Prison News and News Articles For Correction Officers in New York State: { Page 19 }

ARTICLE LIST:

Back to Correctional Officers Informational Page
Back to Page #1, Back to Page #2, Back to Page #3, Back to Page #4, Back to Page #5,
Back to Page #6, Back to Page #7, Back to Page #8, Back to Page #9, Back to Page #10,
Back to Page #11, Back to Page #12, Back to Page #13, Back to Page #14,
Back to Page #15, Back to Page #16, Back to Page #17, Back to Page #18,
To Page #20, To Page #21, To Page #22, To Page #23

Back to the Titles

What has this new regime provided us that improves our working conditions or compensation?

In this thread I wrote "I ASK ONE QUESTION OF EVERYONE... What has this new regime provided us that improves our working conditions or compensation?"

NOBODY even attempted to answer this question. Now, allow me to put it on your shoulders. Answer my question please, if you can, maybe there is no answer.

*** Improvement of working conditions and compensation, it looks like its going to be a long one ;-).

Hate to tell you this but your compensation won't improve until the next contract is negotiated. You can have all the professional negotiaters and lawyers there are and it won't increase your wages one red cent until then. So much for compensation Bob.

Now for the preperation of our goal to increase your wages and compensation; As you are aware we have filed for a 3 step upgrade, while no one expects all 3 we do think it is favorable for 1, if enough prayers are said and none of our members sin between now and hopefully August we might get 2 (much doubt on my part though) A lot of work has been put into this and in case you haven't seen the actual application, rest assured there is one and I'll be glad to see that you get a copy if you haven't seen it already. If your not aware, a survey has recently been completed with our members as a part of the process for this upgrade. Enough about that I'm sure, but before we leave it, let me say that while "others" have promised the elusive upgrade, I have yet to find the member who as ever seen an application or has taken part in the survey needed to complete it. This time it was done and there is documentation to prove it ;-).

A pre-negotiating committee was formed to prepare our negotiating team for our contract. Our negotiators won't be going in at the last minute with a hangover to negotiate for our members, as a matter of fact, they will have been preparing for about a year. We have engaged the services of afscme to locate money in NYS, for training, and for general discussions of our contract (I can't fill you in completely because I haven't been involved much in this phase). Rich has also discussed negotiating issues and training with Cornells Labor Relations in Ithaca NY with Jim Rundell (whom has addressed our pre committee and Lee Adler, he may have too, I'm not sure). Resumes have been received from some pretty impressive people for the position of the long awaited professional negotiator. From my understanding they are close to choosing one and are anxious to start working with him. We believe with the advance preperation, training, professional negotiator, political stature, the drive, and dedication we will deliver a contract that will be suitable to our memberships desires and needs.

On the health care benefits for the upcoming contract negotiations, we have been looking at different providers and their services to better service our members. We may have found some monies that may enhance our benefits or reduce our costs. We are also looking at ways to provide education and assistance to our members thru afscme and other agencies.

We are building our political base on a daily basis. This is one of the essential ingredients to acquiring our political goals, legislative laws, benefits and compensation. In down to earth terms, we are out to get

as many friends in the political structure as possible. This is where our big wins will come from.

For the improvement of our working conditions; I'm not sure exactly what you are expecting on this, so if I'm off track let me know. Since the 3/4 disability bill and the feces bill get run down by the challengers I'll drop it right here. The best improvement I could acquire is to eliminate the inmates, but that would get us all fired so my goal is to just stop short of that. To be honest, I feel I have gotten much up front but several agreements have been reached. Additional staffing for our S-Block units is a good starter 16 in the intial talks and 81 more just recently. Prior to the opening of these S-Blocks we inspected them and had some items removed due to the location and function of these items to make a cell extraction safer for our members. This is a continuing project.

I have corrected some problems with getting inmates convicted on the feces bill which dealt with the evidence. Training is underway at the Academy for collection of the evidence and a Lab in NY has been designated along with the directive being rewritten. A pilot program is in progress at Southport CF. This was a major stride for both Council 82 and DOCS, if all our issues were handled in this manner, we wouldn't have any.

Most recently we have reached an agreement with the state to provide HIV medication to possibly exposed Officers with the initial cost born through the facility and supported by funding from our contract. This merely takes the hassle out of the picture and doesn't in any way remove any responsibility from DOCS.

The L/M has been pretty well discussed here and while we do have agreements for extraction suits and training we are also having a problem with the budget. Other details of that L/M are being addressed and will be forthcoming in due time. I wish I had a deffinate date for all of it, but the facts are it can't be dated. Numerous details need to be addressed. I fell that the majority of issues presented at that L/M should have been addressed years ago. We were just catching up. Seems like I do that a lot.

The Temp Sgts issue has been addressed and settled with a miminal amount of inconvience to our members. While a few have taken the "blunt end" of the settlement, the Temps are now being phased out once and for all. This may not effect you directly, but it does effect any CO who is in line for a promotion.

Training is being scheduled for L/M and grievances on the local level and Gary Tavormina has gotten the ok and expenses from Council 82 to conduct semiars on our retirement system (for some reason there still isn't much call for him even after I put out a memo).

Our daily operations in Correction Policy consist of local and individual issues that can't be handled at the local level or because a superintendent won't deal with it or isn't in favor of it. To list them would take forever and get boring to most in a short time.

Actually, to sit here and try to think of everything that has been done or is in the process of being done isn't easy. As I have been writting this I did come to realize that probably 98% of what I have written, I have already posted on the Net.

You know, I just read this and I just wrote pretty much what I have been involved in or has taken place since my election. Maybe we should get Rich and Mike to let the members know what happened before I got there ;-). I'm beat and I have some calls to return, later.

John Butler
Correction Policy Chairman

Back to the Titles

Lots of Room For Improvement

Lots Of Room For Improvement
By Gary Gerard, Times-Union Managing Editor

It’s funny how things evolve.

Take government, for example.

Generally I’m for less government. It seems the government is everywhere and into everything.

Does this mean that we need no government or that all government is bad?
Of course not.

We very much need to be governed. And we very much need a federal government.

Think of it this way. If there were no federal government, there might still be places in this country where women and blacks wouldn’t be allowed to vote.

There would be no interstate highways. There would be no Social Security. No Medicare. No national monuments or parks. No national security.

Point is, there are lots of reasons we need federal supervision. Our founding fathers knew that and provided a most innovative and progressive way to carry it out - a representative government.

A government that grew from the people.

It’s the evolution of our government that bothers me.

I realize that change is constant and our government had to evolve. After all, when the constitution was written, there were no cars or telephones.

But now, it appears the government wants to regulate everything.
Everything from toasters to clothes dryers.

Of course a construction site should be safe. But do we need a material safety data sheet for a cooler of water on the back of a contractor’s pickup?

The cost of regulation makes the cost of doing business soar. And businesses pass the costs on to us.

Where local and state governments ought to be running the show - like in education, for example - the federal government gets involved.

And all this despite the fact that most of the people our government represents don’t really want all that government.

Which brings us back to another way I think government has evolved in a bad way.

What started out as a government beholden to the people it governs has turned into a government beholden to the guy with the thickest wallet.

Special interests rule in Washington. Big money is what runs campaigns. And our lawmakers are in a relentless, endless pursuit of big money.

No matter what anyone says, big money influences policy at all levels of our government.

I don't want to scrap our form of government, but I think there is a vast amount of room for improvement.

But it seems that any call for reform is met with severe resistance. And the reform has to come from within. Things like campaign finance reform, for example, have to be enacted by the people who benefit most from leaving things the way they are.

Maybe if we show an interest and exert enough pressure on our lawmakers they'll see it our way on some of these issues.

Another entity that has evolved over the years is the labor union.

The concept of a labor union is positive. Unions have done lots of good things for workers in this country. There was a time when child labor, sweatshops, long hours and unsafe conditions made working downright deadly for lots of people.

Workers were abused and exploited by employers.

To a lesser degree, some of those conditions exist even today, with illegal aliens and other workers being exploited in sweatshop environments.

Labor unions brought a level of credibility and dignity to millions of American workers.

But just like government, labor unions have evolved.

Of course employers should provide a safe work environment and reasonable compensation. But should auto workers get 80 percent pay for 36 weeks if they are laid off?

Anymore, it seems unions are more into politics then workers.

Unions spent an untoward amount of money on advertising during the last election cycle. The AFL-CIO alone spent some $35 million in attempts to unseat Republican congressmen.

But just as the federal government seems to have lost sight of the needs of its constituents, it appears unions may be a bit out of touch with rank-and-file members.

Surveys show that union members, by significant margins, feel they are kept in the dark about how their dues are spent.

In addition, only a small percentage of union members want their dues spent on political activities. Topping most union members' lists for dues expenditures is preserving jobs, increasing wages and benefits, and improving the image of unions.

By a large margin, union members support the balanced budget amendment and welfare reform that

requires recipients to work.

The $500 tax credit pushed by the GOP was supported by nearly 80 percent of union members surveyed.

Yet their union was out to unseat Congressmen who supported those very things.

And while union leaders decry the salaries of CEOs, union leaders themselves aren't doing too bad.

John Sweeney, the head of the AFL-CIO, gets nearly $200,000 in salary and compensation from that union. As head of the SEIU, Sweeney draws an additional $230,000.

Gerald McEntee, head of AFSCME, makes around $345,000.

Does this mean that labor unions are all bad and should be abolished? Of course not.

But as in government, I think there is room for improvement.

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Back to the Titles

NYSCOPBA's virtues

Dear John(no pun intended),

You asked if anyone can point out the advantages of NYSCOPBA without 'bashing' the Council. Since any discussion about NYSCOPBA is inherently a comparison between NYSCOPBA and the Council, some 'bashing' is inevitable.

1) Operating funds will increase by approx. $1.5 million.

2) Dues will decrease annually by $35 per member

3) A law firm that specializes in labor law will guide our negotiation, arbitration and lobbying efforts. Does anyone dare to compare the track records of Hinman, Straub, Pigors & Manning vs. Hite & Casey? Can HSP&M's other clients (Estee Lauder, Empire Blue Cross-Blue Shield, PBA of the NYS Troopers, Inc.) give us some idea of the power of this firm? We will have to pay for more for HSP&M, but the $1.5 million saving from AFSCME and the $850,000 savings from Hite & Casey should easily cover it. That doesn't take into account the major reduction in Staff Reps at a savings of approx. 1.3 million. That puts NYSCOPBA in the black by over a million.

4) A PAC fund where every dime spent will be to those politicians that are in a position to to advance the interests of STATE employees. No more PAC monies sent to village, town, city and county political races.

5) A coordinated PAC fund/lobbying effort instead of the current 'cut a check policy'. You can't effectively manipulate politicians merely by writing them a check. You need to coordinate lobbying with the donation. Again I believe the track record of HSP&M speaks for itself.

6) We gain an independent identity. NYSCOPBA will negotiate, lobby, and litigate on it's own merits. Our members perform a unique duty and we need a unique identity. Will NYSCOPBA be able to break

pattern bargaining? Will NYSCOPBA be able to secure binding salary arbitration? I don't know. But I do know neither will happen under AFSCME. I'm willing to take the risk.

7) Attorneys will handle termination arbitration's, contract negotiations and step 3 grievance arbitration's.

8) Major reduction in Staff Reps. NYSCOPBA will spend far less on Staff Rep salaries.

9) Experienced union leaders. NYSCOPBA requires 12 consecutive months experience before running for office in Albany. This experience can be as a local steward or Association Officer. All a member needs to do is be a local steward for one year. For the rest of the members career he/she will be eligible to run for an office in Albany.

10) NYSCOPBA's computer system will cost less than $1.3 million. :-)

Gary Carlsen NYSCOPBA's virtues

Back to the Titles

"To Know The Truth"

I consider low wages, to be, “the parent of decertification and new leadership.” The fate of the Independent union NYSCOPBA depends on the education of the membership, “To Know The Truth.” Facility conditions are often barely tolerable, wages at best barely adequate. We are professionals, we walk America’s toughest beat, and everyone of us faces the possibility of death or being taken hostage, in the performance of our duties.

Two social classes currently exist in the current union with the elite AFSCME officers, the elite Council 82 officers, and the elite staff reps, whose wages are all well above the Correction Officers and supervisors they are suppose to represent. The inherent tension between social classes under different economic orders has created both conflict and progress, progress to change the elite’s stronghold of economic and self-interests on the backs of the front line Correction Officers and supervisors.

The elite class, who-not acting with intentional evil, but as “loyal subjects to AFSCME” - serve as puppets of the system, exploiting the membership, in the collection of union dues to line the pockets of puppet master Gerald McEntee with gold, as well as themselves. Loyalty, after all, is an animal instinct, we can take lessons for it from dogs.

Power, money, and injustice is the value of the necessaries required to sustain the AFSCME empire. Because the elite continues to thirst for increased riches, they are forced to extract increased union dues from the labor of the membership. AFSCME and Council 82 elite have subjected the membership to a “serfdom” of wage slavery under pattern bargaining and the “business”, as president Abrahamson calls Council 82, of collecting union dues. Thus the membership is vulnerable to be used and discarded as interchangeable cogs in the labor machine itself, as Walkhill President Jim Littlefoot found out himself as he was escorted out of the May 1998 statewide executive board meeting.

The perceived value of the individual member by the elite, is diminished, fostering a cavalier disregard for their safety, health, and comfort in the facility’s we work.

Accumulation of wealth at one pole (AFSCME, COUNCIL 82 elite) is, therefore, at the same time

accumulation of misery, low wages, ignorance, and moral degradation at the opposite pole.

But the pendulum of power has swung many times in the past, and it will again shift. The time is now, to take control of your own union, the independent union of NYSCOPBA. If you are wondering who NYSCOPBA is, take a look to your left and to your right in line up, then take a look in the mirror, it is you and I.

Respectfully submitted to the membership,
Grant R. Marin, Correction Officer,
Wende CF

Back to the Titles

6 MONTHS NO PAY

Just to let everyone know what happens when the State of N.Y. has to cover their ass, when they make the huge mistake of putting an inmate on an outside work gang,when the con is serving a life bid, and decides to run. What they do is blame the officer who was working that gang, and suspend him for 6 months with no pay. That is the great news I recieved yesterday(6-10-98), for the escape on 4-15-98.

Through the I.G investigation, which just happened to be 2 scumbags who used to work as officers at Wyoming, they say due to improper supervision of the work crew, i caused the escape of this inmate.For anyone who has worked an outside work crew, you know when you are on a job assignment, there are certainly times when all inmates are not in your direct sight.(What do you do when you have to go to the Bathroom?) According to the smart people in Albany, who have never seen an inmate, much less a jail, all inmates must be kept in your sight at all times. If they were to come to the area in which i was working that day they would have clearly saw that working inside a school building provides no way to keep all inmate in direct sight at all times. short of being shackiled to this inmate, there is no way i could of prevented him from running. This inmate is believed to have had somone pick him up, and they still found that it was my fault that he escaped. I notified the facility within 10 mins. of him escaping.

The other inmates who were in the work crew, told me after the i.g. had interrogated them, that the i.g. officer kept saying "Tell me the officer was sleeping or that he left the building for a while, tell me anything and ill have this officer fired today, I want this officers job." This is an officer who used to work here. When he was a c.o. he was useless as he used to play chess with the inmates, which was observed by many officers over the years. Now he has a hardon for all of the officers at our facility, and we believe that his doing the investigation, was improper, and he is vengeful against against everyone here. I also have a statement from an officer who heard him say "I didnt like him when I worked here and I still don't like him."(meaning me) The thing is, i never worked with this asshole because he worked days and i worked 3-11.

As you can imagine it wasn't much fun to come home and tell my wife I was not going to have a paycheck or insurance for six months because The Facility had to cover their ass. They need a scapegoat and i guess i'm it. I believe alot of this is because of our union activity in the past six months, (I'm our V.P.) and because we filed a lawsuit on one of our captains for threats he made against our local, at the time we were standing together as a local against our job cuts. We were told to drop the suit or they may try to come after us. Well we didnt drop it and look what happened.

If you are working an outside gang, my advice is this: NEVER LET A INMATE OUT OF YOUR SIGHT FOR ONE SECOND. IF HE RUNS, ACCORDING TO THEM, ITS YOUR FAULT.

I have already contacted a lawyer, and the shame is,its going to cost me thousands of dollars to prove i did nothing wrong. I hope nothing like this ever happens to anyone, and i want everyone to take this seriously. THEY DONT CARE ABOUT YOU AT ALL, YOU ARE NOTHING TO THEM.

Sorry I got so long winded but I'm really pissed off. I have to go now and call my mortgage company and tell them their money will be a little late for a while.

If anyone wants to contact me , or reply to me, dont do it on the hacknet because im unable to recieve the mail off it right now. All of my mail from the hacknet comes with a blank screen . E-mail me at jjperry@eznet.net

IT DOESNT PAY TO DO YOUR JOB RIGHT, BECAUSE WE ALWAYS GET IT IN THE ASS NO MATTER WHAT.

John Perry
Wyoming

Back to the Titles

Re: 6 MONTHS NO PAY

John,

Because of your Union activity I am very interested in your case. I was targeted myself but filed an IP and the next thing you know this Cpt was transfered. I am not a lawyer but have found that there are many law cases where you can have your case taken to outside court. Did you consent to discipliary arbitration or sign any document agreeing to it? Did you use Union representation or your own attorney? Did you see to it that you had transcripts of the proceedings? Did the department disclose all notes and memos written by the investigators? Did you agree to a settlement or was this a disposition of the arbitrator?

Below is an article which shows why arbitration clauses have been thrown out in court.

Courts have not hesitated to enforce arbitration agreements except when the fairness of the process is compromised.

By Jay W. Waks,
John Roberti and Rachel H. Yarkon

SPECIAL TO THE NATIONAL LAW JOURNAL
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SINCE THE U.S. Supreme Court's 1991 decision in Gilmer v. Interstate/Johnson Lane Corp.,
1. there has been little serious dispute as to whether, as a matter of principle, workplace claims raising discrimination and other statutory issues may be arbitrated. The most troubling challenges to arbitration

policies have focussed on the fairness of the process, not whether a judicial forum is the exclusive one.
2. Recent cases underscore this point: Courts have enforced predispute arbitration agreements except when, through employer carelessness or overreaching, the fairness and integrity of the arbitration process has been compromised. In light of the growing corporate interest in employment ADR as a critical cost control and litigation avoidance technique, these cases can prove instructive.
3. In Gilmer, the Supreme Court held that an arbitration clause does not waive any substantive rights, but rather merely allows parties to have the resolution of these rights determined by an arbitral, rather than judicial, forum. The court held that the private agreement to arbitrate an age bias claim essentially amounts to the selection of an alternative forum.

Implicit in the Supreme Court's Gilmer holding is that the forum must be substantially equivalent. In the post-Gilmer era, when employers create an arbitration remedy that weighs too heavily in their own favor, they run the risk not only of having an arbitration award resolving an employee's statutory rights overturned pursuant to the Federal Arbitration Act,4 but also of having a court decline to compel arbitration in the first instance.

A number of organizations have attempted to tackle the fairness issue in predispute arbitration. The American Bar Association, for example, has recommended various fairness standards for arbitration of statutory employment disputes.5 The ABA has outlined a "Due Process Protocol," including an employee's informed, voluntary acceptance of arbitration; the right to representation; authorization for the arbitrator to provide for fee reimbursement for the employee's representative as part of the remedy against the employer; access by the employee to relevant information for the arbitration; and limited review of a final and binding arbitration award.

These basic standards generally mirror the more detailed recommendations on similar points developed by the tripartite Employment Disputes Committee of the CPR Institute for Dispute Resolution.6 In theory, at least, a court is more likely to uphold an employer's mandatory ADR policy if due process standards such as those outlined by the ABA and CPR are maintained.

Neutrality of Arbitrators

Although the Gilmer court considered and rejected the plaintiff's argument that arbitration panels of the New York Stock Exchange, or arbitrators generally, will be inherently biased, one recent decision demonstrates concern that arbitration procedures provide for neutral decision-makers. In Cheng-Canindin v. Renaissance Hotel Associates,7 the 1st District California Court of Appeal denied the employer's motion to compel an employee to bring her wrongful-discharge claim before the employer's review board pursuant to the contractual ADR program. The court held that the review procedure was not "arbitration," and that therefore, the employer was not entitled to compel participation. The court found that "a third party decision maker and some decree [sic] of impartiality must exist for a dispute resolution mechanism to constitute arbitration."

The process in Cheng-Canindin--in which the review board is comprised of hotel employees and chaired by a personnel department employee, and tie votes are broken by the general manager of the hotel--was not impartial because "[e]veryone involved in the decision making process is employed by, selected by, and under the control of the Hotel...the entire Review Committee procedure is inherently slanted in management's direction." The court also held that, since the program was presented as a voluntary internal procedure rather than as a substitute for litigation, it was not intended to be binding.

Substantive Statutory Rights

Even if the decision-maker is neutral, an employer cannot limit the substantive protections of an employment rights statute, such as the remedies available and the statute of limitations, as part of the arbitral process. For example, in Graham Oil Co. v. ARCO Products Co.,8 a case involving an arbitration clause in a franchise agreement, the 9th U.S Circuit Court of Appeals declined to compel arbitration when the agreement "purports to forfeit certain important statutorily-mandated rights or benefits." There, the arbitration clause eliminated the right to recover punitive or exemplary damages and attorney fees and reduced the statute of limitations from one year to 90 days.

More recently, in Stirlen v. Supercuts Inc.,9 California's Court of Appeal upheld the trial court's denial of the defendant's motion to compel arbitration, finding that the arbitration agreement was "unconscionable." In evaluating the arbitration provision, the Stirlen court considered it significant that the arbitration clause provided that certain actions by the company (including those seeking specific performance or equitable relief for breach of certain provisions of the agreement) did not have to be submitted to arbitration and that the clause restricted the available remedies to "a money award not to exceed the amount of actual damages for breach of contract, less any proper offset for mitigation of such damages." The parties were not entitled to any other money damages, specific performance or injunctive relief.

In addition, the employee in Stirlen was subject to a one-year statute of limitations that could not be tolled, even if a longer period would ordinarily apply in court.

The court found that these provisions "provide[] the employer more rights and greater remedies than would otherwise be available and concomitantly deprive[] employees of significant rights and remedies they would normally enjoy." That is not to say that every deviation from every remedy designated by a statute will result in a blanket refusal to enforce an agreement to arbitrate. In DeGaetano v. Smith Barney Inc.,10 the court compelled arbitration of a discrimination claim even though the procedure precluded certain remedies, such as injunctive relief, attorney fees and punitive damages. According to the DeGaetano court, "The mere fact that these statutory remedies may be unavailable in the arbitral forum does not in itself establish that Title VII claims must be resolved in a court of law."

Limiting the Costs

By contrast, earlier this year, the D.C. Circuit held that when the arbitration process imposes costs not found in the court system--specifically, the cost of arbitrator compensation--an arbitration clause would not be enforceable. In a decision of first impression in Cole v. Burns International Security Services,11 the D.C. Circuit held that an employer cannot condition employment on acceptance of an arbitration agreement that requires the employee to pay all or part of the arbitrator's fees.

Judge Harry T. Edwards wrote that employees should not be required to pay for the services of a private judge in order to pursue their statutory rights when they would not be so required if they pursued their rights in court. Inasmuch as a system of mandatory employment arbitration has been imposed by the employer, the arbitrator's fees, according to public policy as construed by this court, should be borne solely by the employer.

The point not addressed, however, is the concern of many lawyers from both the corporate and the employee sides that the appearance of arbitrator neutrality may be compromised if the employer, at the outset, is always paying for the arbitrator's services rather than being subject to the arbitrator's

discretionary direction, on a case-by-case basis, to pay these fees as part of an appropriate remedy. Indeed, a typical compensation stipulation used in employment matters by the American Arbitration Association states the parties' agreement for the arbitrator to allocate fees and expenses, including the arbitrator's compensation.

Knowing and Voluntary

Finally, there remains a controversy over the circumstances by which an agreement to arbitrate is considered to have been knowingly and voluntarily made. The 9th Circuit's holding in Prudential Insurance Co. v. Lai,12 which found that employees given an insufficient time to review their arbitration agreements did not knowingly waive their right to go to court, has generally not been followed elsewhere.13 Although the 9th Circuit has acknowledged that its Lai "knowing waiver" rule does not apply to Fair Labor Standards Act claims,14 that circuit court seems intent on relying on the comment by then-Sen. Bob Dole, R-Kan., during congressional debate over the Civil Rights Act of 1991--that arbitration of Title VII claims is to be encouraged if the parties knowingly and voluntarily elected arbitration--as justification for the result it reached in the Lai case.

Although one court has held that an agreement to arbitrate is not knowingly and voluntarily made when the clause describing what claims are to be arbitrated is unclear,15 most such attacks on an agreement to arbitrate should prove unsuccessful.

In addition, the application of the Older Workers Benefit Protection Act's definition of a knowing and voluntary waiver16--that the waiver must be written in an understandable manner, refer specifically to the Age Discrimination in Employment Act, not waive rights arising after the waiver is executed, be in return for consideration, advise the individua to consult an attorney and give the individual seven days to revoke after execution--has also been rejected as applied to arbitration agreements.17

An interesting exception to this trend is Stirlen v. Supercuts Inc. In Stirlen, the California state court held that an imbalance of power between the parties nullified the agreement to arbitrate.

The court acknowledged that the plaintiff, who had been hired as a vice president and chief financial officer of Supercuts, was "not a person desperately seeking employment but a successful and sophisticated corporate executive." Nonetheless, the court held that because William N. Stirlen had no real opportunity to modify the terms of the employment contract that were presented to him after he accepted employment and were described as standard provisions that were not negotiable, and the contract was presented on a "take it or leave it" basis, the arbitration clause was a contract of adhesion and procedurally unconscionable. Due to this one-sidedness, the court concluded, Mr. Stirlen did not willingly agree to arbitrate his claims. The Stirlen court's reliance on its view of the inequality of bargaining power, however, is facially inconsistent with the Gilmer decision, in which the Supreme Court stated, "Mere inequality of bargaining power, however, is not a sufficient reason to hold that arbitration agreements are never enforceable in the employment context."18 As a practical matter, the fact that the arbitration clause in Stirlen was so one-sided--in particular, eliminating remedies and curtailing the statute of limitations--certainly may have influenced that court's decision. In the final analysis, Stirlen stands as an anomaly.

Employee Handbooks

Along the same lines, the means of presentation of the arbitration agreement is essential, and also implicates questions of mutuality and fairness. In this regard, an area of controversy is whether an

arbitration policy that is found exclusively in an employee handbook is binding.

In Heurtebise v. Reliable Business Computers Inc.,19 the Michigan Supreme Court held that an arbitration provision in an employee handbook did not compel a plaintiff to arbitrate her gender discrimination claim. In Heurtebise, the employer distributed the handbook but reserved the right to modify it "at its sole discretion." The court found that this language demonstrated that the employer did not intend to be bound by the handbook provisions and, therefore, that "the handbook has not created an enforceable arbitration agreement with respect to this dispute."

Although the Heurtebise decision may seem consistent with the trend toward scrutinizing arbitration contracts to ensure that they are entered into and performed in a manner that is substantially fair to employees, it contrasts with the holdings of other courts that arbitration provisions in employee handbooks are enforceable.20

Indeed, May 12 the 8th Circuit, in Patterson v. Tenet Healthcare Inc.,21 compelled arbitration of federal and Missouri state employment bias claims under a workplace handbook procedure in which binding arbitration was the final step. On facts similar in many respects to those in Heurtebise, and without ever mentioning that Michigan decision, the court enforced that handbook procedure even though the handbook reserved discretion to the employer to change its terms and did not qualify as a contract under Missouri law. Critical to the court's analysis in Patterson was the "acknowledgment form" signed by the employee, which separated the arbitration procedure from the rest of the at-will employment handbook in which that procedure was contained.

Ensuring Enforcement

In light of the holdings of these cases, there are a number of principles employers should consider in order to make their arbitration agreements easier to enforce and more acceptable to their employees:

*** Keep it fair.**

In order to increase the likelihood that its arbitration policy will be enforced, an employer should ensure that its procedure includes a truly neutral third-party decision-maker mutually chosen by the parties, and an opportunity for both parties to be heard, using counsel of choice if requested. A cramdown procedure with a decision-maker or process that does not provide an adequate substitution for court may not be enforced. Certainly, it will be looked on with suspicion by a reviewing court and by the employees themselves.

Indeed, the employer's imposed choice of arbitrator may provide grounds for the decision to be overturned by the court, possibly on the theory of arbitrator partiality or bias. Furthermore, the policy should not allow the employer the right to litigate certain claims when the employee does not have a similar right; deprive the employee of remedies available in the courts, such as punitive and compensatory damages and equitable relief; or decrease the statute of limitations for bringing statutory claims.

The principal goals of a predispute ADR policy is to avoid the costs, delays and openness of court litigation and reinforce good employee relations while avoiding the uncertainties of jury trial--not to stack the deck in favor of the employer.

Attempts to accomplish the latter will be transparent to a court.

*** Make sure it is understood.**

Employers should ensure that employees understand the meaning and effect of the arbitration procedure.

First and foremost, the definition of what is arbitrable should be clear, stating explicitly that all claims arising out of or relating to the employee's employment must be arbitrated. Any exclusions from arbitration should be mutual. The arbitration agreement, even if included in a handbook, should also be separately stated and distributed.

Further, the prudent employer will distribute to each employee the arbitration policy, as well as any procedural rules. That employer must take steps to ensure that the disputes covered by the procedure are clearly defined and to encourage employees to read the materials.

Specifically, the arbitration provisions should be simply stated, with an underscored summary emphasizing the jury trial waiver and advising employees to read the materials and ask questions if they do not understand the policy. After formal presentation of the materials, an employer should provide time for employees to read and question the provisions, and then require employees to sign an acknowledgment that they understand and agree to the policy.

Cost Controls

*** Make it reasonably priced.**

The arbitration procedure is designed to save costs, not increase them. The fees associated with the arbitral forum should not be out of line with those associated with the courts. The Cole case held that any requirement that the employee pay arbitrator fees will make the arbitration procedure unenforceable.

Whether that will be the hard-and-fast rule remains to be seen.

One way to keep costs to the employee reasonable, which has been proposed by the CPR Institute for Dispute Resolution, is to cap the employee portion of the cost of fees and arbitrator compensation at 50 percent, or a total of one or two days' pay, whichever is less, ultimately leaving any fee-shifting to the decision of the arbitrator.

Interestingly, even among members of the plaintiffs' bar there is a split of opinion on this point, which was of such importance to Judge Edwards in the Cole case.

*** Make a commitment to ADR.**

A mandatory arbitration program is a major commitment for employees. Employers should make the same commitment. Clauses reserving the right to modify or revoke the arbitration agreement at the employer's whim, without a reasonable waiting period, could call into question whether there is truly an intention to create a binding contract. If the employer is not bound by the contract, courts may find that no enforceable contract exists.

*** Consider the predispute alternatives.**

Although mandatory, binding arbitration is the most common and most controversial approach, mandatory procedures, such as those at Brown & Root Inc., Masco Corp. and Metallgesellschaft Corp., often incorporate a multistep ADR procedure to ensure that significant numbers of problems will be resolved well in advance of arbitration.

Some large employers have adopted variations on this theme to resolve workplace disputes. For example, Hughes Aircraft Co. and Eaton Corp., among others, now offer voluntary, binding arbitration as an option available to employees as a matter of corporate policy.

In light of the voluntariness of the employee's participation in this process, after a dispute has arisen, there is little question as to its enforceability, and such a process will almost always save time and expense, particularly in cases involving minor disputes.

Other large employers, such as Texaco Inc. and TRW Inc., have set up multistep workplace ADR systems with mandatory predispute arbitration procedures, the results of which would always be binding on the employer but not the employee. In other words, the employee theoretically may take two bites of the apple. While the employee is required to submit to arbitration before going to court, an arbitration decision against the employee would only be binding if accepted.

This process gives both sides the ultimate education into the strengths and weaknesses of their respective cases, and--even if there is a result unfavorable to the employee--should facilitate resolution short of a court proceeding.

Since Gilmer, the most controversial court cases have been those that consider the fairness of the process--rather than the principle of arbitration--in deciding whether or not to enforce predispute arbitration procedures. In light of this trend, having a fair, even-handed ADR procedure--which, in sum, does not stack the deck in an employer's favor but simply substitutes the speed, privacy and cost advantages of arbitration for the expense, delay and openness of court proceedings--not only makes sense from an employee relations standpoint, but also is sound legal advice.

(1) 500 U.S. 20 (1991).
(2) See Jay W. Waks & John Roberti, "Challenges to Employment ADR: Processes, Rather Than Principles, Are At Issue," 21 Labor & Employment Law Sec. Newsletter (New York State Bar Association, New York, N.Y.), 2, June 1996.
(3) See David B. Lipsky and Ronald L. Seeber, "The Use of ADR in U.S. Corporations: Executive Summary" (A Joint Initiative of Cornell Univ., the Foundation for the Prevention and Early Resolution of Conflict, and Price Waterhouse L.L.P. 1997).
(4) 9 U.S.C. 10.
(5) See American Bar Association, Due Process Protocol (1995). See also American Arbitration Association, Resolving Employment Disputes, a Practical Guide (1997).
(6) See CPR Institute for Dispute Resolution, Employment ADR: A Dispute Resolution Program for Corporate Employers (1995).
(7) 57 Cal.Rptr.2d 867 (Cal. Ct. App. 1996), review denied, 1997 Calif. Lexis 817 (Calif. Feb. 19, 1997).
(8) 43 F.3d 1244 (9th Cir. 1994), as amended (1995), cert. denied, 116 S.Ct. 275 (1995).
(9) 60 Cal.Rptr.2d 138 (Cal. Ct. App. 1997), review denied (Calif. April 16, 1997).
(10) 95 Civ. 1613, 1996 WL 44226 (S.D.N.Y. Feb. 5, 1996).
(11) 105 F.3d 1465 (D.C. Cir. 1997).
(12) 42 F.3d 1299 (9th Cir. 1994), cert. denied, 116 S.Ct. 61 (1995).
(13) See, e.g., Maye v. Smith Barney Inc., 897 F. Supp. 100 (S.D.N.Y. 1995), leave to appeal denied, 903 F. Supp. 570 (S.D.N.Y. 1995); DeGaetano v. Smith Barney Inc., 95 Civ. 1613, 1996 WL 44226 (S.D.N.Y. Feb. 5, 1996); Cosgrove v. Shearson Lehman Bros., 105 F.3d 659 (6th Cir. 1997); Brown v. Rexhall Industries Inc., 3:96-CV-349RM, 1996 WL 662449 (N.D. Ind. Oct. 8, 1996). The 9th Circuit has reconfirmed its Lai decision in Renteria v. Prudential Ins. Co., 95-16659, D.C. CV-94-00931-HDM,

1997 WL 259421 (9th Cir. May 20, 1997).
(14) See Kuehner v. Dickinson & Co., 84 F.3d 316 (9th Cir. 1996).
(15) See Hoffman v. Aaron Kamhi Inc., 927 F. Supp. 640 (S.D.N.Y. 1996). Compare Matthews v. Rollins Hudig Hall Co., 72 F.3d 50 (7th Cir. 1995); Topf v. Warnaco Inc., 942 F. Supp. 762 (D. Conn. 1996); Smith v. Lehman Bros. Inc., 95 Civ. 10326, 1996 WL 383232 (S.D.N.Y. July 8, 1996).
(16) 29 U.S.C. 626.
(17) See e.g., Rice v. Brown Bros. Harriman & Co., 96 Civ. 6326, 1997 WL 129396 (S.D.N.Y. March 21, 1997).
(18) 500 U.S. at 33.
(19) 550 N.W.2d 243 (Mich. 1996), reh'g denied, 554 N.W.2d 10 (Mich. 1996), cert. denied, 117 S. Ct. 1311 (1997). Heurtebise was distinguished by Lorenz v. Bull HN Information Sys. Inc., 177502, LC 94-076871-CZ, slip op. (Mich. Ct. App. Sept. 10, 1996), in which the Michigan Court of Appeals held that Heurtebise did not apply to the arbitration procedures in plaintiff's "Sales Compensation Plan." The court found that, in contrast to the provisions in Heurtebise, the plan "clearly set forth the parties' agreement to submit disputes to arbitration" when it provided for arbitration of all claims for $3,000 or more that arise out of the participant's employment or termination. The court also found that the plaintiff's conduct in accepting compensation conveyed her assent to the contract.
(20) See, e.g., Nghiem v. NEC Elecs. Inc., 25 F.3d 1437 (9th Cir. 1994), cert. denied, 513 U.S. 1044 (1994); Topf v. Warnaco Inc., 942 F. Supp. 762 (D. Conn. 1996). See also Fregara v. Jet Aviation Business Jets, 764 F. Supp. 940, 951 (D.N.J. 1991) (The court held that the plaintiff was bound by the references to the grievance and arbitration provisions in the employee handbook when the action was based on an implied contract claim arising out of the handbook. According to the court, "If the plaintiff seeks to rely on provisions in the employee handbook as the source of an implied contract of employment, then he must accept that agreement as a whole with its attendant responsibilities.").
(21) 96-2587, 1997 WL 236237 (8th Cir. May 12, 1997).¤

Mr. Waks, a Corporate Brief columnist, is a partner at New York's Kaye, Scholer, Fierman, Hays & Handler L.L.P. and co-chair of its labor & employment law department, representing corporate clients. Mr. Roberti and Ms. Yarkon are associates in that department. This article is adapted from Mr. Waks' remarks to the Ninth Annual General Counsel Conference, June 9, 1997, sponsored by Law Journal Seminars-Press.

Back to the Titles

Unions offer compromise for COLA

Albany Times Union 06/12/98

Bid for two years of guaranteed pension increases signals change as the Legislature seems ready to listen

JAMES M. ODATO
Capitol bureau

Albany -- Public employee unions are backing off from their insistence on permanent cost-of-living adjustments and say they will accept two years of guaranteed retirement increases. "You take what you

can get," said Civil Service Employees Association spokesman Stanley Hornak.

In a letter sent to all 210 legislators Thursday and signed by 16 public employee unions, the groups show a shift in strategy to accomplish their goal of cost-of-living adjustments for retirees receiving public pensions. The new message is a result of unions realizing that legislative leaders are leaning toward providing a supplemental increase to pensions, the first such in five years.

"We've always been for a permanent-type COLA but we don't hear about it in any of the talks right now," said Art Wilcox, director of public employee division of the AFL-CIO. "We are supporting a two-year multiple step supplemental bill."

The unions sending out the letters include those representing teachers, prison guards, state employees and fire fighters and New York City workers. Denyce Duncan Lacy, a spokeswoman for the Public Employees Federation, whose president, Roger Benson signed the letter, said PEF continues to strive for permanent pension increases.

She emphasized that the letter calls for "a minimum" of two years of supplements.

PEF and CSEA have been rallying behind a proposal of Comptroller H. Carl McCall that would provide permanent 3 percent COLAs to retired state and county employees based on the performance of the state retirement system's investments. But that plan ran into trouble with the Legislature because it doesn't cover public teachers and New York City pension plans. Legislators will face increasing lobbying to provide pension increases in the next several days as they prepare to adjourn June 18. PEF is taking out half-page ads in local newspapers calling for several measures to help retirees, including pension increases.

The unions are also calling for "tier" equity so that persons working for the state are able to retire at the same ages and receive the same pension benefits; death benefits transferred to survivors; and eligibility for pension benefits after five years of service rather than 10 years.

"We still want permanent supplements," Hornak said. "We'll reluctantly settle for a real compromise." The supplements would likely cost state employers no additional increase of investment gains.

Back to the Titles

11 of first 12 inmates guilty in Mohawk incident

Update on July 1997 disturbance

Eleven of the 12 inmates charged with attempted murder, rioting, assault and other criminal charges in connection with the July 18 disturbance at Mohawk have either been convicted following trials or pleaded guilty to lesser charges.

In all but one of the 11 cases that were successfully prosecuted by the Oneida County District Attorney's Office, the inmates will be spending more time in state prison as a result of their convictions or guilty pleas, to date receiving consecutive sentences of as much as 13 years. One inmate received a one-year concurrent sentence, and another was acquitted by a jury.

"I commend the Department of Correctional Services and Oneida County prosecutors for their swift and

appropriate response to the Mohawk incident," said Governor Pataki. "The message is clear -- we will not tolerate assaults on staff"

Those inmates charged in connection with the disturbance also face severe disciplinary sanctions including as much as 17 years SHU time and loss of good time and all privileges for a corresponding period.

"This Department has always maintained a 'zero tolerance' approach when it comes to assaults on staff," said Commissioner Goord. "Those inmates who assault staff and incite others to do the same will face swift and harsh penalties, both through the criminal courts and at the facility level. The convictions handed down in the wake of the Mohawk disturbance are a testament to that continued commitment."

Following a jury trial, inmate Terry Mathis became the latest inmate to be convicted on criminal charges in connection with last year's incident at Mohawk. An Oneida County jury found the inmate guilty of attempted second-degree murder, three counts of first-degree assault, seven counts of second-degree assault, two counts of first-degree rioting, inciting to riot, three counts of third-degree criminal possession of a weapon and three counts of promoting prison contraband.

Mathis faces as much as 25 more years in prison when he is sentenced on June 8. He is currently serving a term of three to six years for a 1992 second-degree assault conviction out of Onondaga County. Mathis currently is being held in Marcy's SHU, and is scheduled to remain in SHU status until July 18, 2001.

The dispositions of the other cases prosecuted in connection with the Mohawk disturbance include:

Inmate Luis Agosto pleaded guilty to first-degree assault, one count of gang assault, two counts of second-degree assault and one count of rioting. Agosto admitted that he struck a Mohawk lieutenant with a baseball bat and assaulted three other officers. Agosto received a determinate sentence of 13 years, meaning he will not be eligible for parole until serving six-sevenths of that sentence. Agosto will not begin serving that 13-year determinate sentence until he is done serving his current sentence of 2½ to 5 years for two 1996 convictions out of Bronx County, for second-degree assault and fifth-degree criminal possession of a controlled substance.

Agosto also lost 17 years of good time and will be in SHU for the next 17 years, with a loss of packages, phone and commissary privileges for a corresponding period. Those sanctions were imposed after a hearing officer found the inmate guilty of four counts of assault on staff; two counts of rioting, three counts of possession of a weapon, creating a disturbance, fighting, threats and refusing a direct order.

Anthony Copeland was sentenced loan additional 3½ years in state prison following his guilty plea to second-degree assault. Copeland will not begin serving that determinate sentence until he completes his current 7-to-12-year term for three 1995 Bronx convictions.

Copeland also lost 4½ years of good time and will be in SHU for the next 4½ years, with a loss of packages, phone and commissary privileges for a corresponding period.

Johnnie Dockery pleaded guilty to second-degree assault and was sentenced to an additional three years in state prison. That sentence also will not begin until Dockery completes his current term of 3-6 years for a 1996 third-degree attempted criminal sale of a controlled substance conviction out of New York County.

Dockery also lost four years of good time and will be in SHU for the next four years, with a loss of

packages, phone and commissary privileges for a corresponding period.

Moses Reyes pleaded guilty to second-degree assault and was sentenced to an additional four years in state prison. Reyes also lost one year of good time and will be in SHU for the next year, with a loss of packages, phone and commissary privileges for a corresponding period.

Victor Rodriguez pleaded guilty to first-degree rioting and three counts of second-degree assault and was sentenced to an additional four years in state prison. Rodriguez also lost nine months of good time and will be in SHU for the next nine months, with a loss of packages, phone and commissary privileges for a corresponding period.

Damon Miller pleaded guilty to second-degree assault and first-degree rioting. He is expected to receive an additional 1½ to 3 years in prison when he is sentenced later this month. Miller also lost seven years of good time and will be in SHU for the next seven years, with a loss of packages, phone and commissary privileges for a corresponding period.

Norberto Boria pleaded guilty to second-degree attempted assault and was sentenced to an additional 1½-3 years in state prison. Boria also lost four years of good time and will be in SHU for the next four years, with a loss of packages, phone and commissary privileges for a corresponding period.

Eric Gonzalez pleaded guilty to second-degree attempted assault and was sentenced to an additional 1¼-3 years in state prison. Gonzalez also lost 3½ years of good time and will be in SHU for the next 3½ years, with a loss of packages, phone and commissary privileges for the same period.

Jose Medina pleaded guilty to first-degree rioting and was expected to receive a sentence of an additional 1½-3 years in state prison. Medina also lost three years of good time and will be in SHU for the next three years, with a loss of packages, phone and commissary privileges for a corresponding period. He also was ordered to pay $179.69 in restitution.

Steven Bosa pleaded guilty to third-degree assault. He received a one-year concurrent sentence.

Charles Hanrahan was acquitted by a jury on two counts of second-degree attempted murder, two counts of first-degree assault, five counts of second-degree assault, two counts of first-degree rioting, two counts of third-degree criminal possession of a weapon, two counts of first-degree promoting prison contraband and inciting to riot. He lost 10 years of good time and will be in SHU for the next 10 years, with a loss of packages, phone and commissary privileges for a corresponding period.

Back to the Titles

Zero tolerance

The Associated Press

TRENTON -- It has taken less than a month for some inmates to run afoul of the state's new "zero tolerance" drug policy.

The new policy, instituted by the Department of Corrections in May, takes aim at cracking down on drug and alcohol use in prison by denying certain visitation privileges to those who break the rules.

The department said last week that three inmates recently were charged with conspiracy to possess marijuana and one inmate was charged with possession of heroin.

All four will undergo a disciplinary hearing.

If the charges are upheld, the prisoners will lose their "contact" visiting privileges where they can hug or hold hands with visitors, for at least one year. Those caught twice would forfeit such visits for the rest of their sentence. Inmates would be allowed to talk on a phone separated from the visitor by a glass partition.

As part of the "zero tolerance" policy, beginning in October, inmates will no longer be able to receive package deliveries from the outside with the exception of educational, religious, and legal materials.

Inmates will also be required to surrender all personal clothing by Sept. 1, 1998, in exchange for state-issued uniforms.

Back to the Titles

3rd Annual P.J. Ryerson Memorial golf tournament

The 3rd Annual P.J. Ryerson Memorial golf tournament is scheduled for Friday July 10th, 1998, At the Dutch Hollow Golf club, Near Auburn N.Y., To benefit The P.J. Ryerson's Children's fund.Format: Captain and crew (4-man), 10:00am shot gun start.

The Cost includes:Raffles, Door prizes, trophies for first place, food and beverage on the coarse. Streak dinner at 4:00pm, presentations to follow.For more information, Please contact Bob Hansen at (315) 252-4190 Phillip (P.J.) Ryerson was tragically taken from us in an automobile accident 3 years ago next month. He was the vice-president of local 3551 here at Cayuga, and was always there to listen to us, no matter what our problems were. He had two sons, Mathew, and Phillip (P.J.jr) who are loving being raised by their grandmother, Mrs. Virginia Ryerson, along with the help of their two Uncles, Sgt's Leon & William Ryerson. For those of us that knew P.J., We know that he enjoyed life to it's fullest, and was always there for us, his family, and his two sons. The past two tournaments have been an overwhelming success, and a great time is had by all participants.

Hope to see you there,
R. Lord

Back to the Titles

JURY CONVICTS INMATE FOR HURLING FECES

(Star-gazette, June 17, 1998)

A chemung county court jury made history Tueday when it convicted a prison inmate under a new state law that makes it illegal for inmates to throw bodily fluids at staff.

Roger Stokes, a 38 yr. old inmate, at Southport Correctional facility, was convicted of Aggravated harassment of a correction employee by an inmate, a felony.

The law was passed two years ago and was recently strengthened by the governor to give inmates prison time if convicted.

It was the first case to go to trial in New York state, said Assistant Chemung County District Attorney Thomas O'Mara, who prosecuted the two day trial.

On Feb. 18, 1997 Stokes squirted a mixture of feces and urine on Virginia Livermore, a prison counselor, as she was standing outside an adjacent cell talking to another inmate.

Stokes could get 2 1/2 to 5 more years in prison when he's scheduled to be sentenced July 31, 1998 by Chemung County Judge Samuel Castellino.

The eight-man, four-woman jury deliberated for nearly an hour before convicting Stokes, who is serving a six to 12 year sentence for a New York City armed robbery.

O'Mara said the verdict will serve as a deterrent to other inmates. It's a disgusting, vile practice thats all too common. O'Mara said. The Department of Corrections said it's a deterrent just having the law on the books.

Livermore, one of five witnesses to testify for the prosecution, said she was hit in the face with the liquid. It also soaked her sweater and jeans. But the squirt container was never found.

That's not unusual, and it's likely Stokes flushed the container down the toilet in his cell, testified Sgt. Charles Woodruff, who worked at Southport during the incident.

Stokes' attorney, Chemung County Public defender Richard R. Rich Jr., tried to prove that in addition to the container never being found, Livermore never saw where the attack came from or who did it.

The habit of dousing staff with feces, urine and spit is not uncommon at Southport, the state's first and only all-solitary confinement prison, where the state's worst inmates are sent for breaking the law in other prisons.

Before the law was passed, it wasn't a crime to throw bodily fluids at staff. The law was passed, in part, because of the large number of incidents at Southport.

Back to the Titles

Elmira Correctional Facility lieutenant among 72 arrested in drug sweep

ELMIRA -- A lieutenant at the Elmira Correctional Facility, among 72 people arrested Monday in a massive Southern Tier drug sweep, has been locked out of his job while prison officials investigate the charge.

Michael Dean, 42, of Schuyler Avenue, was immediately suspended without pay after his arrest, said James Flateau, spokesman for the New York State Department of Correctional Services.

"There is an (internal) investigation in progress," Flateau said. "Within a day or two we'll make a decision about what to do."

Flateau said he doesn't believe Dean was smuggling drugs into the state maximum security prison.

"There is no indication by the police or their investigation that that is true," Flateau said.

Federal agents served 88 warrants in connection with cocaine trafficking from New York City to the Southern Tier. The arrests were the second wave of Operation Golden Road, during which 72 people were arrested in May 1997 for similar activities in the Binghamton area.

Monday's arrests climaxed a two-year investigation. Dean and seven other Chemung County residents were among those arrested and charged with distributing more than 400 kilograms of cocaine with a street value of $20 million between 1990 and 1998 in the Southern Tier.

Dean could not be reached for comment Tuesday.

Those indicted were charged with federal felony charges of distribution of cocaine or possession with intent to distribute cocaine and narcotics conspiracy. Miroslav Lovric, assistant United States attorney, would not release specific charges against specific individuals.

He also would not say what role the local suspects had in the ring, but did confirm that all were indicted for selling, or possessing cocaine with the intent to sell it.

"Some of (the arrested) were New York City cocaine suppliers," Lovric said. "They'd bring the coke to the Southern Tier area, distribute it to large narcotic dealers who would then distribute it to smaller dealers."

Most of the arrests were made Monday during a 6 a.m. raid throughout the Southern Tier.

Among the other local residents indicted Monday was a former correction officer, Jeff Lavelle, 40, of Leach Hill Road, Pine City. Lavelle worked at the Elmira Correctional Facility until January 1997. Flateau would not say why Lavelle left his job at the prison.

The state corrections commissioner could file a notice of discipline against Dean, who has worked at the prison since 1991. The case would be heard by an independent arbitrator who would study the facts and recommend any Disciplinary action.

This wouldn't be the first time Dean's future as a correction officer has been uncertain.

In June 1996, Dean was charged with driving under the influence after an accident on Route 17 that seriously injured two passengers. The van Dean was driving was eastbound on Route 17 when it went off the road. Dean overcorrected, and the van flipped onto the passenger side when it hit the median.

Dean ran into the woods, but came back after 45 minutes. At first he denied driving, but then admitted he was the driver.

After that incident, prison officials recommended Dean's dismissal from duty.

An arbitrator, however, decided otherwise. Dean was suspended for three months without pay and was also demoted to sergeant for six months. He resumed his post as lieutenant after that six-month period, Flateau said.

Lovric would not say what Dean had done to warrant an indictment, but did say that the drug ring broken

on Monday had dealers and suppliers from all walks of life.

"Everyone thinks that dealers are either low income or no income," Lovric said. "That's a stereotype that is just that -- and it's not accurate." -- Kelley Quinn

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Back to the Titles

GOLDEN ROAD INVESTIGATION Lt. Suspended

By KELLEY QUINN
Star-Gazette

State prison officials suspended an Elmira Correctional Facility lieutenant charged with having links to a $20 million cocaine ring. The suspension, a temporary measure, was made by prison officials in Albany on Wednesday. They are now contemplating a disciplinary recommendation. Michael Dean, 42, of Schuyler Avenue, Elmira, was locked Out of the prison on Monday after his arrest for allegedly taking part in the cocaine trafficking ring.

Dean, who was suspended without pay, was one of 76 people arrested in the federal, state and local sweep Monday. "We just determine the penalty of his work status," said Linda Faglia, spokesperson for the New York State Department Of Correctional Services "And that will go to arbitration"

No internal charges can be filed aganst Dean, Fagila said. State Prison officials are not looking into whether two former Correction Offices also arrested were connected with Dean Jeff Lavelle, of Leach hill Road, Pine City, was also arrested Monday. Lavelle worked at the Elmira Correctional Facility until January' Robert Smith, another former prison employee, was indicted Tuesday. Smith now lives in Taylor, Pa. Smith's wife, Angela, also was charged Federal agents served 88' warrants in connection with cocaine trafficking from New York City to the Southern Tier.

The arrests were the second wave Of Operation Golden Road, during which 72 people were arrested in May 1997 for similar activities in the Binghamton area. Indictments include federal felony charges of distribution of cocaine possession with intent to distribute cocaine and narcotics conspiracy.

Back to the Titles

Thrower Conviction

Practice of throwing bodily fluids at officers more common at Southport than other prisons

ELMIRA -- Prison inmates are ingenious in the methods they devise to assault, abuse and harass staff.

One of the most disgusting involves throwing feces, urine and other bodily fluids at prison employees.

A simple container like a foam cup, shampoo bottle or toothpaste tube can be used to deliver the vile concoction.

The practice made headlines last Tuesday when a Southport Correctional Facility inmate was the first in the state to be convicted under a new law that makes the attack a crime.

A Chemung County jury convicted 38-year-old Roger Stokes of aggravated harassment of a correction employee by an inmate. Stokes faces another 2.5 to five years in prison when he's sentenced July 31.

Stokes' trial drew public attention to a hazard that prison employees face every day, but was little-known outside of the prisons. It's an ordeal that employees describe in the most graphic of terms.

Prior to the law's passage in June 1996, New York, which has 69 prisons, averaged 134 throwing cases a year, said a state prison spokeswoman.

The law has been a deterrent. Since it was enacted, that number dropped to 87 a year.

Inmates use everything they can think of to throw body wastes.

"Three years ago, an inmate at Greenhaven Correctional Facility (Dutchess County) placed his own urine and feces in his own mouth and spit it on an officer," said Daniel Morgan, president of the correction officer's union at Southport.

When an inmate throws feces or urine at staff, a Plexiglas shield is placed over his cell to prevent it from occurring again. The shield has ventilation holes.

"One time an inmate filled his toothpaste tube with urine and feces, placed the tube up to one of the holes, and when a guard came by he squirted him with it," said an correction officer who didn't want to be identified.

Other common containers: shampoo, eye drops, lotion and cupped hands.

Stokes used a spray container to squirt his victim, Virginia Livermore, in the face as she was talking to another inmate in an adjacent cell.

"I was in shock at first," said Livermore, a 26-year-old correctional counselor from Elmira. "Then I was angry and upset. It's disgusting. I don't think you can get much lower than that. That could be the reason they do it."

Inmates retaliate against staff for many reasons, said Betsy Sterling, managing attorney for Prisoner's Legal Services, a statewide prisoner advocacy and legal aid group.

The reason inmates do it vary, say prison officials:

Retaliation against a specific employee, for various reasons.

Retaliation against the prison system.

Initiation into a prison gang.

Mental illness.

"I think the reason they do it is because it's the only way they can get at officers (at Southport)," said Thomas O'Mara, the assistant Chemung County District Attorney who prosecuted Stokes. "The way the cell doors are designed, they can't reach out and grab the officers, so they throw urine and feces on on them.

"It's the most disgusting and vile means they can think of to get back at them."

The practice is more common at Southport than other prisons. That's because the state's worst inmates are sent to Southport for committing crimes in other facilities. Southport is New York's only all-solitary confinement prison. Inmates, up to 850 of them, spend 23 hours a day in a cell. They get out for one hour to walk around, handcuffed, in an outdoor exercise pen.

The cells are covered with a steel mesh making it more difficult, but not impossible, for inmates to grab or punch staff, said Morgan.

"The inmates here are just out and out bad people," Morgan said. "They just want to hurt and degrade us any way they can."

There have been 45-50 instances this year of inmates throwing bodily fluids on staff, Morgan said.

The practice isn't as common in other prisons, like the Elmira Correctional Facility. It happens, but mostly in the prison's solitary confinement or special housing unit, said Dana Smith, first deputy superintendent.

-- Jim Pfiffer

Back to the Titles

Agenda sheet for the up coming convention in Hawaii

I have been handed an agenda sheet for the up coming convention in Hawaii

The first and I mean very first amendment on the agenda is to raise your afscme dues!!!! in 1998 this is the break down of YOUR HARD EARNED DUES!!!!COUNCIL 82 --$4.10 LOCALS GET $1.00 AFSCME GETS $ 2.90 per month per person!

JAN 1,1999- COUNCIL 82 -$3.60, LOCALS GET $1.00 -AFSME $3.40 A RAISE OF 50CENTS

JAN 1 2000 COUNCIL 82 GETS $3.10 LOCALS GET $1.00 AFSCME GETS $3.90

Thats 1.00 a month per person per month just to afscme

Back to the Titles

Triage Result

STATE OF NEW YORK
SECURITY SERVICES UNIT
LAW ENFORCEMENT OFFICERS UNION,
COUNCIL 82, AFSCME, AFL-CIO,
-and-
NYS DEPARTMENT OF CORRECTIONAL SERVICES
(Elmira CF)

Grievance: Class Action
OER File No: 97-01-1823
C.82 File Nos: C97-1958/2029

On 6/18/98, the instant grievance was the subject of Triage review held in Albany before the undersigned Master Arbitrator, persuant to Article 7.2(b) of the State/C.82 Agreernent.

The grievance was filed by the Union on behalf of certain employees (Grievants), employed at Elmira CF. The Union was represented by Christopher H. Gardner, Esq., of Counsel, Hite and Casey, P.C. The State was represented by Richard S. Dautner, Esq., Deputy Counsel, Governor's Office of Employee Relations.

The grievance alleged a violation of the Preamble and Article 7 of the State/C.82 Agreement, in that Grievants claim that the grievance process is being administered in an unfair and. inequitable manner.

Specifically, Grievants allege that at Step 3 of the grievance process, representatives of the Governor's Office of Employee Relations should not hear the grievances, as they are not neutral and consistently find in favor of the Department of Corrections.

Upon review, the Arbitrator finds that the language of Article 7 is clear and unambiguous. Article 7.2 specifies that the Step 3 review shall be held by a representative of the Governor's Office of Employee Relations. It is not intended to be a neutral review. It is a review by the State Agency charged with administering the collective bargaining agreement, as it is applied by many other State agencies, including the the Departrrtent of Corrections. The only neutral review of any grievance is held at the arbitration step of the grievance procedure.

If the Union finds that the current grievance procedure is unfair and inequitable the remedy is to negotiate a new procedure during collective negotiations. This Arbitrator has no authority to "...add to, subtract from, or modify the provisions of the Agreernent. ..' [see Article 7.2 (c) (3)]. The Grievants request in this grievance is clearly beyond the jurisdiction of this Arbitrator.

Accordingly, the instant grievance is denied.

Jeffrey M. Selchick, Esq.
Master Arbitrator
DATED: 6/24/98
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Back to the Titles

Stab Vests

New vests allow more protection for correction officers The prison inmate -- armed with a homemade knife -- barricaded himself in his cell.

He smeared his body and the cell floor with petroleum jelly and mineral oil to make it difficult for correction officers to maintain their footing.

He wasn't coming out. Officers had to go in and get him.

Instances like this are part of the job for correction officers in New York's 69 prisons. But now officers will have more protection thanks to new stab- resistant vests.

The state budgeted $300,000 to buy 244 stab-resistant vests. The vests, made of woven Kevlar fibers, offer more protection than those they replace, said prison officials, especially against sharp-tipped weapons, similar to ice picks.

Plans call for the vests to be sent to 47 of the state's 69 prisons, including all the maximum- and medium-security facilities which have special housing units where inmates are sent for committing crimes and violating prison rules while incarcerated, state officials said.

That's good news for officers at Elmira and Southport correctional facilities.

Correction officers most often use the vests when an inmate refuses to leave his cell. But they can also be worn when breaking up inmate fights or when transporting violent prisoners, said state Department of Correctional Services officials.

"We'll use them anytime we have a cell extraction," said Daniel Morgan, president of officer's union at Southport. "We probably have anywhere from 12 to 20 of them (extractions) a year. We could have 10 of them in a month or go three to four months with no problems."

Southport is an all solitary-confinement prison housing the state's most violent criminals.

The inmates are removed from their cells by specially trained five-member teams, protected not only with vests, but helmets, face shields, leg and arm pads and a 4-foot-long riot shield used to pin the inmate against the floor or wall so he can be handcuffed, said Morgan.

The newer vests are lighter and cooler -- a big advantage, especially during the summer.

"The vests we use now are your basic law enforcement bullet-proof type vests with pieces of metal in them," said Morgan. "They wrap all around you, even through the groin area. You look like the Michelin Man. They weigh about 30 or 40 pounds."

During a cell extraction, three to four officers simultaneously rush into the cell to subdue the inmate.

"Your average cell extraction takes two to three minutes," Morgan said. "Sometimes, as soon as enter the cell, the inmate gives up and you place him on the floor and cuff him and get him out. Other times, they fight, bite, kick, scratch and use weapons against us."

The key to the extraction is to protect the inmate and staff from injury, Morgan said.

The cell extraction is a last resort, used after all other attempts to coax out the inmate -- from counseling by chaplains to use of tear gas -- have failed, said Morgan.

Inmates don't make the job easy.

In addition to smearing their cells with slippery substances, they may set fire to their mattresses or crisscross the cell with a obstacle-course web of torn sheets.

Sometimes the inmates use folded magazines and newspapers to fashion their own body armor, Morgan said.

"I think the new vests are absolutely a good idea," Morgan said. "We're getting more state-of-the-art equipment. That's good for everybody."

James Flateau, spokesman for the Department of Correctional Services, did not return several calls. Elmira Star Gazzette-- Jim Pfiffer

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Back to the Titles

Elmira Correctional Facility inmate attacks correction officer

ELMIRA -- A convicted murderer at the Elmira Correctional Facility stabbed a correction officer several times Tuesday as the inmate was being led out of his cell.

State prison officials wouldn't release the officer's name. He was stabbed with a sharpened metal rod and received several small puncture wounds and a laceration.

The officer was treated at Arnot Ogden Medical Center and returned to work Tuesday. The inmate stabbed the correction officer in the left jaw, twice in the arm and once in the back, and then tried to stab him in the throat, but missed and scratched the officer's neck, said John Butler, correctional policy chairman for Council 82, the statewide officer's union.

According to a New York State Department of Correctional Services press release: Inmate Eric Jeffery was locked in his cell in C-block for refusing a direct order, an infraction of prison rules.

Inmates such as Jeffery are in what is called the keeplock status for disciplinary infractions and are locked in their cells for 23 hours a day and released one hour a day for court-mandated exercise. Around 9:20 a.m., when Jeffery was being led out of his cell for exercise, he allegedly stabbed the officer with a 5.5-inch-long sharpened metal rod. The officer called for help as Jeffery fled down the gallery. Jeffery was confronted by two other officers who ordered him to drop the weapon. Jeffery did, was handcuffed and shackled and taken to the prison's Special Housing Unit.

The officer doesn't know why he was attacked, said Butler. "I talked to him," said Butler, "And from what he said, he was in the wrong place at the wrong time, and it would have happened to anyone who was standing there at the time."

Jeffery faces likely criminal charges, said state officials. State police in Horseheads will investigate the incident C-Block was later locked down so staff could search all 258 cells and 269 inmates in the block for weapons and other contraband. Afternoon programs throughout the prison were canceled so staff members were free to conduct the search.

The 23-year-old Jeffery is serving a 25-year-to-life term for two 1994 convictions in New York City: second-degree murder and second-degree criminal possession of a weapon.

He was sent to the state prison system in August 1994 and has been at Elmira since July 1. Jeffery is eligible for parole in June 2018. -- Jim Pfiffer

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Back to the Titles

Correction officers protest work conditions

More than 200 correction officers and residents picketed Shawangunk Correctional Facility Thursday in protest of unsafe conditions inside the maximum-security prison.

The five-hour-long informational picket, at the prison's entrance along Route 208, came in response to the threat of employee safety inside Shawangunk, said Larry Flanagan president of Council 82's Local 3276. Council 82 is the statewide correction officers union.

At issue, he said, are administrative decisions to allow disruptive inmates to use hot pots to heat cooking oil, hang towels in the front of their cells and walk through hallways and corridors in an unruly manner.

"This is not a luxury hotel. This is a class A maximum-security prison, and it seems management has decided to be concierges for inmates and ignore its responsibility to enforce sound correctional policies," he said.

Three years ago, a correction officer was injured when an inmate flung hot cooking oil on him, said Flanagan. Four years ago, an inmate who hung towels from his cell - obstructing correction officers' views - escaped.

Furthermore, he said, when groups of 50 and 70 inmates are walking through hallways, they are not required to walk in a uniform fashion so that officers can keep an eye on them.

KRISTEN SCHWEIZER (7/10/98)

Back to the Titles

Pension Reform---what C82 doesn't want you to know

The state Legislature passed a four piece package that will result in major pension system reform. CSEA, AFSCME and the AFL-CIO pension task force all supported this package.

PENSION SUPPLEMENT

Creates a two year pension supplement. In the first year all pre-1990 retirees will see a raise and all pre-1993 retirees will begin to receive a pension supplement. Also, the single based allowance, by which the pension supplement is calculated, will be raised from $12,500 to $13,500. In year two, all pre-1994 retirees will receive a pension supplement and the single based allowance will be raised from $13,500 to $14,500.

TIER REFORM

This eliminates the social security offset for Tier 3 members and allows Tier 4 members to maximize on final average salary after 20 years of service as opposed to 25 years. [[This is Article 15's they are talking about here. We are Article 14's does not effect US as correction officers]]

5 YEAR VEST

This allows current and future members of a retirement system to earn full vesting after 5 years of service as opposed to 10 years.

DEATH BENEFITS/VESTED MEMBERS

This allows vested members who die while out of service a death benefit equal to that of 1/2 of the benefit had they died while in service.

VETERAN'S BUT-BACK PASSES

Passes both houses of the legislature and is awaiting delivery to the Governor. This bill will allow members of the retirement system who served in the military during war time to but-back up to three years od additional service credit.

To be eligible for the credit, an employee must pay all associated costs, must have at least 10 years of service credit and must apply for the aditional credit within 3 years prior to retirement.

Back to the Titles

Assault On Staff at Shawangunk

From the Times Herald Record

Correction officer attacked by inmate
By KRISTEN SCHWEIZER, Staff Writer

WALLKILL -- A correction officer at Shawangunk Correctional Facility was rushed to a hospital Tuesday night after he was assaulted by an inmate in special housing, prison union officials said.

The incident came just several days after correction officers at the maximum-security prison held an informational picket in response to the threat of employee safety inside the prison.

The correction officer, Patrick Henn, was treated at St. Luke's Hospital in Newburgh for a concussion, abrasions and a swollen eye. Inmate Michael Hurley, 45, hit Henn in the face repeatedly with cuffed hands, said Larry Flanagan, president of Council 82's Local 3276. Council 82 is the statewide correction officers union.

Flanagan said Henn was moving Hurley from one special housing cell to another.

Traditionally, when inmates are moved, their hands are cuffed behind their backs. But Flanagan said Hurley was permittted by administration to have his hands cuffed in front since he refused to leave his cell unless he was allowed to move his personal property. Hurley was sent to prison in 1972 on murder charges. Since then, he has racked up scores of disciplinary charges on issues such as refusing direct orders, harassment, interference and flammable material, said Linda Foglia, a spokeswoman with the state Department of Correctional Services. Hurley is not not eligible for release from special housing until 2005, she said.

Since last week's picket by 200 correction officers and residents, Flanagan said his union has not met with administration at the prison to discuss the safety concerns. At issue, he said, are administrative

policies which allow disruptive inmates to use hot pots to heat cooking oil, hang towels in the front of their cells and walk through hallways and corridors in an unruly manner.

Back to the Titles

JARDINE RIPOFF

RE:Jardine Insurance
Travelers Insurance
Hospital Confinement Indemnity

Dear Council 82 Members:

I have asked Council 82 to make known the following information to membership, but they have refused. Therefore I am writing to you on my own, in hopes that you will forward this information on to your members.

When. my husband became a Corrections Officer we took out the above policy with Jardine, Tilljust recently Jardine not only sold the policy but issued all the checks regarding claims. During the past 6 months I had cause to really check this policy over and much to my dismay realized that all the claims that we had filed had not been paid at the proper rate. We were only paid the hospital indemnity portion.. We were not given the in-hospital doctor visits or surgical indemnity provision. I have enclosed a benefit description to help you.

I have written to Council 82, they have ignored me. I have written and spoke with Jardine. One of the managers there said there was a problem and would make my claims good, she was fired. Now a Christine Chrysler with Jardine says too much ' time had gone by and will not honor our claims. I have tried to argue that our claims had been submitted properly but again have been ignored. Currently I have written an appeal letter to Luis Marquez of the NYS Ins. Board and am still waiting for a reply.

Please ask your members who also carry this insurance to look at their claims and payments very carefully. This could mean a considerable amount of money, so please see that this information gets passed on. If anyone feels that there claim was not paid properly they need to contact the following:

Luis Marquez, NYS Insurance Dept. 1-800-342-3736
Robert Hite, General Counsel, Council 82
Christine Chrysler, Jardine Insurance 1-800-366-5273
Maryanne Orlowski, Travelers Ins. 1-800-3344298

Please check your own policies, as the amounts do differ and some had coverage for the spouse.

I cannot be sure if this was just an isolated incident, or if everyone has been shorted. I do not understand why Council 82 refuses to follow up on this matter to make sure everyone is protected. We lost a considerable amount of money and hope this letter will help protect other,

Sincerely,
Mary Humiston

Back to the Titles

THE MURDER DROP: GIVE PRISONS THE CREDIT

Mike you are right - Correction Officers do not stand outside George's door. However, please consider the following which has been extracted from an article written in the New York Post, by the editor on 1/4/98.

This article was titled THE MURDER DROP: GIVE PRISONS THE CREDIT

"As for the cost of maintaining a large prison population - a familiar lamentation of the no-such-thing-as-a-truly-bad- inmate crowd, consider the findings of a recent Brookings Institution study:

The average felon does more than $70,000 in social damage each year while on the streets, but costs U.S. taxpayers only $26,000 annually to keep behind bars.

And, in any event, New York state's correction appropriation is $1.5 billion - big bucks at first glance, but a mere 2.2 percent of Albany's $66 billion overall budget. Prison would be a bargain at twice the price.

Giuliani promised to press the case for tougher sentencing as part of his new anti-drug initiative and Pataki is expected to lobby for the same, beginning with his State of the State message.

As well he should. Full prisons help make for safe streets, and New York has the statistics to prove it."

So fellas please don't buy into the philosophy of we can't have because we're too many, we're not troopers, etc. We perform a service unlike any other. Our numbers are dictated by the number of criminals the LAWMAKERS mandate be jailed. We should be of no less value than any other component of the criminal justice system.

No Mike, we don't stand out side his safer door. We not only protect the governor, but every citizen of New York.

Diane
