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Uniformed Supervisor Meeting

Security and Law Enforcement Employees Council 82
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO

UNIFORMED SUPERVISORS LOCAL 1871

2/26/98 MEETING BETWEEN COUNCIL 82 EXECUTIVE TEAM AND LOCAL 1871

Meeting called to order @ 1:25 pm by C-82 President R, Abrahamson. In Attendance representing Local 1871 were T. O'Leary-President, J. Gough-Vice- President, R, Dragoon-Treasurer, M,Cooper-Secretary, Executive Board-Steve Wyley, Rick Cox & Charles Coventry, Trustees-J. Bukovinsky, Wm Langdon & Sam Irwin. Council 82 representatives R.Abrahamson-President, Mike Graney-Vice- President, Mike Suprenant-Treasurer, John Butler-Policy Chair, Patty Rybak- Vice-Policy Chair, Ron Hoyt-Law Enforcement Policy, John Reidy-Law Enforcement Vice-Policy and Robert Hite-C-82 Attorney.

The following is a brief synopsis of topics and issues disscussed (to the best of my recollection):

1. Tim O'Leary thanked the C-82 Executive Team for allowing us to meet and hopefully settle some issues, complaints and grievances prevalent to the membership of local 1871.

2. Copies of proposed Article 10 distributed to C-82 Executive Team and Attorney R. Hite.

3. It was noted for the record that the Temporary Hiring/Promotion Lawsuit was actually filed 7/3/97 by C-82 legal staff.

4. Tim O'Leary then read a prepared "Statement of Facts" (see attached-also distributed to C-82 Executive Team) regarding meetings held with DOCS and C-82 on 1/28/98, 1/29/98, 1/30/98, 2/2/98 and 2/3/98.

5. Upon O'Leary concluding his reading, he requested M. Cooper read three motions from 2/9/98 1871 meeting held at Sing Sing (copy of motions distributed to C-82 Executive Team).

6. O'Leary then further explained to C-82 E/T that the Executive Board of 1871 were here (C-82 offices) at the mandate of our membership who feels that we are not being fairly or equitably represented or respected by C-82.

7. R, Hite then gave a very lengthy but extensively clear factual overview of what the legal council has done and is continuing to do regarding 1871 legal issues and concerns, particularly the "temp promotions". He identified the consistent problems, research, litigation, meetings held with DOCS and Civil Service commencing from 1996 at the request of O'Leary and member Of 1871. R. Hite also presented 1871 the legal papers and documents at that time. It should be clearly understood that there is absolutely no possiblity of the 87.5 Sergeants currently serving in temporary position being made PERMANENT. It should also be noted until the temporary hiring/promotin lawsuit is litigated, any promotions made off the new list will also be temporary promotions.

8. As a result of statements then made by Abrahmason, Graney and Hite it was realized that the main problem was communication between 1871 and C-82 and allowing DOCS to manipulate us at every

opportunity, thereby not focusing on the real problems. So, what else is new?? The real question now is where do we go from here?? 1871 wants respect and full committed representation from C-82 and C-82 would like not to be slandered without verification of facts. They have asked to be invited to any 1871 meeting and explain their position with our members as they did with us. At this time everyone present in the room give various comments, feedback, statements, ideas and opinions, which became the forum for CLEARING THE AIR/STARTING A CLEAN HOUSE.

9. The bottom line on the meetings that took place from 1/28/98 thru 2/3/98 was that there was never any firm committment from DOCS regarding the DOUBLE ENCUMBERING THE MANCON POSITIONS. It should be further noted that there is a HIRING FREEZE ON THE NEW SERGEANTS LIST BY DOCS, not C-82, not 1871, not Civil Service, but by theNEW YORK STATE DEPARTMENT OF CORRETIONAL SERVICES.

10. Upon sending meeting notices Out for the next 1871 meeting scheduled for 4/2/98 at Great Meadow/Washington QWL, an invitation will be extended to the C-82 Executive Team and Legal staff and 1871 members who were at the 2/9/98 meeting held at Sing Sing.

11. C-82 also will be checking on the discrepancies in allowing temporary lieutenants to take a promotional exam, while temporary sergeants cannot. Why?????

Meeting ended at approximately 5:00 pm.

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Sergeant Test

The law is clear in that the duration of an eligible list shall be fixed at not less than one year nor more than four years; in the event that a restriction against the filling of vacancies exits in any jurisdictions, the State Civil Service Department or Municipal Commission having jurisdiction shall, in the discretion of the department or commission, extend the duration of eligible list for a period equal to the length of such restriction against the filling of vacancies. RESTRICTIONS AGAINST THE FILLING OF VACANCIES SHALL MEAN ANY POLICY, WHETHER BY EXECUTIVE ORDER OR OTHERWISE, WHICH BECAUSE OF A FINANCIAL EMERGENCY, PREVENTS THE FILLING OF VACANCIES IN TITLE FOR WHICH A LIST HAS BEEN PROMULGATED. THIS IS CIVIL SERVICE LAW SECTION 56.

At no extended period of time over the last eight years has the State of New York had a FINANCIAL EMERGENCY which has disrupted the hiring from the old promotional Sergeant test list. All litigation relevant to extending Civil Service tests time lines have favored maintaining the integrity of four years or less.

It must be noted that when the Department of Correctional Services made the decision to extend the duration of the eligibility of this list there was and air of blatant disregard or callous interpretation towards laws and management agreements (lagging our pay , increment case etc.).

The States violation of our Civil Service rights have been financially detrimental by 4.5 years to any Correction Officer who will be hired under this new promotional exam by delaying them establishing their rightful place on the seniority list , increment system , longevity payments and transfer list of their choice. The law suit will request restitution for all who are aggrieved by the State or Department violating our Civil Service rights.

R82beall@aol.com

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A couple of questions for Council 82:

In this past October statewide e-board minutes I read that Council 82 hired an individual (I can't remember his name, maybe someone can help me with it) who used to work for AFSCME Council 37 in New York City (Council 37 has about 120,000 members). He was a former Council 37 Official. I believe he was hired for our legislative dept. This individual ran against Governor Pataki just a couple of years ago when he was a Senator. This seemed like a good idea providing he didn't trash Pataki too badly. If he did, do you think Pataki would forgive and forget? Maybe, then maybe not. If not, will we pay the price?

It seemed like it would be a good idea to get some political veteran in there, but why hire more AFSCME people. They never cared about us before, so why now? Could it be our millon dollar PAC money? Could AFSCME be planting this individual to pursue their own hidden agenda with our money? Maybe or maybe not.

Well, either way it seems like it could be a good start for Council 82, EXCEPT for one thing .....

This past November and December I read in the NY Post that Council 37 is currently under investigation by the NYC District attorneys office and the FBI for the exact same thing Puma, Kennedy, and Germano did, (Misappropriation of union funds, embezzelment, theft etc.).

So why did Council 82 hire from Council 37 KNOWING they had problems. Now, Council 82 can say they knew nothing, but AFSCME knew because Council 37 is another part of AFSCME. Maybe AFSCME got C-82 to hire him I don't know. So which is it? Did Council 82 know when they hired him or not?

To add a little icing, the NY Post also listed last years' salaries of the top 3 elected officials in Council 37 they are: President $264,000.00, Vice President $222,000.00, and the outgoing Treasurer who retired last year made a whopping $404,000.00. (Yes, that is correct Four hundred and four thousand dollars). I can't say I know of any union official worth that much. Imagine what Gerald McEntee makes.

My last question is: If this guy is retired from Council 37, is he collecting a union pension? If so, and Council 82 hires him and begins to pay him a salary, isn't that double dipping? It may not be illegal, but isn't it a little unethical.

Dave St.Louis

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New Evidence: Hogtie Restraint DOESN'T Kill

San Diego- Due to the perception that hogtie restraint has resulted in fatalities, countless wrongful-death lawsuits have been filed nationally. However a recent report in the San Diego Tribune indicated that new findings dispute this perception and have led to the dismissal of a wrongful-death suit here.

In a recent study, Dr Thomas Nueman, professor of medicine at the UCSD Medical Center, found that though hogtying may interfere with normal breathing, it does not lead to positional asphyxia.

Dr Ronald T Reay, the chief medical examiner for King County, Washington, had originally maintained that the restraint method caused positional asphyxia. He recently retracted his position on the stand in light of the new information.

"The UCSD study is a development that turns on its head the entire issue of restraining violent subjects,: Lt Greg Meyer of the LAPD told Police Magazine.

Meyer, also a police tatcics expert and member of the Police Magazine Advisory Board added: "These incidents happen everyday and every night on the streets, in the jails, and in the psychiatric lockup facilities around the world. In those rare cases where fatalities have occurred to persons subjected to maximum restraint, millions of taxpayer dollars have been paid out in court verdicts and settlements based on what now appears to be erroneous medical information."

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Senority

Let me start this letter about C82, are big union. Back in 1990 I was in the Army and we all know we were sent to duty in Desert Storm. Well I couldn't go at the time because the federal government called us to do a job. At that time NYS Civil Service Department gave me a letter saying when my ranking number was called and I couldn't go, I would be place on a special military list and my seniority date would be the date it became available which is 6/23/93. Well guess what my number did come up and civil service kept there promise and gave me the date and said after I was permanently appointed which my probationary ended on 2/98 that I will be awarded the 6/23/93.

Well the C82 and the D.O.C.S. says its only good for lay off and it wouldn't be good for job bidding because it wouldn't be fair to other officers. Well this is bullshit, because it wasn't fair for me not being there when duty calls and besides you tell me it's fair when there is a lay off and the guy before me who can bid on jobs and has seniority over me goes before me.

It's true I do believe the C82 is sleeping with the state and it's about time I wake them up because I am taking this to my Congressman and all the way to capitol hill to the federal government. I think C82 makes rules as they go to favor the union and not the officers. Any replies to this matter please feel free to enter your comments. It's time to get rid of C82 and get a new union or be abuse for the rest of our retirement.

Dave, Mid-State

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Peace Officers Power

2.10 Persons designated as peace officers

Subparagraph 25) Officials, as designated by the commisioner of the Department of Correctional Services pursuant to rules fo the department, and Correction Officers of any state correctional facility or of any penal correctional institution.

Since there is nothing in this section stating : nothing in this subdivision shall be deemed to authorize such

officer to carry, possess, repair or dispose of a firearm unless the apropriate liscense therfor has been issued pursuant to section 400.00 of the penal law. This little note means that if it were present in who is defined as a peace officer that you must have a pistol liscense to possess or purchase a firearm. Since this is not noted in section 2.10 subparagraph 25 our badge constitutes our liscense. We are allowed by law to carry off duty firearms without a pistol liscense or permit.

2.20 Powers of peace officers

1: The person designated in section 2.10 of thes artice shall have the following powers:

A) The power to make warrentless arrests pursuant to section 140.25 of this chapter.

B) The power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to section 35.30 of the penal law.

C) The power to carry out warrentless searches whenever such searches are constitutionally permissible and acting pursuant to thier special duties.

D) The power to issue appearance tickets pursuant to subdivision three fo section 150.20 of this chapter, when acting pursuant to thier special duties. New York City special patrolman shall have the power to issue an appearance ticket only when it is pursuant to rules and regulations of the police cimmisioner.

E) The power to issue uniform appearance tickets pursuant to article twenty-seven of the parks, recreation and historic preservation law and to issue simplified traffic informations pursuant to section 100.25 of this chapter and section two hundred seven of the vehicle and traffic law whenever acting pursuant their special duties.

F) The power to issue a uniform navigation summons and/or complaint pursuant to section nineteen of the navigational conversation law, whenever acting pursuant to thier special duties.

G) The power to issue uniform appearance tickets pursuant to article seventy - one of the environmental conservation law, whenever acting pursuant their special duties

H) The power to possess and take custody of firearms not owned by the peace officer for the purpose of disposing, guarding, or any other lawful purpose, consistant with his duties as a peace officer.

I) Any other power which a particular peace officer is otherwise authorized to exercise by any general, special or local character whenever acting pursuant to his special duties, provided such power is not inconsistant with the provisions of the penal law or this chapter.

2: For the purposes of this section a pleace officer acts pursuant to his special duties when he performs the duties of his office, pursuant to the specialized nature of his particular employment, whereby he is required or authorized to enforce any general, special or local law or charter, rule, regulation, judgement or order.

3: A peace officer, whether or not acting pursuant to his special duties, who lawfully excercises any of the powers conferred upon him pursuant to this section, shall be deemed to be acting within the scope of his public employement for purposes of defense and indemnification rights and benifits that he may otherwise entitled to under the provisions of section fifty-k of the general municipal law, section seventeen or eighteen of the public officers law, or any other applicable section of law.

Penal Law

Title P - Offenses against public saftey
Article 265 Firearms and other dangerous weapons

Section 265.20 Exemptions a.Sections 265.01, 265.02,265.03,265.04,265.05,265.10,265.11,265.12,265.13,265.15, 270.05. shall not apply to:

1: Possession of any any of the weapons, instruments, appliances or substances specified in sections 265.01, 265.02,265.03,265.04,265.05,270.05 by the following:

A) Persons in the military service of the state of New York when duly authorized by regulations issued by the adjuant general to possess the same.

B) Police officers as defined in subdivision thirty-four of section 1.20 of the criminal proceedure law.

C) Peace officers as defined by section 2.10 of the criminal procedure law

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Contract: Talk

Everything in the next contract should be RETROACTIVE!!!.....BACK TO APRIL THE FIRST 1999.....

11.6--Longevity Payments shall be given for every year over 20 at a percentage which should equal at least $300 per year. The troopers have longevity payments on a yearly basis and add up to a bigger amount due to compound interest. If we have to take zero's then lets get something in return.

17.4--Raise OT meal allowance currently $3.50. This has not been changed for the past 16+ years that I know of and we used to get the full amount in a separate check, now they add it in your regular check and tax it besides. So when you take 1/3 for taxes we have lost $1.67, so we need atleast a $5.50 meal allowance to get back to where we were a few years back. Your taxed on the meal you buy and then again when you receive your meal allowance.

20.2--Raise Uniform allowance currently $550

Pay Grade raise--Civil Service

3 year contract instead of a 4 year, thereafter 4 year. Thus resulting in our contracts coming due in an election year and we would not have to compete with the other unions.

14.2--Run PLs the same as Holidays (16.1) either Pay or Time off, at the officers choice. This would allow for higher earnings and raise your final average salary without having to work as many hours of overtime. Especially since many officers do not work overtime.

Better percentages for raises in the last 8 years (2 contracts) we have averaged 2% per year. Where the rate of inflation has been an average of 3.425% over the same 8 year period. A loss of 11.4% not counting the higher medical payments.

Revamp grievence process, step 2 is useless.

Maintain Co-pays on doctors visits and perscriptions. Better Dental to cover the second step for childrens

braces.

14.1--(e) change date to Jan1st which is currently Oct1st. Many individuals save their time to utilize in the fall for various reasons and they loose any hours over 320 on Oct 1st. By changing this to Jan. 1st it would eliminate this problem.

14.4--Sick Leave; current maximum is 1320 hours. New maximum should be unlimited and raise the amount of hours to offset medical insurance costs at retirement. Medical insurance is costing more and more evey year. If you multiply 1320 by your hourly salary this gives you the cash value. Our raises have not been even close to that of inflation and medical costs ahve been bypassing the cost of inflation by triple easily. So whats happening is we are losing some major buying power, our money is worth less. If we can raise the hours to compensate for loss in money it would offset the cash value.

15.1--OT 1/4 hour for pre-shift briefing on RDOs. Many jails now have this in place but it should be done on the statewide level for every facility.

If we must take a ZERO in this upcoming contract then get better benefits at the end of our careers such as a COLA in the form of a BENEFIT ADJUSTMENT and/or a Better retirement package..... I know it is a legislative issue. But the same guy has to sign it over to LAW!!

Hiker

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Contract: 1999

To Hiker,
All that sounds great and those issues should be addressed ,but please leave out the issue of excepting a ZERO. This thought should not even be in the minds of anyone negotiating our contract.
ZERO=WEAK=C82

****

Here is what I believe will happen;

We are getting a 3% raise the end of September, this was done with our next contract in mind. Besides the raise C82 says they are trying to get a now 3 pay grade raise. Well even if we get a 1 pay grade raise, I do not for a minute believe the state will give us anything the first year of the contract.

Even if we take a ZERO (I know nobody wants too) We can still gain in BENEFITS!!! Say we want our retirement package fixed, we go to the table and tell them want we are looking for and explain that this will NOT cost you a dime while you are in office. We hold out on our contract until Legislation is in place and voted on in our favor. If not we push harder and utilize our PAC money to help our cause for the next year. But it will help your employees in the long run. Please do not continue to look at arms length. Look at the whole picture someday you will reap these benefits and will appreciate what was done when you look back to the past. There are benefits to holding out as well. Your union dues remain the same along with your medical, co-pays and you keep all of your benefits until a new contract is signed. If we are offered a ZERO in the first year it will actually save you money because your benefit package remains frozen until a new contract is signed. We must be PATIENT!!!!!

I have also heard a rumor that we will have a 5 year contract, now why would this be?

1) A longer term between challenges

2) Less times to negotiate a contract, thereby making C82's job a bit easier

3) Say we get a 18-20% increase it sure sounds good, but remember it would be over 5 years. Another political sceme

Is Cuomo still around here? It sounds like something he would do.....

Hiker

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A Poem dedicated to Correction Officers

This poem is dedicated to the forgotten ones, the correctional officers. I would like to commend these courageous men and women for doing a helluva job of maintaining safety and security in the jails and prisons/ as correctional officers, we know how difficult a task it is to perform our daily duties; Now I would like to let everyone else know.

Just as the men and women in blue attend roll call before their tour of duty, so do we, but instead of being armed with pistols, we are armed with whistles.

Just as the men and women in blue, we too do not know if we will greet our loved ones at the end of the day.

It takes a correctional officer to deal with society's undesirables, the overcrowding of prisons, the thanklessness of the public and to efficiently carry out the duties of a job that so many criticize and so little want.

During our tour of duty not only are we correctional officers we are also; police officers, firepersons, suicide watch, coroners, nurses, counselors, computer operators, mailpersons, newspaper delivery persons, the united parcel service, and more.....

And with all of this in mind at the beginning of our tour...

We will stand tall beneath our hats.

With pride we wear our shields.

And with unity, integrity, and professionalism,

Like soldiers we march side by side into our unpredictable institutions both

Bonafide and qualified to handle any situation that may erupt.

So please, do not call us "prison guards"

Acknowledge us as professionals

And address us as correctional officers.

Latanya Long
Correctional Officer
Philadelphia Prison System

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Disgruntled Dissidents

On February 20, 1998, Richard S. Abrahamson, President of Council 82 signed a memorandum to "All Council 82 Executive Board Members". The subject of this memo is an apparent Decertification Effort (for those of you who do not know what decertification refers to, this means we would become an independent bargaining agent and would not be obligated to AFSCME).

In Rich's memo, he refers to the individuals who support Decertification as "disgruntled dissidents". Richard states, "They are unorganized and lack any real credibility. We are concerned with this attempt being brought out at the same time we are attempting to secure upgrades for our various titles within our union, as well as working on upcoming negotiations for the state unit contracts. Any effort such as this will seriously jeopardize these issues, as well as the rest of our legislative initiatives and service to our members".

I must agree with Rich, that the timing MAY NOT be fortunate, however, I think we should not be "intimidated" by what we "might" jeopardize. I think we must carefully consider the past, present and future. There is always risk when considering the future.

To those who think the term "disgruntled dissidents", is derogatory, please consider the following names:

Abraham Clark, John Hart, Francis Hopkins, John Witherspoon, Richard Stockton, Arthur Middleton, Thomas Lynch, Jr., Thomas Heyward, Jr., Edward Rutledge, John Penn, Jospeh Hewes, William Hopper, Thomas McKean, George Read, Ceasar Rodney, George Ross, James Wilson, George Taylor,James Smith, George Clymer, John Morton, Benjamin Franklin, Benjamin Rush, Lewis Morris, Francis Lewis, Philip Livingston, William Floyd, Carter Braxton, Francis Lightfoot Lee, George Wythe, Charles Carroll, Thomas Stone, William Paca, Samuel Chase, George Walton, Lyman Hall, Burton Gwinnett, Oliver Wolcott, William Williams, Samuel Huntington, Roger Sherman, William Ellery, Stephen, Hopkins, Elbridge Gerry, Robert Treat Paine, John Adams, Samual Adams, Matthew Thornton, William Whipple, Josiah Bartlett, Charles Thomson, John Hancock.

These men risked their very lives for the future. So, if you are a disgruntled dissident, and this "apparent" Decertification Effort" does get off the ground, remember - you're in good company.

Diane Davis

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Taylor Law

§ 210. Prohibition of strikes. 1. No public employee or employee organization shall engage in a strike, and no public employee or employ- ee organization shall cause, instigate, encourage, or condone a strike.

2. Violations and penalties; presumption; prohibition against consent to strike; determination; notice; probation; payroll deductions; objections; and restoration. (a) Violations and penalties. A public employee shall violate this subdivision by engaging in a strike or violating paragraph (c) of this subdivision and shall be liable as provided in this subdivision pursuant to the procedures contained here- in. In addition, any public employee who violates subdivision one of this section may be subject to removal or other disciplinary action provided by law for misconduct. (

b) Presumption. For purposes of this subdivision an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(c) Prohibition against consent to strike. No person exercising on behalf of any public employer any authority, supervision or direction over any public employee shall have the power to authorize, approve, condone or consent to a strike, or the engaging in a strike, by one or more public employees, and such person shall not authorize, approve, condone or consent to such strike or engagement.

(d) Determination. In the event that it appears that a violation of this subdivision may have occurred, the chief executive officer of the government involved shall, on the basis of such investigation and affi- davits as he may deem appropriate, determine whether or not such violation has occurred and the date or dates of such violation. If the chief executive officer determines that such violation has occurred, he shall further determine, on the basis of such further investigation and affidavits as he may deem appropriate, the names of employees who committed such violation and the date or dates thereof. Such determi- nation shall not be deemed to be final until the completion of the procedures provided for in this subdivision.

(e) Notice. The chief executive officer shall forthwith notify each employee that he has been found to have committed such violation, the date or dates thereof and of his right to object to such determination pursuant to paragraph (g) of this subdivision; he shall also notify the chief fiscal officer of the names of all such employees and of the total number of days, or part thereof, on which it has been determined that such violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

(f) Payroll deductions. Not earlier than thirty nor later than ninety days following the date of such determination, the chief fiscal officer of the government involved shall deduct from the compensation of each such public employee an amount equal to twice his daily rate of pay for each day or part thereof that it was determined that he had violated this subdivision; such rate of pay to be computed as of the time of such violation. In computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on account of his absence from work or other withholding of services on such day or days. In computing the aforesaid thirty to ninety day period of time following the determination of a violation pursuant to subdivision (d) of paragraph two of this section and where the employee's annual compen- sation is paid over a period of time which is less than fifty-two weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term shall be disregarded and not counted.

(g) Objections and restoration. Any employee determined to have violated this subdivision may object to such determination by filing with the chief executive officer, (within twenty days of the date on which notice was served or mailed to him pursuant to paragraph (e) of this subdivision) his sworn affidavit, supported by available documenta- ry proof, containing a short and plain statement of the facts upon which he relies to show that such determination was incorrect. Such affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof estab- lishes that the employee did not violate this subdivision, he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this subdivision, he shall dismiss the objection and so notify the employee. If the chief executive officer shall determine that the affidavit and supporting proof raises a ques- tion of fact which, if resolved in favor of the employee, would estab- lish that the employee did not violate this subdivision, he shall appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he did not violate this subdivi- sion, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such employee did not violate this subdivision, the chief executive officer shall forthwith notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this subdivision. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

3. (a) An employee organization which is determined by the board to have violated the provisions of subdivision one of this section shall, in accordance with the provisions of this section, lose the rights granted pursuant to the provisions of paragraph (b) of subdivision one of section two hundred eight of this chapter.

(b) In the event that it appears that a violation of subdivision one of this section may have occurred, it shall be the duty of the chief executive officer of the public employer involved (i) forthwith to so notify the board and the chief legal officer of the government involved, and (ii) to provide the board and such chief

legal officer with such facilities, assistance and data as will enable the board and such chief legal officer to carry out their duties under this section.

(c) In the event that it appears that a violation of subdivision one of this section may have occurred, the chief legal officer of the government involved, or the board on its own motion, shall forthwith institute proceedings before the board to determine whether such employ- ee organization has violated the provisions of subdivision one of this section.

(d) Proceedings against an employee organization under this section shall be commenced by service upon it of a written notice, together with a copy of the charges. A copy of such notice and charges shall also be served, for their information, upon the appropriate government officials who recognize such employee organization and grant to it the rights accompanying such recognition. The employee organization shall have eight days within which to serve its written answer to such charges. The board's hearing shall be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required.

(e) In determining whether an employee organization has violated subdivision one of this section, the board shall consider (i) whether the employee organization called the strike or tried to prevent it, and (ii) whether the employee organization made or was making good faith efforts to terminate the strike.

* (f) If the board determines that an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this chapter, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organ- ization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent neces- sary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the financial resources of the employee organization; and the board may consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organiza- tion, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of subdivision one of section two hundred eight of this chapter, the books and records of such public employer shall be prima facie evidence of the amount so collected.

* NB Expires 99/10/01

* (g) An employee organization whose rights granted pursuant to the provisions of paragraph (b) of

subdivision one, and subdivision three of section two hundred eight of this article have been ordered forfeited pursuant to this section may be granted such rights after the termi- nation of such forfeiture only after complying with the provisions of clause (b) of subdivision three of section two hundred seven of this article.

* NB Expires 99/10/01

(h) No compensation shall be paid by a public employer to a public employee with respect to any day or part thereof when such employee is engaged in a strike against such employer. The chief fiscal officer of the government involved shall withhold such compensation upon receipt of the notice provided by paragraph (e) of subdivision two of section two hundred ten; notwithstanding the failure to have received such notice, no public employee or officer having knowledge that such employee has so engaged in such a strike shall deliver or caused to be delivered to such employee any cash, check or payment which, in whole or in part, repres- ents such compensation. 4. Within sixty days of the termination of a strike, the chief executive officer of the government involved shall prepare and make public a report in writing, which shall contain the following information: (a) the circumstances surrounding the commence- ment of the strike, (b) the efforts used to terminate the strike, (c) the names of those public employees whom the public officer or body had reason to believe were responsible for causing, instigating or encourag- ing the strike and (d) related to the varying degrees of individual responsibility, the sanctions imposed or proceedings pending against each such individual public employee. .

§ 205. Public employment relations board. 1. There is hereby created in the state department of civil service a board, to be known as the public employment relations board, which shall consist of three members appointed by the governor, by and with the advice and consent of the senate from persons representative of the public. Not more than two members of the board shall be members of the same political party. Each member shall be appointed for a term of six years, except that of the members first appointed, one shall be appointed for a term to expire on May thirty-first, nineteen hundred sixty-nine, one for a term to expire on May thirty-first, nineteen hundred seventy-one, and one for a term to expire on May thirty-first, nineteen hundred seventy-three. The governor shall designate one member who shall serve as chairman of the board until the expiration of his term. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to succeed.

2. Members of the board shall hold no other public office or public employment in the state. The chairman shall give his whole time to his duties.

3. Members of the board other than the chairman shall, when performing the work of the board, be compensated at the rate of two hundred and fifty dollars per day, together with an allowance for actual and necessary expenses incurred in the discharge of their duties hereunder. The chairman shall receive an annual salary to be fixed within the amount available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by him in the performance of his duties.

4. (a) The board may appoint an executive director and such other persons, including but not limited to attorneys, mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts made available therefor by appropriation. Attorneys appointed under this section may, at the direction of the board, appear for and represent the board in any case in court.

(b) No member of the board or its appointees pursuant to this subdivision, including without limitation any mediator or fact-finder employed or retained by the board, shall, except as required by this article, be compelled to nor shall he voluntarily disclose to any administrative or judicial tribunal or at the legislative hearing, held pursuant to subparagraph (iii) of paragraph (e) of subdivision three of section two hundred nine, any information relating to the resolution of a particular dispute in the course of collective negotiations acquired in the course of his official activities under this article, nor shall any reports, minutes, written communications, or other documents pertaining to such information and acquired in the course of his official activities under this article be subject to subpoena or voluntarily disclosed; except that where the information so required indicates that the person appearing or who has appeared before the board has been the victim of, or otherwise involved in, a crime, other than a criminal contempt in a case involving or growing out of a violation of this article, said members of the board and its appointees may be required to testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of such crime is the subject of inquiry.

5. In addition to the powers and functions provided in other sections of this article, the board shall have the following powers and functions:

(a) To establish procedures consistent with the provisions of section two hundred seven of this article and after consultation with interested parties, to resolve disputes concerning the representation status of employee organizations.

(b) To resolve, pursuant to such procedures, disputes concerning the representation status of employee organizations of employees of the state and state public authorities upon request of any employee organization, state department or agency or state public authority involved.

(c) To resolve, pursuant to such procedures but only in the absence of applicable procedures established pursuant to section two hundred six of this article, disputes concerning the representation status of other employee organizations, upon request of any employee organization or other government or public employer involved.

(d) to establish procedures for the prevention of improper employer and employee organization practices as provided in section two hundred nine-a of this article, and to issue a decision and order directing an offending party to cease and desist from any improper practice, and to take such affirmative action as will effectuate the policies of this article (but not to assess exemplary damages), including but not limited to the reinstatement of employees with or without back pay; provided, however, that except as appropriate to effectuate the policies of subdivision three of section two hundred nine-a of this article, the board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice. When the board has determined that a duly recognized or certified employee organization representing public employees has breached its duty of fair representation in the processing or failure to process a claim alleging that a public employer has breached its agreement with such employee organization, the board may direct the employee organization and the public employer to process the contract claim in accordance with the parties' grievance procedure. The board may, in its discretion, retain jurisdiction to apportion between such employee organization and public employer any damages assessed as a result of such grievance procedure. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations. The board shall exercise exclusive nondelegable jurisdiction of the powers granted to it by this paragraph; provided,

however, that this sentence shall not apply to the city of New York. The board of collective bargaining established by section eleven hundred seventy-one of the New York city charter shall establish procedures for the prevention of improper employer and employee organization practices as provided in section 12-306 of the administrative code of the city of New York, provided, however, that a party aggrieved by a final order issued by the board of collective bargaining in an improper practice proceeding may, within ten days after service of the final order, petition the board for review thereof. Within twenty days thereafter, the board, in its discretion, may assert jurisdiction to review such final order. The failure or refusal of the board to assert jurisdiction shall not be subject to judicial review. Upon the refusal of the board to assert jurisdiction, an aggrieved party shall have the right to seek review of the final order of the board of collective bargaining. Such proceeding to review shall be brought within thirty days of the board's refusal and shall otherwise conform to the requirements of article seventy-eight of the civil practice law and rules. If the board shall choose to review, it may affirm, or reverse in whole or in part, or modify the final order, or remand the matter for further proceedings, or make such other order as it may deem appropriate, provided, however, that findings by the board of collective bargaining regarding evidentiary matters and issues of credibility regarding testimony of witnesses shall be final and not subject to board review.

(e) To make studies and analyses of, and act as a clearing house of information relating to, conditions of employment of public employees throughout the state.

(f) To request from any government, and such governments are authorized to provide, such assistance, services and data as will enable the board properly to carry out its functions and powers.

(g) To conduct studies of problems involved in representation and negotiation, including, but not limited to (i) the problems of unit determination, (ii) those subjects which are open to negotiation in whole or in part, (iii) those subjects which require administrative or legislative approval of modifications agreed upon by the parties, and (iv) those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies.

(h) To make available to employee organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations. (i) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, arbitrators or members of fact-finding boards.

(j) To hold such hearings and make such inquiries as it deems necessary for it properly to carry out its functions and powers. At any conference, hearing, investigation, inquiry or other proceeding before the board or any agent thereof, a party shall have the right to appear in person, by counsel or by other authorized representative. Nothing contained herein shall restrict the right of the board to exclude, suspend or disbar any representative for misconduct in accordance with the board's rules.

(k) For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions. Such subpoenas shall be regulated and enforced under the civil practice law and rules.

(l) To make, amend and rescind, from time to time, such rules and regulations, including but not limited to

those governing its internal organization and conduct of its affairs, and to exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this article.

6. Notwithstanding any other provisions of law, neither the president of the civil service commission nor the civil service commission or any other officer, employer, board or agency of the department of civil service shall supervise, direct or control the board in the performance of any of its functions or the exercise of any of its powers under this article; provided, however, that nothing herein shall be construed to exempt employees of the board from the provisions of the civil service law. .

§ 89-b. Good behavior time allowances against definite sentences served in alternate correctional facilities. Notwithstanding any other provision of law, the commissioner shall be authorized to grant, withhold, cause to be forfeited, or cancel time allowances as provided in and in compliance with section eight hundred four of the correction law.

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VICTORY AT WYOMING

Date: Wed, 11 Mar 1998

Today we were informed that Albany has approved a temporary item for our tower staffing. This is still short of what is needed, but this is still a victory because if we didn't stand together on this issue, we would have gotten nothing. We are not done fighting for what is needed, but alot of headway has been made with a few other issues we needed addressed for many years.We will continue to fight for permanent staffing but at this point, we have something to show for our efforts. It is the hope of our local, that other facilities can get together and stand up for their issues, because now we have proof that it can be done. If another facility is planmning any type of picket, let us know, because we have a list of officers waiting to take a bus to anywhere. Lets keep the ball rolling, and take care of alot of things that should have been done along time ago. UNITY IS THE ONLY WAY!!!!!!!!!!!!!!!!!!!!

JOHN PERRY
1st VICE PRES
WYOMING LOCAL 1169 (strongest local in the state)

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The CRIMINAL'S Justice System

The CRIMINAL'S Justice System

...where the crime VICTIM winds up in the doghouse.

The Criminals View

1. Exercises a choice as to whether or not to commit a crime and who the victim will be.

2. If caught, must be informed of rights; if injured during commission of crime or apprehension, gets first class free medical care; if indigent, gets free legal counsel to represent him; is entitled to bail, except in extreme cases (apprehension is a 1 in 5 possibility).

3. If incarcerated; pre-trial must be food, clothing, shelter, recreation, visitation, medical care, drug and/or alcohol counseling, a legal library, and every opportunity to complain and file grievances about his circumstances.

4. At trial, has free attorney (if indigent), has the option to plea bragain, delay, stall, change venue, maneuver to suppress evidence.

5. If convicted (5% chance), can appeal ad nauseum with free legal counsel.

6. If sentenced to incarceration; will receive credit for time served, "good-time, gain-time", be given every opportunity for educational and psychological counseling, vocational training, medical care, etc.

7. Will more than likely get an early release so he can victimize another family and start the process over again... repeatedly.

The Victims View

1. Excercises no choice as to whether or not to be a victim.

2. If injured; pays own medical expenses, loses time and money from work, lives with the psychological if not physical injuries for life.

3. Bears complete responsibility for property losses, economic losses, and rehabilitation.

4. Spends hours, days, weeks, cooperating with law enforcement at own expense, learns about case status on six o'clock news.

5. If trial follows; is not advised of delays beforehand, pays own expenses of travel to and from trial, parking, lunch, misses work and possibly pay, cannot object to tactics, will then be victimized on cross examination as if he were the criminal, has no appeal.

6. Sentencing; has no say in sentence, time granted, restitution, in some jurisdictions may not be permitted to speak at sentencing, has no representation - remember the public prosecutor represents the state, not the victim.

Aftermath

The criminal is eligible for all kinds of therapy, and aid, the victim is forgotten and left to fend for him or herself.

There is no need for further explanation as to why the public is rapidly losing faith in the system that should be renamed "The CRIMINAL'S Justice System".

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Triage misses target 900 times / we all lose

The down fall is removing local influence from an Alternate Dispute Resolution Agreement and process. It is unconstitutional. I used to think the process was the problem and it is, but it is definitely the people who participate in the process. Now 900 cases waiting for arbitration We can have no confidence in the Council????????? We have no redress!!!!!! We have no voice, Council 82 Executive Committee for

approval

TRIAGE:

We have met with the State and have come to an agreement in concept concerning the changes to be made in the ADR when it continues. We do not yet have a draft of the agreement relating to the continuing ADR, but when a draft is completed, it will be presented to the Executive Committee for approval . If approved, the modified ADR will resume some time in the middle part of January, 1998.

Presently, there are nearly 900 grievances awaiting arbitration. We are in the process of categorizing these grievances by contract article and worksite in order to target certain articles and worksites where problems appear to exist.

This is wrong right here!!! You mean to tell me this union has been around for over 25 years and there are no existing precedents?????? With direction from local leaders and the Executive Committee, we will obtain precedents in many articles of the contractand thereby give everybody a better understanding of rights and benefits under the contract.

The following is a summary of some awards which we have achieved both in the triage process:

1) Time and Attendance - Direct Deposit Privileges

The grievance alleges a violation of Articles 7.1 and 19.1 when Grievant Direct Deposit privileges were suspended because he was on documentation status and had low sick leave accruals. After triage hearings, the parties agreed that the Department of Correctional Services would advise Elmira Correctional to discontinue the practice of loss of Direct Deposit privileges for time and attendance reasons.

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Unions Your Rights and Federal Code

I used to think what a wonderful job the people who authored the International Constitution did. They were very careful to protect the rights of the members. Then I was searching some United States Codes and found out the Union is obligated by law to protect our rights in its constitution. CHECK THIS OUT!!

-CITE-

29 USC CHAPTER 11 - LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEDURE

01/16/96

-EXPCITE- TITLE 29 - LABOR

CHAPTER 11 - LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEDURE .

-HEAD-

CHAPTER 11 - LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEDURE

-MISC1-

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This chapter is referred to in sections 186, 1111 of this title; title 39 section 1209; title 42 section 2000e.

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Pataki's Revised Proposal for Fixed Term

ALBANY, N.Y. -- Gov. George Pataki Wednesday renewed his attack on first-time violent offenders with a revised proposal to keep them in prison for fixed terms, limit their parole and extend their supervision after release. Although a similar bill failed last year, this time even the critics say the idea has a real chance of passing.

Factors favoring the plan's passage include Pataki's addition of the clause for extended supervision by parole officers, and election year pressures on Pataki's Democratic rivals in the Legislature to avoid appearing soft on crime.

Pataki calls his plan Jenna's Law, in honor of a young woman killed in Albany last year. A convicted child molester has been accused of the crime. With the victim's father, Bruce Greishaber, at his side at a news conference Wednesday, Pataki said, "Respect for the safety of our citizens demands that we not wait for these violent predators to strike again."

Pataki's proposal reprises his image of being tough on crime. He has also signed into law the restoration of the death penalty, eliminated work release for violent criminals and increased sentences for repeat felons.

But critics say the proposed Jenna's Law is deeply flawed. They say that even if the bill had been in effect when Jenna Greishaber was killed, it could not have been applied to the man accused of the crime, because he would already have been released from prison on the child molestation charge. The governor's aides contend that the bill might have helped.

One leading advocate on corrections policy argued that the proposal would do more harm than good and

would eventually cost billions of dollars for more prison space and staff. The advocate, Robert Gangi, executive director of the nonprofit Correctional Association of New York, cited studies indicating that inmates who receive education, drug abuse therapy and early release are less likely to relapse into criminal ways than prisoners kept in for longer terms.

The governor disputes those criticisms, saying Jenna's Law will reduce crime and incur only modest addition costs for housing some 200 additional inmates three to five years from now, and for additional parole officer supervision after their release.

But Gangi said in an interview: "This is a shameless play to emotions in an election year. If they really want to prevent crimes by inmates when they get out, this is not the answer. But, unfortunately, I think the Assembly is going to be loath to resist this in an election year."

Last year the Senate, controlled by Pataki's fellow Republicans, passed the bill while the Democratic-controlled Assembly declined to bring it to a vote.

Under the governor's proposal, prison sentences for inmates convicted of their first violent felony would be set at fixed terms, instead of the current so-called indeterminate sentence, ranging from a minimum to a maximum length, like five to 10 years.

His plan would also bar the parole board from granting discretionary early releases, which now can cut a third or more from the maximum sentence. But inmates with good behavior would still be eligible to have their sentences cut by a seventh, known as time off for good behavior.

The bill would also impose extended supervision of three to five years for most felons, but lifetime supervision for sex offenders.

"I think the chances are pretty good that a bill will be passed," said the chairman of the Assembly Codes Committee, Joseph Lentol, a Democrat from Brooklyn, "though it may not be this exact proposal."

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REVISED PENAL PLAN

ARTICLE 24 PROVISIONS APPLICABLE TO SENTENCES IMPOSED UNDER THE REVISED PENAL PLAN

Section 800. Applicability.

* 803. Good behavior allowances against indeterminate and determinate sentences.
* NB Effective until 2005/09/30

* 803. Good behavior allowances against indeterminate sentences.
* NB Effective 2005/09/30

804. Good behavior allowances against definite sentences.

804-a. Good behavior allowances for certain civil commitments.

* 805. Earned eligibility program.

* NB Expires 97/09/01 .

Sec. 800. Applicability. The provisions of this article shall apply, to the exclusion of all other provisions of this chapter relating to good behavior allowances, where sentence has been imposed pursuant to the provisions of the penal law as enacted by chapter ten hundred thirty of the laws of nineteen hundred sixty-five, as amended, or where the sentence is a reformatory sentence of imprisonment. Matters not expressly covered herein or covered in such penal law shall be governed by such other provisions of law as may be applicable. .

* § 803. Good behavior allowances against indeterminate and determi- nate sentences. 1. (a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate or determinate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the term or maximum term of his sentence imposed by the court. Such allowances may be granted for good behavior and effi- cient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.
(b) A person serving an indeterminate sentence of imprisonment may receive time allowance against the maximum term of his sentence not to exceed one-third of the maximum term imposed by the court.
(c) A person serving a determinate sentence of imprisonment may receive time allowance against the term of his sentence not to exceed one-seventh of the term imposed by the court.

* (d) Every person under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum term in excess of one year and no determinate sentence of imprisonment, except a person serving an indeterminate sentence for an A-I felony offense, a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicu- lar manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, may receive merit time allowance against the minimum term or period of his or her sentence in the amount of one-sixth of the minimum term or period imposed by the court. Such allowance may be granted when an inmate successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such inmate obtains a general equivalency diploma, an alcohol and substance abuse treatment certificate, a vocational trade certificate following at least six months of vocational programming or performs at least four hundred hours of service as part of a community work crew. Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an inmate, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by a person, while an inmate, against a state agency, officer or employee.
* NB Repealed 02/09/01

2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the term or maximum term of each sentence or, where consecutive sentences are involved, against the aggregate maximum term. Such allowances shall be calculated as follows:
(a) A person serving two or more indeterminate sentences which run concurrently may receive time allowance not to exceed one-third of the indeterminate sentence which has the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively may receive time allowance not to exceed one-third of the aggregate maximum term.
(c) A person serving two or more determinate sentences which run concurrently may receive time allowance not to exceed one-seventh of the determinate sentence which has the longest unexpired time to run.
(d) A person serving two or more determinate sentences which run consecutively may receive time allowance not to exceed one-seventh of the aggregate maximum term.
(e) A person serving one or more indeterminate sentence and one or more determinate sentence which run concurrently may receive time allow- ance not to exceed one-third of the indeterminate sentence which has the longest unexpired term to run or one-seventh of the determinate sentence which has the longest unexpired time to run, whichever allowance is greater.
(f) A person serving one or more indeterminate sentence and one or more determinate sentence which run consecutively may receive time allowance not to exceed the sum of one-third of the maximum or aggregate maximum of the indeterminate sentence or sentences and one-seventh of the term or aggregate maximum of the determinate sentence or sentences.
* 2-a. If a person is serving more than one indeterminate sentence, the authorized merit time allowance granted pursuant to paragraph (d) of subdivision one of this section shall be calculated as follows:
(a) A person serving two or more indeterminate sentences with differ- ent minimum terms which run concurrently shall have the minimum term of the indeterminate sentence with the longest unexpired minimum term to run reduced in the amount of one-sixth of such minimum term; provided, however, that where the minimum term of any other concurrent indetermi- nate sentence is greater than such reduced minimum term, the minimum term of such other concurrent indeterminate sentence shall also be reduced but only to the extent that the minimum term of such other concurrent sentence, as so reduced, is equal to the reduced minimum term of such sentence with the longest unexpired minimum term to run.
(b) A person serving two or more indeterminate sentences with the same minimum terms which run concurrently, and no concurrent indeterminate sentence with any greater minimum term, shall have the minimum term of each such sentence reduced in the amount of one-sixth of such minimum term.
(c) A person serving two or more indeterminate sentences that run consecutively shall have the aggregate minimum term of such sentences reduced in the amount of one-sixth of such aggregate minimum term.
* NB Repealed 02/09/01

3. The commissioner of correctional services shall promulgate rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating the person or committee in each correc- tional institution delegated to make discretionary determinations with respect to the allowances, the books and records to be kept, and a procedure for review of the institutional determinations by the commis- sioner.

4. No person shall have the right to demand or require the allowances authorized by this section. The decision of the commissioner of correc- tional services as to the granting, withholding, forfeiture, cancella- tion or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.

5. Time allowances granted prior to any release on parole or prior to any conditional release shall be forfeited and shall not be restored if the paroled or conditionally released person is returned to an institu- tion under the jurisdiction of the state department of correctional services for violation of parole, violation of the conditions of release or by reason of a conviction for a crime committed while on parole or conditional release. A person who is so returned may, however, subse- quently receive time allowances

against the remaining portion of his term, maximum term or aggregate maximum term pursuant to this section and provided such remaining portion of his term, maximum term, or aggre- gate maximum term is more than one year.

6. Upon commencement of an indeterminate or a determinate sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by a person designated by the commissioner to perform such duty.
* NB Effective until 2005/09/30

* § 803. Good behavior allowances against indeterminate sentences. 1. Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the maximum term or period of his sentence not to exceed in the aggregate one-third of the term or period imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform proper- ly in the duties or program assigned.
2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the maximum term of each sentence or, where consecutive sentences are involved, against the aggregate maximum term. In no case, however, shall the total of all allowances granted to any such person under this section exceed one- third of the time he would be required to serve, computed without regard to this section.
3. The commissioner of correctional services shall promulgate rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating the person or committee in each correc- tional institution delegated to make discretionary determinations with respect to the allowances, the books and records to be kept, and a procedure for review of the institutional determinations by the commis- sioner.
4. No person shall have the right to demand or require the allowances authorized by this section. The decision of the commissioner of correc- tional services as to the granting, withholding, forfeiture, cancella- tion or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.
5. Time allowances granted prior to any release on parole or prior to any conditional release shall be forfeited and shall not be restored if the paroled or conditionally released person is returned to an institu- tion under the jurisdiction of the state department of correctional services for violation of parole, violation of the conditions of release or by reason of a conviction for a crime committed while on parole or conditional release. A person who is so returned may, however, subse- quently receive time allowances against the remaining portion of his maximum or aggregate maximum term or period not to exceed in the aggre- gate one-third of such portion provided such remaining portion of his maximum or aggregate maximum term or period is more than one year.
6. Upon commencement of an indeterminate sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by a person desig- nated by the commissioner to perform such duty.
* NB Effective 2005/09/30 .

Sec. 804. Good behavior allowances against definite sentences. 1. Every person confined in an institution serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of his sentence not to exceed in the aggregate one-third of the term imposed by the court. Such

allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.
2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the term of each sentence or, where consecutive sentences are involved, against the aggregate term. Allowances based upon sentences of less than one month may be granted, and in such case the maximum allowance shall be one day for every three days of the sentence. In no case, however, shall the total of all allowances granted to any such person exceed one-third of the time he would be required to serve, computed without regard to this section.
3. No person shall have the right to demand or require the allowances authorized by this section. The decision of the sheriff, superintendent, warden or other person in charge of the institution, or where such institution is under the jurisdiction of a county or city department the decision of the head of such department, as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.
4. A person who has earned a reduction of sentence pursuant to this section and who has been conditionally released under subdivision two of section 70.40 of the penal law shall not forfeit such reduction by reason of conduct causing his return to the institution. Provided, nevertheless, that such reduction may be forfeited by reason of subsequent conduct while serving the remainder of his term.
5. The state commission of correction shall promulgate record keeping rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section.
6. Notwithstanding anything to the contrary in this section, in any case where a person is serving a definite sentence in an institution under the jurisdiction of the state department of correction, subdivisions three and four of section eight hundred three of this chapter shall apply.
7. Upon commencement of any definite sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by an officer designated in the regulation to perform such duty.

§ 804-a. Good behavior allowances for certain civil commitments. 1. Every person confined in an institution serving a civil commitment for a fixed period of time, whose release is not conditional upon any act within his power to perform, may receive time allowances as discretionary reductions of the term of his commitment not to exceed, in the aggregate, one-third of the term imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.
2. Allowances based upon commitments of less than one month may be granted, and in such case the maximum allowances shall be one day for every three days of the commitment. In no case, however, shall the total of all allowances granted to any such person exceed one-third of the time he would be required to serve, computed without regard to this section.
3. No person shall have the right to demand or require the allowances authorized by this section. The decision of the sheriff, superintendent, warden or other person in charge of the institution, or where such institution is under the jurisdiction of a county or city department the decision of the head of such department, as to the granting, withholding, forfeiture, cancellation, or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.
4. The state commission of correction shall promulgate record keeping rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section.

5. Upon commencement of any civil commitment as described in subdivision one of this section, the provisions of this section shall be furnished to the person serving the commitment and the meaning of same shall be fully explained to him by an officer designated in the regulation to perform such duty. .

* § 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the inmate's eligibil- ity to be paroled pursuant to subdivision one of section 70.40 of the penal law, the commissioner shall review the inmate's institutional record to determine whether he has complied with the assigned program. If the commissioner determines that the inmate has successfully partic- ipated in the program he may issue the inmate a certificate of earned eligibility. Notwithstanding any other provision of law, an inmate who is serving a sentence with a minimum term of not more than six years and who has been issued a certificate of earned eligibility, shall be grant- ed parole release at the expiration of his minimum term or as authorized by subdivision four of section eight hundred sixty-seven unless the board of parole determines that there is a reasonable probability that, if such inmate is released, he will not live and remain at liberty with- out violating the law and that his release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.
* NB Expires 99/09/01--Amendments by ch. 3/95 § 28 Repealed 05/09/30 .

BILL NUMBER: A4799

_____

NOTE: Numbers in braces {} are footnotes

PURPOSE: To enable the Department of Correctional Services to better_____ control the behavior of its inmates; to help the Department maintain an equilibrium between new intakes and releases by determining which inmates are good candidates for release; and preventing the release of inmates posing a high risk.

SUMMARY OF PROVISIONS: Under the bill, Section 803 of the Correction _____ Law is repealed and a new section 803 is added to establish a merit time allowance committee in each institution. It reviews an inmate's record every six months and awards merit time to an inmate. The committee's decisions may be reviewed by the Commissioner of the Department of Correctional Services. DOCS would promulgate regulations governing the operation of these committees. A record of "good behavior and efficient and willing performance of duties or progress" in treatment program would reduce by up to one-third an inmate's minimum sentence for that _____ six month period. On the other hand, this merit time may be "withheld _____ in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or programs assigned." An inmate who loses merit time during a six month period cannot make it up at a subsequent date, nor can an inmate have merit time taken away for misbehavior during another six month period. If the Parole Board declines to release the inmate, the merit time can be applied to the maximum sentence. When an inmate reaches his or her maximum sentence minus the merit time, the inmate shall be released. A person returned to prison for a crime committed while on parole forfeits all accumulated merit time, but is able to start earning merit time all over again. Paragraph (a) of subdivision 2 of section 259-i of the Executive Law, is amended to allow the date of an inmate's first parole hearing to be determined by subtracting the merit time allowance earned from his or her minimum time. The Board however must consider the recommendation of the merit time allowance committee. Thus the Board's emphasis on the original crime, the inmate's criminal record, any crime victim's statement that is submitted, must be balanced by consideration of the inmate's conduct

during imprisonment. There must be a reasonable probability the parolee will remain at liberty without violating the law. The release must be compatible with the general welfare without undermining respect for law. The law would apply retroactively to inmates. But the decision to grant parole remains at the discretion of the Parole Board.

JUSTIFICATION: This measure would introduce flexibility into the long _____ sentences imposed by the courts often as a result of mandatory penalties imposed by law. These sentences, which are a major cause of costly new prison construction, have come under increasing criticism from law enforcement professionals and the public. Since 1983, reports of violent crime in the state have increased from 150,000 to 200,000, while the inmate population has jumped from 30,000 to 54,000 and the Correctional Services Operating Budget has gone from $500 million to $1.2 billion.{1} The increasing incidence of violent crime, combined with the evidence that Afro-American and Hispanic youth in large numbers have been arrested, found guilty, and imprisoned or placed under court supervision undermines a critical premise of law and order advocates: tough sentences deter crime. "Domestic tranquility" has not been achieved and professionals are sharply questioning whether arresting people solves social problems. During the low crime period that lasted for about thirty years after national prohibition, approximately 100 out of every 100,000 people were in state or federal prisons; today the figure is fast approaching 300 per 100,000. The Executive Director of the American Correctional Association agrees that, "It is kind of a fraud, no doubt," to assert a relationship between the incarceration rate and the level of violent crime.{2} The tough-sentences-deter-crime school has emphasized restricting judicial discretion, particularly through mandatory sentencing provisions. The New York State Department of Corrections has criticized mandatory sentences for filling prisons with non-violent offenders at the very time violent crime is the dominant problem. In 1987, the legislature established the Earned Eligibility Program and shock incarceration which accelerated the release of young inmates convicted of non-violent crime. These new laws combined a heavy emphasis on programs and treatment. The new law also authorized DOCS to utilize other service providers for residential and treatment services. This legislation extends this trend to inmates serving longer sentences. It divides every inmate's term into six month periods. During this time the inmate gains merit time and vests it. He or she can see the benefits quickly of performing well. Or on the other hand, the inmate's behavior can result in a loss of merit time and the penalties are equally apparent. The system is open ended, the inmate starts each six month period with a clean slate. Thus, there is a constant opportunity for a fresh start, and to reward the inmate who changes his or her behavior for the better. This system offers constant incentive, constant review, immediate penalties and immediate awards. Merit time makes the penalties for misbehavior and the rewards for good behavior readily apparent to the inmate. DOCS personnel through the merit allowance committee continually monitor inmate performance. A record is established which charts the ups and downs of the inmate's behavior. This is particularly important for the long time offender; it drastically reduces the risk of an inmate shamming reform in the hopes of early release. The best protection against fakery is long term observation. The merit allowance system differs from the conditional release system that exists under current law. Sole discretion is vested with the Commissioner of the Department of Correctional Services on reducing maximum sentences and in practice, almost every inmate is released at _____ two-thirds of his or her maximum sentence. Presently, Section 804 of the Correction Law provides for conditional release after two-thirds of the sentence is complete. Many prisoners realize that their initial parole hearing will focus on their criminal history and the nature of the crime that sent them to prison with relatively little attention to their institutional adjustment and accomplishments. Under these circumstances, many prisoners ask "why bother," and spend their time in the yard doing push-ups and shooting baskets content to wait for their conditional release. The current law's heavy emphasis on the crime that sent the inmate to prison reduces the inmate's desire to enter programs, while the merit time system rewards desired behavior and increases

participation in programs. Under the merit time system, an inmate can create the possibility of a mandatory discharge before two-thirds of the maximum by earning merit time. But this merit time can not suddenly be created as an inmate nears the two-thirds mark: it must be earned in six month increments. In this manner an inmate's record can be reviewed for trends showing good or bad behavior and predictions about an inmate's future conduct can be made with some confidence. It can be expected that, unlike now, the prison stay of some problem inmate may be extended beyond their conditional release date. It will be possible to do this without increasing the prison population because other long-term inmates will leave early under the merit time program.

This bill allows DOCS and the Parole Board to release prisoners who have demonstrated for an extended period of time their willingness to live within the law. It uses a sound mechanism for distinguishing "good risks" from other prisoners -- their conduct in prison and their participation in vocational, educational and therapeutic programs. The experience with earned eligibility demonstrates that Parole and DOCS can draw distinctions between good and bad risks. Of the 13,847 inmates reviewed under the earned eligibility procedure in 1988, 8,989 (or 65%) were issued certificates of earned eligibility. Of those issued the certificates, 1,642 were denied release by the Parole Board and held for an average of eight months.{3} Merit time is the most reasonable approach for combining the concern for public safety from released prisoners with the need for finding new space to combat violent crime while resources are severely limited.

PRIOR LEGISLATIVE HISTORY: _____ 1/3/96 - A.19 referred to Assembly Corrections Committee. FISCAL IMPLICATIONS: Reduces the length of prison stays for certain _____ inmates and the expense of their incarceration while reducing pressure to build new prisons. The measure holds out the promise of making a substantial contribution towards having releases approach the number of newly arrived inmates. Housing an inmate costs approximately $25,300 a year or $25,300,000 a year for each thousand inmates. A new facility costs about $500 million, and is financed by the state's limited credit. The Urban Development Corporation, which provides the funding, was originally chartered to increase low and moderate income housing, but today its major "housing program" is prison construction. EFFECTIVE DATE: Ninetieth day after becoming law. _____ _____

{1} Imprisoned Generation: Young Men Under Criminal Justice Custody in _____

New York State, A Report by The Correctional Association of New York & _____

New York State Coalition for Criminal Justice, September, 1990.

{2} "More Cells for More Prisoners, But to What End?" by Andrew H. Malcolm, p. B16, The New York Times, January 18, 1991. _____

{3} Earned Eligibility Statistical Report, 1988 Calendar Year, February, _____ 1989. .

A 4799-A Clark

Correction Law

TITLE.... Provides for accumulation of merit time allowance; repealer
02/24/97 referred to correction
05/29/97 amend and recommit to correction

05/29/97 print number 4799a
01/07/98 referred to correction

A4799
Provides for vesting of merit time allowance for good behavior with certain limitations; provides commissioner of correctional services shall promulgate rules and regulations for merit time allowance to determine which inmates are good candidates for release. .

S T A T E O F N E W Y O R K

4799--A
1997-1998 Regular Sessions
I N A S S E M B L Y
February 24, 1997 _____

Introduced by M. of A. CLARK -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee AN ACT to amend the correction law and the executive law, in relation to merit time allowance and release for prisoners accumulating merit time allowance and to repeal certain provisions of the correction law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM- BLY, DO ENACT AS FOLLOWS:
1 Section 1. Legislative intent. It is the purpose of this act to
2 strengthen the ability of the department of correctional services to
3 better manage its inmate population through the granting or withholding
4 of merit time allowance credits. This new system seeks to prevent the
5 early conditional release of ill-prepared inmates, while offering
6 release only to those inmates who have demonstrated a willingness and
7 ability to work in society through completion of therapeutic and treat-
8 ment programs prescribed by the department of correctional services.
9 § 2. Section 803 of the correction law is REPEALED and a new section
10 803 is added to read as follows:
11 , 803. MERIT TIME ALLOWANCE AGAINST INDETERMINATE SENTENCES. 1. EVERY
12 PERSON CONFINED IN AN INSTITUTION OF THE DEPARTMENT OR A FACILITY IN THE
13 DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE SENTENCE OF IMPRI-
14 SONMENT, MAY RECEIVE MERIT ALLOWANCES AGAINST THE MAXIMUM AND MINIMUM
15 TERMS OR PERIOD OF HIS SENTENCE NOT TO EXCEED IN THE AGGREGATE ONE-THIRD
16 OF THE TERM OR PERIOD IMPOSED BY THE COURT, EXCEPT THAT NO MERIT TIME
17 ALLOWANCE SHALL DECREASE THE MINIMUM TERM OR PERIOD TO LESS THAN ONE
18 YEAR, AND NO MERIT TIME ALLOWANCE SHALL BE CREDITED TO THE MAXIMUM PERI-
19 OD OF A PERSON SERVING A SENTENCE WITH A MAXIMUM TERM OF LIFE. SUCH
20 ALLOWANCES MAY BE GRANTED FOR GOOD BEHAVIOR AND EFFICIENT AND WILLING
21 PERFORMANCE OF DUTIES ASSIGNED OR PROGRESS AND ACHIEVEMENT IN AN
22 ASSIGNED TREATMENT OR EDUCATION PROGRAM, AND MAY BE WITHHELD IN WHOLE

OR PAGE-2

1 IN PART FOR BAD BEHAVIOR, VIOLATION OF INSTITUTIONAL RULES OR FAILURE TO
2 PERFORM PROPERLY IN THE DUTIES OR PROGRAM ASSIGNED.
3 2. IF A PERSON IS SERVING MORE THAN ONE SENTENCE, THE AUTHORIZED
4 ALLOWANCES MAY BE GRANTED SEPARATELY AGAINST THE MAXIMUM AND MINIMUM
5 TERMS OF EACH SENTENCE OR, WHERE CONSECUTIVE SENTENCES ARE INVOLVED,
6 AGAINST THE AGGREGATE MAXIMUM AND MINIMUM TERMS. IN NO CASE, HOWEVER,
7 SHALL THE TOTAL OF ALL ALLOWANCES GRANTED TO ANY SUCH PERSON UNDER THIS
8 SECTION EXCEED ONE-THIRD OF THE MAXIMUM TIME HE WOULD BE REQUIRED TO
9 SERVE, COMPUTED WITHOUT REGARD TO THIS SECTION. NO MERIT TIME ALLOWANCE
10 SHALL DECREASE THE MINIMUM TERM TO LESS THAN ONE YEAR.
11 3. THE COMMISSIONER OF CORRECTIONAL SERVICES SHALL PROMULGATE RULES
12 AND REGULATIONS FOR THE GRANTING AND WITHHOLDING OF MERIT TIME ALLOW-
13 ANCES AUTHORIZED BY THIS SECTION IN ACCORDANCE WITH THE CRITERIA HEREIN
14 SPECIFIED. SUCH RULES AND REGULATIONS SHALL INCLUDE PROVISIONS DESIG-
15 NATING A MERIT TIME ALLOWANCE COMMITTEE IN EACH CORRECTIONAL
INSTITUTION
16 DELEGATED TO MAKE DISCRETIONARY DETERMINATIONS WITH RESPECT TO THE
17 ALLOWANCES, THE BOOKS AND RECORDS TO BE KEPT, AND A PROCEDURE FOR
REVIEW
18 OF THE INSTITUTIONAL DETERMINATIONS BY THE COMMISSIONER. SUCH COMMITTEE
19 SHALL REVIEW THE RECORD OF EACH INDIVIDUAL INMATE EVERY SIX MONTHS
20 BEGINNING FROM THE DATE OF HIS OR HER ENTRANCE AT SUCH INSTITUTION. THE
21 COMMITTEE SHALL THEN DETERMINE, BASED ON THE FACTORS FOR WHICH
ALLOWANCE
22 TIME IS GRANTED, WHETHER OR NOT TO GRANT ALLOWANCE TIME TO THE INMATE.
23 FOR EACH SIX MONTH REVIEW PERIOD, AN INMATE MAY BE GRANTED MERIT TIME
24 WHICH MAY REDUCE BY UP TO ONE-THIRD AN INMATE'S MINIMUM SENTENCE FOR
25 THAT SIX MONTH REVIEW PERIOD. IF AN INMATE IS NOT GRANTED MERIT TIME FOR
26 THE SIX MONTH REVIEW PERIOD, HE OR SHE CANNOT EARN ADDITIONAL MERIT TIME
27 IN ANY SUBSEQUENT SIX MONTH REVIEW PERIOD TO MAKE UP FOR MERIT TIME
28 WHICH HAS NOT BEEN GRANTED. ADDITIONALLY, AN INMATE WHO HAS BEEN
GRANTED
29 MERIT TIME DURING A SIX MONTH REVIEW PERIOD SHALL NOT LOSE SUCH MERIT
30 TIME DURING A SUBSEQUENT SIX MONTH REVIEW PERIOD FOR BAD BEHAVIOR,
31 VIOLATION OF INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE
32 DUTIES OR PROGRAM ASSIGNED.
33 4. ALL MERIT TIME ALLOWANCES EARNED PURSUANT TO THIS SECTION SHALL BE
34 VESTED, ON A ONE DAY FOR EVERY THREE DAYS BASIS, EXCEPT AS MODIFIED BY
35 OTHER PROVISIONS OF THIS CHAPTER.
36 5. MERIT TIME ALLOWANCES GRANTED PRIOR TO ANY RELEASE ON PAROLE SHALL
37 BE FORFEITED AND SHALL NOT BE RESTORED IF THE PAROLED PERSON IS RETURNED
38 TO AN INSTITUTION UNDER THE JURISDICTION OF THE STATE DEPARTMENT OF
39 CORRECTIONAL SERVICES FOR VIOLATION OF PAROLE BY REASON OF A CONVICTION
40 FOR A CRIME COMMITTED WHILE ON PAROLE. A PERSON WHO IS SO RETURNED MAY,
41 HOWEVER, SUBSEQUENTLY RECEIVE MERIT TIME ALLOWANCES AGAINST THE

REMAIN-
ING PORTION OF HIS MAXIMUM OR AGGREGATE MAXIMUM TERM OR PERIOD NOT TO
EXCEED IN THE AGGREGATE ONE-THIRD OF SUCH PORTION PROVIDED SUCH REMAIN-
ING PORTION OF HIS MAXIMUM OR AGGREGATE MAXIMUM TERM OR PERIOD IS MORE
THAN ONE YEAR.
6. UPON COMMENCEMENT OF AN INDETERMINATE SENTENCE THE PROVISIONS OF
THIS SECTION SHALL BE FURNISHED TO THE PERSON SERVING THE SENTENCE AND
THE MEANING OF SAME SHALL BE FULLY EXPLAINED TO HIM BY A PERSON DESIG-
NATED BY THE COMMISSIONER TO PERFORM SUCH DUTY.
7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHENEVER MERIT TIME
ALLOWANCE IS CLAIMED AGAINST THE MINIMUM TERM OR PERIOD OF
IMPRISONMENT,
IT SHALL SERVE ONLY TO ALLOW SUCH PERSON, IN THE SOLE DISCRETION OF THE
STATE PAROLE BOARD, TO BE RELEASED ON PAROLE. WHENEVER MERIT TIME ALLOW-
ANCE IS CLAIMED AGAINST THE MAXIMUM TERM OR PERIOD OF IMPRISONMENT, AND
THE MAXIMUM TERM LESS ACCUMULATED MERIT TIME ALLOWANCE CREDITS
EQUALS
PAGE-3
THE PERSON'S TIME SERVED, SUCH PERSON SHALL BE RELEASED TO PAROLE SUPER-
VISION.
8. EVERY PERSON WHO IS INCARCERATED ON THE EFFECTIVE DATE OF THIS
SUBDIVISION SHALL BE ENTITLED TO NO MORE THAN ONE MONTH OF MERIT TIME
ALLOWANCE FOR EVERY THREE MONTHS SERVED TO BE CREDITED AGAINST THE MINI-
MUM AND MAXIMUM TERMS OR PERIODS OF IMPRISONMENT. THE AMOUNT OF CREDITS
ACTUALLY AWARDED SHALL BE DETERMINED BY THE MERIT TIME ALLOWANCE
COMMIT-
TEE AND APPLIED RETROACTIVELY. EVERY PERSON WHO IS INCARCERATED ON THE
EFFECTIVE DATE OF THIS SUBDIVISION, AND WHO HAS ALREADY SERVED HIS MINI-
MUM TERM, SHALL BE EVALUATED RETROACTIVELY FOR EARNED ELIGIBILITY
CERTIFICATION.
§ 3. Paragraph (a) of subdivision 2 of section 259-i of the executive
law, as amended by chapter 3 of the laws of 1995, is amended to read as
follows:
(a) At least one month prior to the date on which an inmate may be
paroled pursuant to subdivision one of section 70.40 of the penal law
LESS ANY ACCUMULATED MERIT TIME ALLOWANCE CREDITS, a member or members
as determined by the rules of the board shall personally interview such
inmate and determine whether he should be paroled in accordance with the
guidelines adopted pursuant to subdivision four of section two hundred
fifty-nine-c. If parole is not granted upon such review, the inmate
shall be informed in writing within two weeks of such appearance of the
factors and reasons for such denial of parole. Such reasons shall be
given in detail and not in conclusory terms. The board shall specify a
date not more than twenty-four months from such determination for recon-
sideration, and the procedures to be followed upon reconsideration shall
be the same. If the inmate is released, he shall be given a copy of the

conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order and mandatory surcharge previously imposed by a court of competent jurisdiction that applies to the parolee. The board of parole shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution and mandatory surcharge as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law.

§ 4. Paragraph (a) of subdivision 2 of section 259-i of the executive law, as amended by chapter 396 of the laws of 1987, is amended to read as follows:

(a) At least one month prior to the expiration of the minimum period or periods of imprisonment fixed by the court or board, LESS ANY ACCUMULATED MERIT TIME ALLOWANCE CREDITS, a member or members as determined by the rules of the board shall personally interview an inmate serving an indeterminate sentence and determine whether he should be paroled at the expiration of the minimum period or periods in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c. If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If the inmate is released, he shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order and mandatory surcharge previously imposed by a court of competent jurisdic-

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tion that applies to the parolee. The board of parole shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution and mandatory surcharge as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law.

§ 5. Paragraph (c) of subdivision 2 of section 259-i of the executive law, as amended by chapter 559 of the laws of 1994, is amended to read as follows:

(c) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c shall require that the following be considered:

(i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates AND THE RECOMMENDATIONS OF THE APPROPRIATE MERIT TIME ALLOWANCE COMMITTEE ESTABLISHED UNDER SUBDIVISION THREE OF SECTION EIGHT HUNDRED THREE OF THE CORRECTION LAW; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department of correctional services and any recommendation regarding deportation made by the commissioner of the department of correctional services pursuant to section one hundred forty-seven of the correction law; and (v) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated. In the case of an oral statement made in accordance with subdivision one of section 440.50 of the criminal procedure law, the parole board member shall present a written report of the statement to the parole board. A crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Notwithstanding the provisions of this section, in making the parole release decision for persons whose minimum period of imprisonment was not fixed pursuant to the provisions of subdivision one of this section, in addition to the factors listed in this paragraph the board shall consider the factors listed in paragraph (a) of subdivision one of this section.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law, provided that the amendments to paragraph (a) of subdivision 2 of section 259-i of the executive law made by section three of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section four of this act shall take effect.

Back to the Titles

'Jenna's Law' To Rewrite Parole

A much-longer "post-release supervision" would replace traditional parole.

Published March 12, 1998, in The Post-Standard.

By ERIK KRISS
Albany Bureau

With Bruce Grieshaber by his side, Gov. George Pataki unveiled his proposed "Jenna's Law" Wednesday.

Named after Grieshaber's slain daughter, the measure would end traditional parole for all violent felons, not just repeat offenders.

It would require all violent felons to serve at least six-sevenths of their prison sentences. It would mandate sentences with set lengths. And it would subject violent felons to "post-release supervision" of anywhere from three to five years, or life for sex offenders.

State Sen. John DeFrancisco, R-Syracuse, pledged that the Republican-controlled Senate will pass Pataki's bill. And a key assemblyman praised elements of the proposal.

Assembly Codes Committee Chairman Joseph Lentol, D-Brooklyn, said he has advocated post-release supervision of violent felony offenders.

"It's something the Assembly is not philosophically opposed to, in my opinion," said Lentol, who answered questions on Pataki's bill at the request of Assembly Speaker Sheldon Silver, D-Manhattan. Pataki's bill also would:

Subject offenders who violate terms of their post-release supervision to sentences of one to five years back behind bars.

Require victims be notified when the perpetrator is to be released from prison. Ban discretionary release of violent felons from prison before six-sevenths of the sentence is up. Grieshaber said he liked the proposal, although he vowed to continue pushing for a registry and community notification procedure for released violent felons.

"Our family is comforted to know that someone else's Jenna will live to make the world a better place when this law becomes a reality," Grieshaber said as he choked back tears at the state Capitol news conference where Pataki unveiled his plan. Jenna Grieshaber Honis, 22, of Camillus, was killed Nov. 6 in Albany, where she was studying to be a nurse. Her accused killer, Nicholas Pryor, was a violent felon out on parole before the end of his prison sentence.

Robert Gangi, executive director of the Correctional Association of New York State, a prisoners' rights group, charged Pataki with "policy by broad brush stroke." He asked if battered women convicted of fighting back against their abusers would have no chance at early release.

"You can make the case that keeping people in prison longer will make them, when they're released, more embittered and crime-prone," Gangi said.

Back to the Titles

Salary Upgrade

My story begins with Rich Abrahamson coming to Wende and touring the Jail with me on the 3-11 shift. During this tour Rich was boasting of the 2 pay grade upgrade that looked very good by June or July.

Then I have dinner with a few of the local Presidents and Rich and Dep. Comm. Breen, Rich boasted of improved relations with the state, especially the Governor and used the "Gift", not my quote, the Officers up north received, as Proof.

This was all backed up by alot of head nodding and "that's right Richs'" by the Dep Comm. I asked Rich

again if the 2pay grade still looked good, he said by June or July again, I left very encouraged!

Now I have a meeting with my staff rep who explains the Re-allocation process to me and gives me the Re-allocation application to give to my Exect. Board to read and understand. Now heres where it gets Funny!

In the Very next breath my staff rep tells me that any infighting will spoil the chances of an upgrade! Any Decertification effort and we can throw this out the window. Was this a Desperate threat from a man trying to keep a very plush C-82 staff rep job?

Now I read the Re-allocation request and I also read the Previous Re-allocation request that were Denied. At the end of each report it explains in detail,why the Re-allocation was Denied.

None of the reasons the Previous requests were denied were because of any Union reasons, let alone a Challange. What possible Union issues ,could cloud the facts stated in the request, these facts Hep-B, Aids, TB, Herpes, Throwers etc, are the REASONS we deserve this Re-allocation, NOT because Council 82 is "User Friendly" with the State.

AN UPGRADE IS BASED ON OUR JOB AS CORRECTION OFFICERS NOT ON OUR LOYALITY OR OBEDIENCE TO OUR UNION

Also, an Upgrade can be submitted at any time! So it's not a once every 10 or 15 year thing that some may wish you to believe, if we have a good chance of getting it now, that chance will not diminish over a few months as our jobs will not change.

I enjoy a good Challenge, like in sports, it makes the Challenger fight like hell to get to the top and it makes the Challenged fight like hell to stay there. Either way the ones who benefit most are the Spectators who get the pleasure of being Entertained by a good fight and they reap the Benefits of the Victory!

I have done my research and have shared it with my membership who will not be fooled, threatened or cohearsed into making such an important decision without ALL the Facts. My membership will make an Educated Decision!

Since I've been the Local President at Wende,I have had a few things Rammed down my throat from the Council, I say rammed because I had no opportunity to ask my membership before having to vote:
1) That Very Lucrative Staff Rep contract. (This one tasted especially bad!)
2) Bob Hite's new building.
3) Now the upgrade

Thank God I had the insight to purchase stock in Johnson and Johnson a couple years ago, I forsee a rise in production in the KY Jelly division!

Mark Lewandowski

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TRIPS Management controls them, we pay for it!!!!!!!

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES
HARRIMAN STATE CAMPUS
ALBANY, N.Y. 12226

Commissioners prepared testimony before the Assembly Committee on Correction 11 a.m., November 28, 1995 Hearing Rooms A&B State Office Building 207 Genesee Street Utica, New York

"SUBJECT The effect of Administration budget reductions on the management of the State prison system."

We advised both then-Governor Cuomo's Division of the Budget and the Legislature in our Fiscal 1995 budget proposal that we needed 725 more Correction Officers to increase our relief factors to cover legitimate absences. The State could not afford those 725 officers due to its fiscal constraints.

In addition to those 974,000 hours, we had to cover 635,089 hours due to approved jobs that were vacant and 318,000 hours of additional inmate services (such as medical and court trips.)

Now see who approves these outside meical trips according to Correction Law!!!!

2. The commissioner of correction, in his discretion, may by written order permit inmates to receive medical diagnosis and treatment in outside hospitals, upon the recommendation of the superintendent or director that such outside treatment or diagnosis is necessary by reason of inadequate facilities within the institution. Such inmates shall remain under the jurisdiction and in the custody of the department while in said outside hospital and said superintendent or director shall enforce proper measures in each case to safely maintain such jurisdiction and custody.

3. The cost of transporting inmates between facilities and to outside hospitals shall be paid from funds appropriated to the department of correction for such purpose.

So what we had was a commissiner who could not secure funds for all of these trips which he approved. And now we have a Deputy Commissioner who is trying to steal resources from individual jails, causing staff shortages to justify closing posts which violates our contractual rights. He is violating Correction Law by having officers from one jail escort inmates from another.

The commissioner of correction shall have the power to transfer inmates from one correctional facility to another. Whenever the transfer of inmates from one correctional facility to another shall be ordered by the commissioner of correction, the superintendent of the facility from which the inmates are transferred shall take immediate steps to make the transfer. The transfer shall be in accordance with rules and regulations promulgated by the department for the safe delivery of such inmates to the designated facility.

2. The commissioner of correction, in his discretion, may by written order permit inmates to receive medical diagnosis and treatment in outside hospitals, upon the recommendation of the superintendent or director that such outside treatment or diagnosis is necessary by reason of inadequate facilities within the institution. Such inmates shall remain under the jurisdiction and in the custody of the department while in said outside hospital and said superintendent or director shall enforce proper measures in each case to safely maintain such jurisdiction and custody.

The superintendent is in charge of only one facility at a time. Even the Hub consept violates correction law. Each facility has one superintendent.

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Hyperlink to knowledge

Found this very interesting search engine. If you are on the Web just type in AFSCME and you will be taken to some very interesting information concerning your rights as a Union member. A US District Court Judge has ruled that an AFSCME member can donate his dues to a charity of his choice due to Afscme's support of Abortion with his dues. Check it out.

America's ConservativeNet

Herb Wild ----------

Public Employee Unions And Members' Dues

Political observers expect the controversy over how unions spend members' dues on political issues and candidates to heat up in the new Congress. Substantial numbers of union members -- and non-members who are forced to pay the dues -- have begun to object to their dues being used for political purposes with which they disagree.

Since public employee unions are one of the few sectors of the labor movement which is showing any growth, their activities will probably receive particular scrutiny.

The largest of the public-sector labor unions, the 1.3 million member American Federation of State, County and Municipal Employees (AFSCME), sent 217 of its members to the Democratic convention this year -- making up one-quarter of the entire number of delegates who were members of unions affiliated with the umbrella labor organization, the AFL-CIO.

If AFSCME were a state, the size of its delegation would have ranked behind only California, New York and Texas.

The American Federation of Government Employees -- the largest of the federal employees unions -- represents 700,000 workers in 67 federal agencies and the District of Columbia and has 210,000 dues-paying members.

Both these unions gave more than their assessed share to the AFL-CIO's "Labor '96" campaign effort -- which spent $35 million targeting Republic candidates for defeat in this election.

Along with money, public sector unions back candidates -- who are overwhelmingly Democratic -- with "voter education" advertising, canvassing, phone banks, registration drives and get-out-the-vote pushes. All this was made easier this year by loosening of the rules under the 57-year-old Hatch Act, which had previously limited public employees' political activism. Changing the law met with opposition even from the normally liberal Common Cause, which feared even greater politicization of the Civil Service, and the possibility that workers could be forced into activity.

While membership in federal unions is voluntary, public employees in many states are required to pay union dues that fund political activities. But that is being challenged in lawsuits across the country.

Since the Supreme Court has ruled that employees must have the option not to pay for political activity they disagree with, the National Right to Work Legal Defense Fund is suing both public-sector and

private-sector unions to recoup for workers those portions of their dues earmarked for political causes.

In a settlement last year, an AFSCME affiliate agreed to return $8.6 million in dues to 57,000 Pennsylvania workers.

The Right to Work group now has more than 80 cases pending against National Education Association affiliates on behalf of public school teachers.

While unions contend that workers can get some of their dues rebated, a spokeswoman for the National Right to Work fund says that to do so, employees must resign from the union -- and that unions understate political spending so as to keep rebates small.

Source: David A. Price, "Liberalism's New Fifth Column," Investor's Business Daily, November 8, 1996.

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AFSCME UNION DUES REFUND

Just wanted to remind everyone that if you intend to get a refund of your portion of your union dues that are used for political purposes you must do so only between the dates of April 1 and April 16. The refund this year amounts to about $47 and next year the amount will be $75. You need to send a letter such as I have used and distributed to my fellow brothers and sister. See the sample letter below that we are using. This can only be mailed to AFSCME headquarters by registered or certified mail otherwise you will not receive a rebate check.

To: Mr. William Lucy
International Secretary-Treasurer
AFSCME International Headquarters
1625 L Street N.W.
Washington D.C. 20036

Dear Sir,

My name is _____. I am a member of Council 82 local _____. My social security number is _____-_____-_____ . I object to having my dues used for partisan political and ideological purposes and request a rebate of my dues according to article 9 section 11 of the AFSCME International Constitution. My address is

_____
_____
_____
_____

Yours Truly,

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Getting Rid of AFSCME

John Butler

You stated in the past to me as well as in general you would charge AFSCME and Gerald McEntee if you had the chance, particularly for their participation and support of the privatization issue. What about Rich, Mike Graney, Patty, and the rest of Council 82? Are you really serious about it? If you or any other Council 82 official pursues this, your elected position could be in jeopardy, so how serious are you people?

Keep in mind that you or any other official at Council 82 cannot charge Gerald McEntee or William Lucy or the AFSCME International by constituion because the international constitution requires that (10) Ten Local Presidents must get together in order to charge McEntee or Lucy. My question to you John is would you really and I mean really support this to go after AFSCME? I feel that in order to do this well, the locals need a focal point and would need support from Council 82 which would be Correction Policy. Since you are the CPC Correction Policy Chairman you have direct contact to all local presidents in correction policy thus giving you the ability to sell it. Rich and Mike would have no direct involvement in this only provide support because this would be a Correction Policy issue affecting Corrections.

I've been told all the part-time elected officials at Council 82 are now working full-time due to the challenge and AFSCME is picking up the tab. If this is true, does this or would this influence you or anyone elses decision making in order to go after AFSCME? Would you or anyone else halfway through suddenly change your mind?

Before I say anything else how sincere are you and how sincere is the rest of the crew down at Council 82?

Dave St.Louis

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New York State Correction Officer & Police Benevolent Association

I went to this informational meeting with a open mind and to get some facts. In the crowd of approximately 60 or so correction officers, were members from Eastern, Fishkill, Greenhaven, Mid-Orange, Shawngunk, Sing-Sing, Ulster & Wallkill, also represented were a few hacknet members. I hope they took notes or at least tell me if I didn't hear things correctly. Let me start off by telling who sat at the head table Billy West of Wallkill and Brian Shanager from GreenHaven and a lawyer from Albany law firm named Bill Sheehan, who works for a rather large Albany firm(I didn't get the full name) who has a staff of 28 lawyers, this was the same law firm that represented the NYS Trooper in their contract.

It seems to me that they have done there homework and have gone on many fact finding missions to other states that have decertified and/or are independent unions, such as Massachusetts, California, New Jersey and a few other states. No other state union are trying to take us over, they would only be offering their assistant in helping us through a decertification process as they have been through it and have the knowledge to help.

It was noted by attorney Sheehan that through a decertification , that we can not loose any benefits, the Taylor law protects us.

Some of the benefit that other state with independent union enjoy are:

*NJ a officer with 9 years makes $59,000+ , Retirement 25 years-65% 30/70%

*Calf. officers at job rate makes $55,000+ , Retirement 30 years age 55 makes 112%

*Mass. Starts at $28.000,at 5years $48.000+ a 20 year Retirement 1.5% every year after that.

It was explained that Union dues being proposed would be only $16.00 a pay period. That the monies collected would be broken down to 1/3 staff, 1/3 legal &1/3 image. The $2.8 million that goes to AFSCME, would come back to us, the members. This allowing us to have more money for legal services, offering better contracts, grievance procedures. The law firm has no problems taking the State of New York to court when they are wrong, this is their business.

4 main things that will be worked towards would be
#1 Secure decent wages,
#2 Assure of legal representation,
#3 Dealing with the grievances,
#4 Image enhancement.

Binding arbitration was discussed and it was explain by Bill Sheehan that it took the troopers approx... 10 years and a few failed bills, before the troopers got binding arbitration. He explained that with a professional negotiator, who would negotiation a contract for correction officers(only), that we could show the need for a pay increase and better benefits & retirement. We also can have binding arbitration, but it was not something that would happen right away. This would be in the top 5 of items that would be worked on and consider priority.

They will represent all correction officer, Sergeants and Lieutenants, under one union, " we are all correction officers".

They are looking for members to help spread the word and in the future to help to get cards signed. A need of 30% of members must sign the cards for them to make a challenge.

If you can make their next meetings, please do so, the more information you have the better you can make a choice when it comes down to a challenge.

For more information
NYSCO&PBA
121 State St.
Albany, NY 12207
1-518-427-1551 (answering machine, your call will be returned)

The next proposed information meeting will be,
March 27th Hudson Valley, Newburgh area,

Also the following are tentative;
April 3rd West region possible in Syracuse
April 9th Central region Utica area

April 14th Northern region, Plattsburg area

It should be further noted that NYSCO&PBA will make their official announcement in May as to their intention, these informational meetings are just that, informational to gather information and to see if their is enough support to make a challenge.

I am not for or against this decertification at this time, I attended the informational meeting, to get information and to become informed and now I am relaying this information to those that could not make it.

tupper89@geocities.com(Ed Kasper)ICQ# 2811842

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Binding Arbitration

I'll explain why we should want it, #1 with binding arbitration the arbitraitors have to consider the salaries of other correction dept's in the state to our's ie: NYC CORRECTIONS, NASSAU COUNTY CORRECTIONS, SUFFOLK COUNTY CORRECTIONS, WESTCHESTER COUNTY CORRECTIONS, YONKERS CORRECTIONS, AND ANY ONE ELSE WHO MAKES MORE THAN US, than the state will say that there are alot of dept's in the state that make less but our argument will be that the majority of convicted felon's came from the NYC and surronding area which all of there dept's make more than us, therfore we have just as dangerous a job if not more than they have hence we should be compensated just as they are since 80% of the convict's in the system are from there. Plus they will also take into consideration the higher cost of living in the southern teir of the state as we have seen with the troopers arbitration award. Now do not say that the New York City Police didn't do good in arbitration because that did not go before the board that we would be going before they tried but were reversed in state court.

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