rehabilitative purposes. The proposed regulations were subject to a comment period for the public. The comment period for these particular regulations expired on October 27, 2019. This office met with NYSCOPBA representatives at NYSCOPBA HQ in order to provide guidance on the impact of the proposed regulations and to receive insight into the practical impact on the membership for purposes of providing a responsive comment to the Department. This office also took a tour of Greene Correctional Facility and met with the membership there to receive additional information to fold into the comment. A comment was then timely submitted to the Department. In September 2020, DOCCS issued a notice of revised rulemaking, which further altered the proposed regulations and delayed their implementation, in part. This office provided an overview to the Board of the few changes made. Prior to the deadline for submission, this office submitted to DOCCS a revised comment regarding the most recent changes and incorporated by reference our prior comment. The combined comment sought answers to numerous questions and points raised by NYSCOPBA within the past year.

DOCCS has now responded to the public comments. In short, their Assessment of Public Comment is largely filled with generic language that addressed various concerns brought up in the comments, but did not make any changes to the regulations. The response addressed comments from two labor unions and numerous advocacy groups, without naming any in particular. The Department declined to provide additional details regarding grounds for placement in SHU, training for staff, criteria for determining risk to facility safety and personnel, etc. The Department also clarified the distinction between keeplock and SHU. The Department declined to keep inmates in the Residential Rehabilitation Unit (“RRU”) or Step-Down Unit (“SDU”) after the expiration of their sanction despite the fact that they may not have completed their RRU or SDU programming at that time. Additional public concerns were addressed; however, they were mostly addressed by the Department by stating that the balances and interests were carefully weighed and that no changes would be made. Therefore, no substantive changes were made to the regulations as a result of the public comment period.

The regulations are now adopted, which means the Department will continue implementation. The Department will likely implement some changes right away, while other changes will take place within the timeframe provided for in the regulations. As you know, some changes (like the creation of Step-Down Units) have already been made at certain facilities.

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

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

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

SUNY Vaccinations: On January 27, 2021 we had a Zoom conference call with NYSCOPBA Law Enforcement Vice President John Harmon, Aaron Glad and Liesl Zwicklebauer from SUNY discussing the SUNY vaccination program and how Campus Security can qualify for vaccines.

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

Tobacco in Packaging Room: On February 2, 2021, we provided Western Region Vice President Mark DeBurgomaster our analysis on whether tobacco shipments received by inmates that do not contain an indication that tobacco is enclosed, can be returned to the sender by DOCCS. We explained that the enforcement of this rule lies with the United States Postal Service (USPS).

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

Virtual Disciplinary Arbitrations: An agreement regarding hybrid disciplinary arbitrations between NYSCOPBA and DOCCS was executed on December 10, 2020. A hybrid virtual arbitration is a format in which the parties and their representatives appear in person in a designated location, and the arbitrator appears via video conference technology. This agreement will last until April 1, 2021, and will only apply to those NODs *not* subject to Article 8.9, where the arbitrator designated by PERB, at the time of the designation, will not conduct in-person hearings.

Virtual Executive Assembly: We are working with the Executive Board to organize the virtual Executive Assembly on March 10, 2021.

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

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