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## **New York Gang Leader Can Sell Soap**

By LISI de BOURBON  
Associated Press Writer

NEW YORK (AP) The leader of the Latin Kings gang may continue to sell household cleaning products, a judge ruled Tuesday, despite prosecutors' claims that the business is a cover for gang activity.

U.S. District Judge Reena Raggi said Antonio Fernandez, 31, may continue to peddle Amway goods, including soap and detergents, door-to-door.

The government argued that Fernandez, facing a charge of conspiracy to distribute heroin, is using the Amway job to conduct Latin Kings business and that the sales job makes it difficult for probation officers to track him.

Fernandez was among 100 members of the Latin Kings arrested in May on charges ranging from racketeering to probation violations. He was released on \$350,000 bail but ordered to wear a tracking bracelet around his ankle.

"We would prefer that he work at a steady job so he can be monitored," Assistant U.S. Attorney Catherine Friesen told Raggi.

But Raggi said that the government should seek a change in Fernandez's bail conditions if it is concerned about his potential dealings with other Latin Kings. She requested written arguments from both sides on bail conditions.

Speaking outside the courthouse, Fernandez admitted he wasn't making a lot of money selling the products, but said the job is a way for him to make an honest living. He started working for Amway two months ago.

"One of the things that Antonio Fernandez has tried to do with the Latin Kings is show that labor has dignity," said his lawyer, Ron Kuby.

The gang was formed in the 1940s in Chicago prisons and it has branches in New York, Illinois, Rhode Island, Connecticut and Massachusetts.

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## **Pension benefits raised**

Pataki signs law to hike payouts to public workers

ALBANY (AP) Gov. George Pataki signed into law a series of bills yesterday providing pension benefit increases for 470,000 state and local government retirees in New York.

The new laws will provide \$250 million annually to retirees in the New York State and Local Retirement Systems, the New York City Retirement Systems and the Teachers' Retirement System. As an example of the impact of the legislation, Pataki said his former teachers in his hometown of Peekskill receive \$8,250 annually.

"That just isn't acceptable as we approach the 21st century," Pataki said. Starting in September, teachers who retired before July 1, 1970, will get an increase up to \$10,500 and an additional \$2,000 increase a year later. The actual increases for all pensioners will vary, from a few percentage points to 36 percent or more, depending on how long people have been retired and how long they worked.

It will be the first pension increase for the retirees since 1995. In addition to the Teachers' Retirement System, members of the New York State and Local Retirement Systems increase also will begin to see higher pensions in September. The New York City Retirement Systems increase will start in July 1999, unless the New York City Council chooses to offer the benefits earlier.

State Comptroller H. Carl McCall, the sole trustee of the New York State and Local Retirement Systems, said that the legislation was a good step. But he insisted that government can afford to give retirees a permanent cost of living adjustment or "COLA."

"We shouldn't have to come back time and again and do this on an ad hoc basis," McCall said.

The pension increases come at no cost to the taxpayers because pension fund investments in the stock market are doing so well, McCall said. Also due to the good performance of the pension funds, the comptroller said local governments are saving \$208 million this year in contributions they do not have to make toward employees' pensions.

In addition to increasing pensions over a two-year period, the new laws also shorten the vesting period for current employees to qualify for public pensions. A state worker will now be eligible for a pension after five years of service instead of 10. The pension changes, coupled with the recently accelerated property tax-cut program for senior citizens called "STAR," should make life easier in New York for many retirees, according to Pataki.

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## State has first death-row inmate in 14 years

From the Times Herald Record

DANNEMORA (AP) New York state got its first death-row occupant in 14 years yesterday when Darrel Harris arrived at Clinton Correctional Facility to await execution, scheduled for the week of Sept. 14.

A Brooklyn jury sentenced Harris to death on May 19 for killing three people at a Brooklyn social club. Brooklyn State Supreme Court Justice Anne G. Feldman formally sentenced the former prison guard to death by lethal injection on Tuesday.

Harris' lawyers promised to appeal his conviction, and that will begin what is likely to be the years-long

process of determining the constitutionality of New York's new death-penalty law. The new law took effect on Sept. 1, 1995. Harris became the first death-row inmate since Lemuel Smith, who was awaiting execution in 1984 when the last remnants of New York's old death penalty law were ruled unconstitutional. Smith was convicted of the 1981 slaying of prison guard Donna Payant, and to this day remains in solitary confinement.

Following Tuesday's sentencing, New York City officials transported Harris to the state's maximum-security Downstate Correctional Facility in Fishkill.

Although inmates usually spend weeks at Downstate before being transferred to another facility, Harris was held for less than four hours and then taken on the 220-mile trip from Fishkill to Dannemora, near the U.S.-Canadian border. Clinton is a 2,959-bed prison which opened in 1845. Prison officials said a ring, watch and earring were taken from Harris at Downstate and forwarded to his family.

Harris will live in isolation in a 7-foot, 2-inch by 9½-foot cell at the end of a 12-cell unit for condemned prisoners in Clinton until another inmate is sentenced to death row.

The court requires that he receive one hour of exercise a day in an 8-foot by 16-foot pen off his cell. The exercise areas is surrounded by a two-story solid wall topped by razor wire.

He will be admitted to a room off his cell for showers he will be entitled to at least three per week for 10 minutes each and visitors. Harris is allowed one visit per week in addition to meetings with his lawyers. He will not be allowed to receive any packages. Harris' housing cell and his shower-visiting cells will be monitored. Among the amenities in his cell is an audio jack. Using a set of state-issued headphones, Harris can listen to four radio stations and also choose the audio feeds from 12 television stations, including the three network affiliates, WPIX from New York City, WTBS from Atlanta, a PBS station and American Movie Classics.

After a "satisfactory" adjustment period of 60 days, Harris will be allowed to buy a 13-inch black-and-white TV set from the facility commissary to provide him with video access to the TV stations, prison officials said. Green Haven state prison in Dutchess County has been designated as the site of executions in New York.

It has been equipped with gurneys and other equipment to be used for the lethal injections called for under the new law. Prisoners will be transported to Green Haven just before their scheduled day of execution.

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## **Bill S6915 3/4 Disability Bill**

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

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6915

I N S E N A T E

April 9, 1998

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Introduced by Sen. TRUNZO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to performance of duty disability retirement for certain correction officers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The retirement and social security law is amended by adding

2 a new section 63-b to read as follows:

3 S 63-B. PERFORMANCE OF DUTY DISABILITY RETIREMENT. A. A MEMBER

4 EMPLOYED BY A COUNTY SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISA-

5 BILITY RETIREMENT IF THE COUNTY ELECTS TO MAKE THE BENEFITS PROVIDED

6 HEREIN AVAILABLE, AS PROVIDED FOR IN SUBDIVISION D OF THIS SECTION, AND

7 SUCH MEMBER IS A SHERIFF, DEPUTY SHERIFF, UNDERSHERIFF OR CORRECTION

8 OFFICER.

9 B. ANY SHERIFF, DEPUTY SHERIFF, UNDERSHERIFF OR CORRECTION OFFICER AS

10 DEFINED IN SUBDIVISION A OF THIS SECTION, THAT BECOMES PHYSICALLY OR

11 MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL  
AND

12 PROXIMATE RESULT OF AN INJURY SUSTAINED IN THE PERFORMANCE OR  
DISCHARGE

13 OF HIS OR HER DUTIES, OR AS THE NATURAL AND PROXIMATE RESULT OF AN INJU-

14 RY SUSTAINED BY THE ACT OF ANY INMATE OR ANY PERSON CONFINED IN AN

15 INSTITUTION UNDER THE JURISDICTION OF SUCH COUNTY, SHALL BE PAID A

16 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT  
WHICH

17 IS PROVIDED IN SECTION SIXTY-THREE OF THIS TITLE, SUBJECT TO THE

18 PROVISIONS OF SECTION SIXTY-FOUR OF THIS TITLE.

19 C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR

20 SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO

21 CONTRACTS HIV (WHERE THERE MAY HAVE BEEN AN EXPOSURE TO A BODILY  
FLUID),

22 TUBERCULOSIS OR HEPATITIS WILL BE PRESUMED TO HAVE CONTRACTED SUCH  
23 DISEASE IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES, AND WILL  
24 BE PRESUMED TO BE DISABLED FROM THE PERFORMANCE OF HIS OR HER DUTIES,  
25 UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

26 D. (1) EACH COUNTY THAT ELECTS PURSUANT TO THE PROVISIONS OF THIS  
27 SUBDIVISION SHALL PAY THE COST ATTRIBUTABLE THEREFOR.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
{ } is old law to be omitted.

LBD13835-01-8

S. 6915 2

1 (2) THE PERFORMANCE OF DUTY DISABILITY RETIREMENT AS DEFINED IN SUBDI-  
2 VISIONS B AND C OF THIS SECTION SHALL BE AVAILABLE ONLY TO SHERIFFS,  
3 DEPUTY SHERIFFS, UNDERSHERIFFS AND CORRECTION OFFICERS WHOSE EMPLOYER  
4 ELECTS TO PROVIDE SUCH BENEFITS BY ADOPTING A RESOLUTION TO SUCH EFFECT  
5 AND FILING A CERTIFIED COPY THEREOF WITH THE COMPTROLLER. SUCH RESOL-  
6 UTION SHALL BE ACCOMPANIED BY THE AFFIDAVIT OF THE CHIEF EXECUTIVE OFFI-  
7 CER OF THE COUNTY THAT THE COUNTY HAS RECEIVED AN ESTIMATE FROM THE  
8 RETIREMENT SYSTEM OF THE COST OF THE BENEFIT PROVIDED BY THIS SECTION.

9 (3) SUCH RESOLUTION SHALL APPLY ONLY TO THOSE MEMBERS AS DEFINED IN  
10 SUBDIVISIONS A AND B OF THIS SECTION.

11 S 2. Subdivision a of section 444 of the retirement and social securi-  
12 ty law, as amended by chapter 622 of the laws of 1997, is amended to  
13 read as follows:

14 a. Except as provided in subdivision c of section four hundred forty-  
15 five-a of this article, subdivision c of section four hundred forty-  
16 five-b of this article, subdivision c of section four hundred forty-  
17 five-c of this article, and subdivision c of section four hundred

18 forty-five-d of this article, the maximum retirement benefit computed  
19 without optional modification provided to a member of a retirement  
20 system who is subject to the provisions of this article, other than a  
21 policeman, a fireman, an investigator member of the New York city  
22 employees` retirement system, a member of the uniformed personnel in  
23 institutions under the jurisdiction of the New York city department of  
24 correction who receives a performance of duty disability retirement  
25 allowance, a member of the uniformed personnel in institutions under the  
26 jurisdiction of the department of correctional services or a security  
27 hospital treatment assistant, as those terms are defined in subdivision  
28 i of section eighty-nine of this chapter, who receives a performance of  
29 duty disability retirement allowance, A SHERIFF, DEPUTY SHERIFF, UNDER-  
30 SHERIFF OR CORRECTION OFFICER AS DEFINED IN SUBDIVISION A OF SECTION  
31 SIXTY-THREE-B OF THIS CHAPTER AND WHO RECEIVES A PERFORMANCE OF DUTY  
32 DISABILITY RETIREMENT ALLOWANCE, a member of a teachers` retirement  
33 system or a member of the New York state and local employees` retirement  
34 system, from funds other than those based on a member`s own or  
35 increased-take-home-pay contributions, shall, before any reduction for  
36 early retirement, be sixty per centum of the first fifteen thousand  
37 three hundred dollars of final average salary, and fifty per centum of  
38 final average salary in excess of fifteen thousand three hundred  
39 dollars, and forty per centum of final average salary in excess of twen-  
40 ty-seven thousand three hundred dollars, provided, however, that the  
41 benefits provided by subdivision c of section four hundred forty-five-d  
42 of this article based upon the additional member contributions required  
43 by subdivision d of such section four hundred forty-five-d shall be  
44 subject to the maximum retirement benefit computations set forth in this  
45 section. The maximum retirement benefit computed without optional

46 modification payable to a policeman, an investigator member of the New  
47 York city employees` retirement system or a fireman shall equal that  
48 payable upon completion of thirty years of service.

49 S 3. The retirement and social security law is amended by adding a new  
50 section 607-b to read as follows:

51 S 607-B. PERFORMANCE OF DUTY DISABILITY RETIREMENT. A. ANY SHERIFF,  
52 DEPUTY SHERIFF, UNDERSHERIFF OR CORRECTION OFFICER AS DEFINED IN SUBDI-  
53 VISION A OF SECTION SIXTY-THREE-B OF THIS CHAPTER, WHO BECOMES PHYS-  
54 ICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE  
55 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN THE  
PERFORMANCE

56 OR DISCHARGE OF HIS OR HER DUTIES, OR AS THE NATURAL AND PROXIMATE

S. 6915 3

1 RESULT OF AN INJURY SUSTAINED BY THE ACT OF ANY INMATE OR ANY PERSON  
2 CONFINED IN AN INSTITUTION UNDER THE JURISDICTION OF SUCH COUNTY, SHALL  
3 BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO  
4 THAT WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT  
5 TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

6 B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR  
7 SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO  
8 CONTRACTS HIV (WHERE THERE MAY HAVE BEEN AN EXPOSURE TO A BODILY FLUID),  
9 TUBERCULOSIS OR HEPATITIS WILL BE PRESUMED TO HAVE CONTRACTED SUCH  
10 DISEASE IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES, AND WILL  
11 BE PRESUMED TO BE DISABLED FROM THE PERFORMANCE OF HIS OR HER DUTIES,  
12 UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

13 S 4. This act shall take effect immediately, provided that section  
14 607-b of the retirement and social security law, as added by section  
15 three of this act, shall expire on the same date as article 15 of the  
16 retirement and social security law expires, pursuant to section 615 of



17 such law.

## FISCAL NOTE.--PURSUANT TO LEGISLATIVE LAW, SECTION 50:

This bill would allow a county to elect to provide sheriffs, undersheriffs, deputy sheriffs and correction officers employed by such county with a performance of duty disability benefit of 76% of their final average salary. The payment of this allowance would be subject to the provisions of Section 64 of the Retirement and Social Security Law.

In addition, for those members who contract tuberculosis, HIV, or hepatitis, these diseases will qualify the members for a similar disability benefit.

If this bill is enacted, we anticipate that there will be an increase of approximately 0.1% of affected members` salary in the annual contributions of affected counties for the fiscal year ending March 31, 1999.

In future years, this cost will eventually increase to approximately 1% of annual salaries of affected members.

In addition to the annual contributions discussed above, there will be an immediate past service cost which would approach 1.5% of salary of affected members. These costs would be borne by counties employing the affected members.

This estimate, dated March 2, 1998 and intended for use only during the 1998 Legislative Session, is Fiscal Note No. 98-133 prepared by the Actuary for the New York State and Local Employees` Retirement System.

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## Details of inmates' prison escape revealed at trial

The attempted escape from the Elmira Correctional Facility had all the elements of the 1979 movie "Escape From Alcatraz": meticulous planning, tunnels, ingenious tools and inmate mannequins.

But the Elmira caper had a different ending. The two inmates, a murderer and a burglar, never escaped. They were caught the day they planned their break -- victims of a snitch.

Now they'll spend the next 10 years locked in solitary confinement at Southport Correctional Facility with no phone, packages, movies, commissary or recreation privileges, said state prison officials.

Details of the thwarted Halloween eve 1997 escape played out in Chemung County Court this week as one of the inmates, Timothy C. Fair, was convicted of first-degree attempted escape.

An 11-woman, one-man jury deliberated for 6.5 hours Tuesday before convicting the 34-year-old Rochester man. He was serving 13 years for burglary, auto theft and other crimes.

His partner, 43-year-old Aguedo J. Chevez, who was serving a 25-years-to-life sentence for murder, pleaded guilty to the attempted escape charge May 1, said Assistant Chemung County District Attorney Christopher Baker. Chevez of Rochester, who gave police a detailed statement about the planned escape, was sentenced June 19 by Chemung County Judge Samuel J. Castellino to 1.5-3 years. That time will be

added to his murder sentence, Baker said. Fair is scheduled to be sentenced Sept. 11 and faces another 2-4 years, Baker said. Both men had been at the Elmira prison only four months before the attempted escape, Baker said.

Not surprisingly, both inmates had been convicted in 1996 for escaping from the Monroe County Jail, Baker said. The Elmira story began Sept. 28 when Fair and Chevez saw plumbers working in the pipe chases (small tunnels) carrying pipes and other utilities through the 122-year-old prison.

The two men were housed on the first floor of A-block -- five cells apart -- in the prison's reception center, where new inmates are processed, Baker said. This is a hole under one of the sinks in one of the jail cells at the Elmira Correctional Facility which was going to be used by inmates to escape through. While the plumbers were working, Fair and Chevez noticed large openings in the pipe chase grates leading to the prison basement. From that day on, they began plotting their escape, Chevez told a state police investigator.

"They were really smart guys, actually," said Baker, who prosecuted Fair. "They had a lot of time on their hands and were able to take advantage of the old construction of the building."

They made crude digging and prying tools from bed parts, a hook that held up a cell radiator and pieces of wire and metal they found in the basement. Both men stuffed their prison-issued green clothing with New York Times newspapers, and used garbage bags and books to make life-like dummies to place under covers in their beds at night when the officers made bed checks.

Since then, the prison requires officers to see some part of an inmate's skin when making bed checks, said Baker.

For security reasons, a state prison spokesman declined to say what, if any, changes the facility has made to prevent a similar escape attempt.

In the "Escape from Alcatraz" movie starring Clint Eastwood, inmates made similar dummies and chipped through their cell walls, gained access to pipe chases, climbed to the prison roof and escaped.

"This was something straight out of 'Escape From Alcatraz,'" said Baker. "They did a lot of the same things."

After two days of chipping away at the plaster and terra cotta brick in their cell walls, Fair and Chevez broke through into the pipe chase and found their way into the basement.

Fair had started working at another hole in his cell, but ran into pipes, Baker said. "So he used newspapers (and paint) to patch the hole and make it look like nothing had been breached," Baker said.

After breaking through the cell walls, the two inmates escaped their cells every night for 28 days, Baker said. At 12:30 p.m. each night, they placed the dummies in the beds, removed the cardboard, crawled through the 18-inch holes and made their way to the cellar. They returned to their cells each morning at 5:30 a.m. for the morning bed count, Baker said.

"Once in the basement, they ran around for two weeks searching for a way out and picking up discarded items -- wire and anything metal -- which might aid their escape," New York State police Investigator Richard M. Babcock, Horseheads, wrote in his statement from Chevez.

During the day, they hid the dummies in the cell wall holes and covered them with pieces of cardboard, propped up with 5-gallon, plastic waste baskets. The crawl spaces and basement were pitch black and the inmates needed a light source. Again they relied on their resourcefulness.

Chevez made an oil lantern. He saved his margarine from the mess hall meals, melted it on his cell radiator and separated the corn oil. He used the corn oil as fuel in a crude oil lamp fashioned out of a plastic juice bottle, with a homemade cloth wick, Baker said.

They used pieces of angle iron to break brass padlocks off thick metal doors in the basement that led toward the outside prison walls.

They thought about tunneling out of the basement, until they noticed bird feathers and heard the cooing sound of pigeons, Chevez said in his statement to police. That's when they decided there might be an easier way out.

The easier way out was up a more than 40-foot tall ornamental turret on the northeast side of the prison -- one of several turrets on the outside of the brick facility, Baker said.

"The turret was so narrow, no more than 2-3 feet wide, they were able to wedge their way up to the top," Baker said. "Once up there they tied a 26-foot-long orange extension cord to a pipe and used it to climb up and down the tower."

That cord came from a floor buffer the inmates found in the cellar. They also braided cables together, with knots tied in them every few feet, to make two other climbing ropes.

While the pigeons led the two to the turret, the birds turned out to be a problem. "Once inside the turrets, Chevez stated that they actually had to fight off the pigeons," read his statement.

"I guess they were pecking at them and so on," Baker said of the birds. Near the top of the tower the two men found a long, narrow window covered with a screen and heavy mesh grate.

The window gave them a view of a guard tower, 50 to 70 feet away, Baker said. "From what Chevez said, when they climbed the tower they would watch the guard and time the guard to see what his routine was," Baker said. "They said they never even came close to getting caught."

The inmates even timed how long it took to get from their cells to the tower each night: 15 minutes.

They had planned to climb the tower Oct. 30, break open the narrow window, throw the electric buffer cord rope out the window and shimmy down it to freedom. The men intended to run under the guard tower, into some nearby trees, steal a car and get out of town, Baker said.

They had no outside help, Baker said.

But on the night of Oct. 30, it took too much time to remove the tower's window flashing and grate hinges. So both men returned to their cells and waited to escape the following night -- Halloween night, Baker said.

But that didn't happen. Another inmate snitched on them, and at 11:25 a.m. Oct. 31, officers searched the cells of Fair and Chevez and found the holes, tunnels and dummies, said Baker.

"I never thought about what would happen if we got caught," Chevez said in his statement. "I know

there's a lot of evidence. Take it easy on Tim. He has 13 more years to do and he isn't a bad guy."

Both men are now serving time in Southport Correctional Facility, an all-solitary confinement prison where inmates are locked in cells 23 hours a day, said Mike Huston, a spokesman for state Department of Correctional Services.

Fair didn't testify during his trial and refused to give any statements to investigators, Baker said.

While the inmates' planning and attention to detail was impressive, their energy was wasted, Baker said.

"If they had generated that intelligence and drive in another direction, maybe they wouldn't have been in state prison in the first place," said Baker. "They sure weren't like Clint Eastwood, because they didn't get it out of the facility." -- Jim Pfiffer

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## **BLATANT DIRECT DEALING, IS NOT = CORRUPTION**

THE HARRIMAN STATE CAMPUS  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

April 14, 1998

RE: Agency Level Decision

Class Action; Elmira

L-4-98C;C98-0275;97-041

L-5-98C;C98-0276;97-040

Dear Mr. Middaugh:

On Wednesday, April 1, 1998 we met at Elmira Correctional Facility to discuss the above referenced contract grievances alleging that the Department violated Articles 2, 3, 5, 24 and 25 of the negotiated agreement between the State of New York and Council 82.

The issue in these grievances is that management allowed two correction officers to change the hours they are working.

It is the union's position that the management of Elmira Correctional Facility was arbitrarily making changes to permanent bid jobs. Further, they were dealing directly with the employees and bypassing the union.

The facility's position is that they were just responding to a request by employees. The staff in SHU asked if one correction officer could change their work hours by 1/2 hour, to see if they could run the SHU better. They felt they did speak with the union although they admit it was unofficial. These changes are not permanent, but just temporary, to see what happens.

In reviewing these grievances I can find no violation of the Articles cited. However, it is the Department's position that if the union does not wish unofficial contact with different officers of the

union at a facility, all contacts will be made through the designated representative. To the extent stated above, the remedy sought is granted.

Sincerely,  
John B. Seiler  
Deputy Director  
Bureau of Labor Relations

cc: Supt. Bennett  
FDS Smith  
DSS Deane  
Richard Abrahamson  
C.O. Bachert

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## **ATTENTION!!!!!! FULL ARBITRATION WIN ART 10**

If you have had court decisions placed in your personal history folder without the protections of Article 8, discipline this decision affects YOU!!!

Council 82 files: C96-0802, C96-803, 804, 805, 806, 0686.

BEFORE MICHAEL S. LEWANDOWSKE, Impartial Arbitrator

Decision dated July 17, 1998

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### **DISCUSSION AND ANALYSIS**

Based on the evidence before me, I find that the State has violated Article 8 of the Agreement. Article 8.d2 specifically precludes the imposition of a written reprimand without the application of the procedure contained in the rest of the Article. The inclusion to the court decisions in the employees personal history folders constitutes the imposition of a written reprimand. The court decisions are not just mere criticisms of employees.

They are written findings that the employee involved engaged in conduct that is clearly gross misconduct. This is the very type of behavior that an employee may be disciplined for had the State reached the conclusion the court did. The court decisions, as part of the personal history file then become part of any future disciplinary proceedings where they are then available for use by the State for consideration or to petition disciplinary arbitrators for consideration Should it become necessary to assess penalty. What other use would they have? No practical use different from the above was presented at the hearing. All of the forgoing occurs without the protections contained in the balance of Article 8. It is easy to conclude that DOCS' practice of keeping the decisions out for 25 years was based on at least an instinctive assessment that the decisions are indeed reprimands. If the decisions read like and are used like reprimands, and they do, it is proper to find them to be reprimands regardless of what they are called, I find that the decisions are written reprimands when placed in the employees folders therefor their inclusion without application of the balance of Article 8 is violative of the Agreement.

Having found the inclusion of the court decisions is violative of Article 8, the remaining issues become moot.

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# Sen. Nozzolio/Feldman Bill S5190

STATE OF NEW YORK

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5190  
1997-1998 Regular Sessions  
IN SENATE  
April 16, 1997

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Introduced by Sen. NOZZOLIO -- (at request of the Department of Correctional Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to the appointment of correction officers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 22-a of the correction law, as added by chapter 134

2 of the laws of 1984, is amended to read as follows:

3 § 22-a. Qualification for employment as a correction officer. No

4 person, on or after the effective date of this section, may be appointed

5 to the position of a correction officer in any institution in the

6 department who has been convicted of a felony or of any offense in any

7 other jurisdiction which if committed in this state would constitute a

8 felony. The commissioner may in his discretion, bar the appointment of a

9 person, on or after the effective date of this section, to the position

10 of correction officer in any institution in the department, who has been

11 convicted of a misdemeanor or of any offense in any other jurisdiction

12 which if committed in this state would constitute a misdemeanor, OR WHO

13 DOES NOT HAVE FITNESS AND GOOD MORAL CHARACTER, where he has determined  
14 that the employment of such person is not in the best interest of the  
15 department. Notwithstanding the foregoing provisions of this section, no  
16 person shall be disqualified pursuant to this section unless he shall  
17 have first been furnished a written statement of the reasons for such  
18 disqualification and afforded an opportunity by the commissioner, or his  
19 designee, to make an explanation and to submit facts in opposition ther-  
20 eto.  
21 § 2. This act shall take effect immediately.

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## **ATTICA INMATES CONFINED TO CELLS AFTER ATTACKS ON GUARDS**

By MARY PASCIAK  
News Staff Reporter

Prisoners in Attica Correctional Facility were confined to their cells indefinitely Saturday after several guards were attacked by inmates over the weekend. "There were several fights yesterday and a couple today, so we locked down today," state Department of Corrections spokesman James Flateau said Saturday. Officials at the maximum-security prison do not yet know what sparked the incidents, he said.

About 11 a.m. Friday, some guards were assaulted by inmates from Cell- block B -- some armed with homemade weapons. Three guards had been attacked by 2 p.m., according to Richard Harcrow, president of Attica Local 1040 of the New York State Law Enforcement Officers Union. Union representatives said they asked prison administrators to lock down the entire prison after the first three guards were assaulted.

On the order of Corrections Commissioner Glenn Goord, officials locked down the 450 inmates in Cellblock B Friday afternoon. "We make that decision based on what the commissioner feels should be done," Flateau said. "Yesterday, problems were confined to B block, so B block was locked down." But union leaders believe the more than 2,000 prisoners in Attica should have been locked down as a precautionary measure. There are four cell- blocks in the prison. After the lockdown in Cellblock B, four more guards were assaulted there Friday. Early Saturday, two guards were assaulted in Cellblock C. Union spokesmen blame the additional assaults on the administration's failure to lock down the entire prison immediately.

"If they would have locked down after the first three incidents, they wouldn't have had six more officers assaulted," Harcrow said. "We went to the administration looking for help, and they just turned their backs on us."

"It was directly because management didn't do the right thing," said Carl Canterbury, vice president of the union. "They actually put our officers' lives in jeopardy because they wouldn't do the right thing."

But Flateau said as soon as officials learned the problem had spread to other cellblocks, the entire prison was locked down. Goord did not think it was necessary to lock down anything more than Cellblock B on Friday, when incidents were confined to that area, Flateau said.

The president of the statewide union of correction Officers took a more moderate view of the administration's actions. "I thought the administration responded yesterday pretty accurately when they shut down B block and today when they shut down the rest of the facility," said Rich Abrahamson, in an interview from Albany. "The administration does the best they can. It's a judgment call they make. "These are the risks we accept when we go into these places. There's a lot of emotion in there right now. People are getting hurt, people are getting hit." One officer was attacked Friday afternoon by an inmate wielding a homemade Plexiglas weapon while the guard was handing prisoners their mail. The inmate tried to stab the officer in the back, according to guards. The officer walked away with two holes in the back of his shirt, where the weapon pierced the fabric, the guards added. In all, nine officers were attacked, union officials said. Half of those attacks involved some sort of weapon fashioned from Plexiglas or steel. Some officers suffered minor injuries, and at least two were taken to local hospitals for treatment. One guard dislocated his shoulder while trying to subdue an inmate, Harcrow said, and another guard was knocked unconscious during a scuffle.

Goord ordered the entire prison locked down Saturday. "The commissioner wants to assess what's going on at the prison," Flateau said. "The facility will remain locked down until the commissioner feels comfortable with the situation." Administrators last locked down Attica in September, after a few inmates attacked guards in the mess hall, Canterbury said. The prison remained locked down for seven days.

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## **GUARDS ATTACKED DESPITE LOCKDOWN**

By MICHAEL BEEBE  
News Staff Reporter (8/4/98)

Five guards suffered minor injuries Monday in three attacks by inmates as prisoner unrest continued at Attica Correctional Facility, despite a lockdown. One officer was struck in the face by an inmate as he escorted him to make a court-ordered telephone call.

A second officer was hurt subduing him. Both were treated at a nearby hospital and returned to duty. Another officer was struck by an inmate during a pat-down frisk and a second officer was hurt subduing him.

Another officer was struck in the ankle with a coffee can thrown from a cell. These officers remained on duty. All three incidents occurred in Cellblock B, which was the first unit to be locked down Friday. State Correctional Services Commissioner Glenn S.Goord ordered that all Cellblock B inmates be locked in handcuffs and waist chains before being moved from their cells.



The Attica lockdown, now in its fifth day, started when seven inmates refused to leave caged exercise yards reserved for some of the prison's most violent convicts, the president of the state corrections union said Monday.

Seven hours of negotiations last Friday failed to convince the inmates to go back to their cells and they vowed to fight guards who came to take them out, the union president said. "Two of them charged the officers," said Richard Abrahamson, president of Council 82, the statewide union representing corrections officers. "A third guy refused to come out and they had to go in and get him."

The decision to lock down inmates in Cellblock B, where the scuffles took place, was made by prison officials that night. It came after another guard answering requests from the law library was attacked by an inmate delivering hot water along the gallery, Abrahamson said.

The union president said the officer was struck several times in the head by the inmate, who also tried to stab the guard with a sharpened Plexiglass shank. After further assaults Saturday in Cellblock C, Attica officials ordered all 2,216 inmates locked in their cells. Officials expected the lockdown to continue today as guards conduct a cell by cell search of Cellblock B for weapons and contraband.

A new stab-resistant vest protected one officer from injury Sunday, a Correctional Services Department spokesman noted. As a Cellblock B inmate was being moved prior to a search of his cell, he attempted to stab the officer in the shoulder with a sharpened metal rod. The rod punctured the vest, but did not penetrate it. Six of the vests arrived at Attica Thursday evening and were immediately put into service.

None of the injuries to the nine guards in the weekend assaults was believed serious. One officer was treated for a possible separated shoulder and another guard was treated after Attica union officials said he was knocked unconscious. Corrections officials in Albany said the man had an asthma attack. Union leaders of Local 1040 of the New York State Law Enforcement Officers Union at Attica said the administration should have shut down the entire prison Friday to prevent further injuries. Corrections brass in Albany said they ordered the lockdown at the appropriate time Saturday.

Abrahamson, a Buffalo resident, said it is a difficult decision. "If every time you heard something was going to happen, you shut down the prison, it would never run," he said. "Assaults on staff are not unheard of, they're not unusual," the union president said. "We don't like it to happen, but we realize it goes with the territory. We don't condone it."

The incident that sparked the lockdown occurred in a newly renovated area designed for long-term inmates. While inmates there are double-bunked, their cells are more than twice as large as the standard 48-square-foot cell and come with a shower and caged-in exercise yard known as the bullpen.

State prison officials said they are investigating why the inmates refused to leave the bullpens and what caused the attacks. Attica was locked down last September for seven days after inmates assaulted guards in a dining hall.

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# Schedule of Personnel Costs

The following is taken from the Schedule of Personnel Costs July, 1997 - June 30, 1998

## Field Service Staff Reps. Salaries

Rep. Id	Base C82 Salary	Union Leave	Total
McMillan	12,000.04	37,256.28	49,256.32
Zeller	57,722.26	0	57,722.56
Ottavani	15,667.26	33,221.23	48,888.49
LaDuke	57,722.26	0	57,722.26
Sears	8,382.31	38,809.71	47,192.02
Lesniak	13,261.13	12,482.82	25,743.98
Klienschmidt	56,503.24	0	56,503.24
Patterson	3,311.92	41,491.55	44,803.47
Middaugh	14,316.31	33,221.23	47,537.54
Cambareri	14,316.31	11,627.42	25,943.73
Hill	56,371.31	0	56,371.31
Kulogowski	16638.44	31,391.30	48,029.74
Sawyer	16,740.11	31,391.30	48,131.41
White	16,083.28	31,866.71	47,949.01
Rodgers	14,083.17	33,221.23	47,304.40
Kraft	13,665.33	33,085.68	46,751.01
Beachy	15,176.61	31,865.73	47,042.34
Mann	12,963.23	33,221.23	46,184.46
Cassiak	13,914.67	32,340.16	46,254.83
Stanforth	14,730.23	31,865.73	46,595.96
Moses	12,963.23	33,221.23	46,184.46
Stevens	22,865.31	24,577.07	47,442.38

This represents the salaries paid for the above. It does not list the fringe benefits for those that are still employed by the state. If we add these in, the cost increases.

Remember your benefits have a cost factor to the state, for an individual on union leave that cost must be paid back to the employer. This can be a high of \$15,472.00 in the case of Paterson and a low of \$9,164.00 for Stevens

This posting also does not include reimbursements for expenses.

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# "Council 82" & Respirators

More than 1 1/2 years ago many officers lost the right to facial hair (Nov '96). I immediately called and spoke with Rich Abrahamson. I asked him what was going to be done to win our rights back. He said, "We expected a much larger response but we have not seen it." He also said, "Since it only affected a small amount of officers that it was not a top priority." Basically C82 thought it was too small an issue to bother with.

I have written to PESH/OSHA many times within this same period for an interpretation of their standard. In basic terms it says that we are entitled to respirators (either a full face or a hood type) with corrective lenses and the state is obligated to provide this equipment at their cost. Below is their last response;

Dear Mr. Butchino:

This is in response to your March 26, 1998 letter regarding questions pertaining to OSHA's respirator standard, 29 CFR 1910.134.

The original OSHA respirator standard was first promulgated in 1971 and was later adopted by the NYSDOL Public Employee Safety and Health (PESH) Bureau under the original 1980 PESH Act. The latest version of the standard took effect April 8, 1998 for OSHA (with September 8 and October 5, 1998 as compliance dates) but has not yet been adopted by PESH (It will be in the near future).

The NYSDOL PESH Bureau has enforced the OSHA respirator standard since 1980. If violations of the standard were brought to PESH's attention or if they were discovered during an inspection then citations were issued. New York State can't be penalized for not providing proper protection prior to the inception of the PESH Act. After 1980, if respirator violations were discovered or brought to our attention they were cited, simple as that.

If an employee has facial abnormalities that prevent a good fit then the employer must provide a loose-fitting respirator for this employee. OSHA's 1986 letter to Mr. Markovich that you quote comes right out and says this. The employer can not fire the employee solely due to not getting a proper fit with a tight-fitting respirator. OSHA says that a loose-fitting respirator must be offered in these cases.

The employer is also required to provide corrective lens kits if normal glasses can't be worn with a respirator. Section 29 CFR 1910.134(e)(5)(ii) of the respirator standard addresses this. If a proper fit is not possible due to the temple bars of the glasses breaking the face seal then the two options would be a full-face tight-fitting respirator with corrective lenses mounted in the facepiece or a loose-fitting respirator. Respirator companies manufacture corrective lens mounting kits for full-face respirators for personnel who must wear glasses. PESH enforces this corrective lens issue under 29 CFR 1910.134(e)(5)(ii).

The corrective lens policy is part of OSHA's 5 respirator program and has nothing to do with weapons qualifications. While qualifying with weapons correction officers must wear either approved safety glasses or goggles. Goggles should be used over corrective lenses. Liability is not a PESH issue. If personal protective equipment (PPE) is needed the employer must provide it with no cost to the employee; this is covered under the OSHA standards and is not a labor/management issue. Whenever a violation is detected there is a mutually agreed upon time period to correct the hazard. There is also a time period allowed for PESH to adopt new OSHA standards.

Loose-fitting respirators may be worn with beards. Corrective lens can also be worn with these respirators. Glasses are only a problem with tight-fitting respirators when the temple bars go through the respirator face seal. Keep in mind, however, that this does not mean that NYSDOCS has to issue loose-fitting respirators for employees who want to wear beards. A no facial hair policy would also be acceptable.

Only if the conditions that prevent a good seal cannot be removed or corrected must the employer provide a loose-fitting respirator. Facial abnormalities may not be able to be removed or corrected; beard growth, sideburns, and large mustaches that interfere with a face seal obviously can be removed.

Sincerely,

Mark E. Thorsland  
Associate Industrial Hygienist

I sent this to C82 who had their Lawyers give it their approval, which they had no choice. They sent me a letter agreeing with the content along with a sample complaint letter. I asked that my union follow up with the complaint since I have already filed 2 with no response from PESH. C82 said they have filed the complaint but PESH is going to be changing some standards in the near future (oct). So C82 wants to wait until after this time to follow through to see if any changes are going to be made. The problems exists NOW under their current policy and the complaint is against the issue as is stands now.

I feel C82 is going to sit on this to see if they survive the challenge.

Darren  
Sorry for the length but its the whole story.....

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## Your Troubles in Attica

ASSOCIATION OF OREGON CORRECTIONAL EMPLOYEES A.O.C.E.  
PROFESSIONALISM \* PEOPLE \* PERSISTENCE \* PROTECTION  
P.O. Box 13357, Salem, Or. 97309 / Phone: 503-370-9035 / Fax:  
503-370-9488 / E-mail: [aoce@open.org](mailto:aoce@open.org)

DATE: August 8, 1998

TO: All Brother and Sister Correctional Officers that work in Attica

FROM: Correctional Officers that work inside the Oregon State  
Penitentiary, Oregon State Correctional Institution, Mill Creek  
Correctional Facility, and South Fork Prison  
RE: Your Troubles in Attica

The Correctional Officers from Oregon would just like to let all of you fellow brother and sister Correctional Officers that work in Attica know, that we have you in our thoughts and prayers. We wish the Officers that were injured a speedy recovery

For all of you that do "walk the toughest beat" our hats are off to you for not losing your facility. Even when you were faced with not only the great odds of fighting the inmates, but also having to fight management.

When you deal with inmates it is one thing, But when your management doesn't listen to the Professionals that work the line, that is outrageous. Your Union President works along side you in the facility like we do in Oregon. He knows what's coming, as do all of you. We read the statement by the council 82 president. This should not only tell you, but should make you open your eyes. This so called union DOESN'T CARE ABOUT THOSE WHO WALK THE LINE! This is because they never have and never will walk the line. We in Oregon have been there. We now represent ourselves. We make decisions based on our knowledge of walking the line and represent ourselves based on that knowledge. Change inside all institutions, for all Correctional Officers is a very hard thing to accept, But this is a change that you have to do. Not only for your safety, but for the safety and welfare of you families. Remember "Fool me once, shame on you. Fool me twice, shame on me." How many times does this union get to fool you? We support your efforts and will help in anyway possible.

Sincerely,  
Correctional Sergeant  
Michael L. Van Patten,  
Executive Vice President AOCE

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## **UNION BLASTS STATE ON PARTIAL LOCK DOWN AT ATTICA**

By TOM ERNST  
News Staff Reporter 8/7/98

ATTICA -- Failure to lock down the entire Attica Correctional Facility showed a lack of concern by the state Department of Correctional Services for the guards' safety, a union official said Thursday. "The inaction is unconscionable, reprehensible, and possibly criminal," Richard Harcrow, president of the local union representing corrections officers said during an afternoon news conference across the street from the prison.

It was attended by about 40 officers, including 20 from other facilities. Several days of inmate unrest resulted in parts of the facility being locked down and injuries to 14 officers. Harcrow said.

The incidents began last Friday in Cellblock B and spread to other areas over the weekend.

Rather than just locking down Cell-block B, the union asked that the entire facility be locked down, knowing that more assaults would occur, Harcrow said.

But the Department of Corrections refused, and six more officers were assaulted, some with deadly weapons he said.

James Flateau, a spokesman for the Corrections Department, said that the agency's response "was conscientious, responsible and professional."

Harcrow also criticized the president of his union and called for his resignation. He charged that Richard Abrahamson, state-wide president of Council 82 of the Law Enforcement Officers Union, had taken management's side during the situation.

"I am dumbfounded that Richard Abrahamson spoke to management and the press without so much as making a call to me to find out the facts of the matter," Harcrow said.

"Surely he must know that management has a tendency to play down incidents involving violence against officers. (The department) would have down played the 1971 riots if they could have gotten away with it."

Told of Harcrow's comments, Abrahamson, who was elected two years ago, said Harcrow is operating with his own agenda "and his strings are being pulled by people from outside the union.

"I will put my almost 24 years as a corrections officer -- including 10 at Attica -- on the line that my agenda is nothing more than the health and safety of our officers." Abrahamson said.

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## **NYSCO&PBA Attorney threatening Law Suit**

An open letter to NYSCO & PBA,

In all fairness I must state in the out set of this posting that I'm a supporter of Council 82 and I believe that a challenge at this time is counter productive to our goals.

As a thirty three year member of the New York State Conservative Party and as a member of the Putnam County Conservative Party for twenty three years from time to time information filters down from the Party powerful concerning issues that develops throughout the State.

On Wednesday I received a call from a dear friend that has close connections to the second floor of the capital. I wish that I could divulge the name of this friend but I fear of his loosing his place of confidence. I also realize that not divulging the name seriously jeopardizes the effect of this posting.

I have debated whether or not to post this letter since receiving the information. I chose this forum since it is an active source of information concerning NYSCO & PBA and I thought it would compel the individuals involved to research the accusation and come back with a verification or denial.

On the outset I must state strongly that this information comes from a second source and I can not verify its authenticity. It is for this reason why I hesitated in posting.

Some may say that it should never have been posted but, if it is a rumor it should be quelled at the beginning.

It has been stated from both supporters of Council 82 and NYSCO & PBA that if Council 82 can secure an upgrade for Correction officers it would seriously damage if not destroy the possible success of NYSCO&PBA challenge.

It has been reported that the attorneys for NYSCO & PBA have contacted the governors office and

threaten to sue the governor if he allows the upgrade of Correction Officers to happen. Sources state that the suit will be under the Taylor concerning the fair ability to challenge.

My question to the NYSCO & PBA people is can you verify that this conversation has happened or can you show through a statement from your attorneys that no contact concerning the upgrade has been made with the governor's office.

If such action has been taken by NYSCO&PBA by its attorneys then there must be some serious concern that the upgrade push by Council 82 is a reality and NYSCO&PBA is willing to throw off our members receiving a \$2,000.00 plus wage increase so that they can win a challenge.

Please address this issue immediately.

A.J.Sportiello  
President  
S.S.C.O.U.  
Local 1413

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## **NYSCOPBA Press Release- Signature Petitions Filed**

August 11, 1998

ALBANY, NY--The New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) announced today that its President, Brian Shanagher, a correctional officer at Green Haven Correctional Facility, has filed a petition with the NYS Public Employment Relations Board for an election to decertify the incumbent bargaining agent, Council 82, AFSCME, AFL-CIO, as the union representing the more than 24,600 members of the Security Services Unit of the State of New York. The Security Services Unit includes the correctional officers and sergeants responsible for the operation of 69 correctional facilities run by the NYS Department of Correctional Services, as well as the police officers and other law enforcement personnel in the Office of Parks and Historical Preservation, the Department of Environmental Conservation, the State University of New York, and the Offices of Mental Health and Mental Retardation and Developmental Disabilities.

NYSCOPBA's petition is supported by a Showing of Interest signed by well over 30% of the entire bargaining unit. "We have been gratified and energized by the enthusiastic interest and support of so many members of the bargaining unit for the principles which guide our organization," said President Shanagher. "And the Showing of Interest is just the beginning. We believe that when the election is held, the support for NYSCOPBA will be overwhelming."

NYSCOPBA is an independent union created by rank and file members of the Security Services Unit. It is opposed to affiliation with other organizations such as AFSCME and the AFL-CIO, which require payments of members' dues to groups which do not have an impact on the terms and conditions of employment of correctional officers and law enforcement personnel. "Council 82 sends \$2 million a year in dues to AFSCME in Washington, and that number is expected to go up to \$2.6 million when

AFSCME meets in Hawaii later this month to vote themselves an even greater percentage of the hard earned dues money paid by our members," said President Shanagher. "To us, that is an outrageous amount of money to send out of New York. We believe that members' dues should be used to improve their working conditions, increase the professional training that they receive, enhance the legal and legislative services which are so necessary for their protection, and to improve the public's understanding of the difficult and essential work that they perform at great personal risk and danger. We have pledged to our members that we will put more than \$1 million in reduced dues back into their pockets and still improve on the quality and quantity of union services with the money saved by elimination of the AFSCME/AFL-CIO dues."

Shanagher acknowledged that "We expect the election campaign to be hard fought, and we realize that Council 82, AFSCME will spend huge amounts of money during the campaign. We believe, however, that the members of the Security Services Unit will vote with their hearts and souls and that their votes can not be bought with a barrage of media materials, trinkets and souvenirs. We are counting on the members to weigh the value they have received for their money--and there have been far too many years of 0% raises in our contracts--against the opportunity for real change, real participation in their own organization, and real improvement in wages and working conditions."

NYSCOPBA is calling upon PERB to conduct an immediate election. "NYSCOPBA hopes and expects," Shanagher said, " that all of the interested parties will cooperate to ensure that the election is held as expeditiously as possible, so that collective bargaining for a successor agreement to the one that expires on 3/31/99 can begin on a timely basis."

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## L.E.O.U. Staff Salaries

Reimbursements for expenses:

These are totals:

Auto allowance: \$3,046.12

per diem: \$13,985.23

Gas & Oil: \$3,160.37

Milage:\$138,354.60

Parking & Tolls: \$12,327.88

Fares: \$352.00

Subtotal Travel: \$171,226.20

Lodging: \$16,954.90

Meals & Entertainment: 2,772.81

Tel.Communications: \$33,249.35

Medical/dental reimb.: \$ 2,655.31

Union leave benefits: \$193,497.49

other: \$1,521.58

Total all (includes salaries and union leave/preshft.) \$ 1,418,968.44

You must add to this a total of \$ 78,640.85 which represents the total cost of the field staff director McMillan.



The point that I'm trying to make is that no one in the field staff area is making the \$85,000.00 figure even with the expected reimbursement of expenses and fringes.

Even our salaries have additional cost factors when you add in the percent of medical paid by the employer, percent of retirement paid by employer. It has been said that each State employee salary has an additional 29% of cost . For me with rounded \$42,000. salary represents a cost to the State of \$12,180.00 for a total employment cost of \$54,180.00. Please this does not represent in pocket money it only represents the cost to the employer.

I say this so it is not misrepresented that I'm saying I make \$54,180.00 per year.

Fraternally,  
A.J.Sportiello  
President  
S.S.C.O.U.  
Local 1413

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## Official Response from NYSCOPBA

I was forwarded NYSCOPBA's official response regarding the rumor the NYSCOPBA is lobbying against the upgrade.

Gary Carlsen

"NYSCOPBA is responding to the letter posted on the Hack Net from A. J. Sportiello, President, S.S.C. O. U., Local 1413, dated August 8, 1998, reporting a rumor that NYSCOPBA's attorneys had threatened to sue the Governor if he allows the upgrade of Correction Officers to occur. Mr. Sportiello acknowledged that the "information" he conveyed had not been verified. We appreciate the opportunity to respond before an unverified rumor is portrayed as fact. This rumor is completely false."

NYSCOPBA

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## Coxsackie News Report (8/12/98)

Brawls between 2 large groups of inmates Tuesday at Coxsackie C.F. sent some to hospitals with minor injuries and prompted officials to lock down the maximum security prison.

Tensions began at 7:45 a.m. with a fight in D-block between 3 black and 3 hispanic inmates. The prisoners were armed with a razor and 3 bent over metal can lids said Don Premo a C.O. and treasurer of local 1264 of Council 82.

"There are indications that it could be gang related, Premo said. No Correction Officers were injured and one inmate was treated at Albany Med. for cut and released.

But things escalated later in the day with a larger fight that erupted in the recreation yard involving 30 black and hispanic inmates. The fight, which was related to the earlier skirmish, took place while 130 inmates and 3 Officers were in the yard.

It took 18 C.O.'s to stop the fight. Two plastic knives and 2 razors were recovered.

In the larger brawl, one inmate was taken to Albany Med. for treatment of a cut eyelid and a C.O. was taken to Columbia Med. for a neck injury. 24 inmates involved in the fight received minor injuries.

Commissioner Goord ordered a lockdown and said the prisons 1070 inmates will stay in their cells while Officers search for weapons.

"This points out the ongoing problems we have with gang-like activity and is a testament to the Officers getting control without major injuries" Premo said

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## Convict walks with history of assault on staff

### Jury finds inmate didn't assault guard

By JOHN MILGRIM

Staff Writer

KINGSTON – A county jury yesterday cleared a convicted murderer of charges he assaulted a corrections officer because they believed the inmate had been assaulted, his lawyer said after the verdict.

Eastern Correctional Facility inmate Jamal Thomas, 47, was acquitted of two counts of felony assault by an Ulster County jury yesterday after less than two hours of deliberations.

"They thought he had been assaulted and they (the officers) had come at him. A couple of jurors indicated they thought he hadn't done anything," said Thomas's public defender Daniel Gaffney. "The only guard injured had a broken right pinkie. I said it's probably true my client kept hitting him with his head in his right fist."

Eastern Correctional Officer James Walsh, who had alleged he was assaulted by Thomas, sustained a broken finger and a cut on his forearm. Thomas, on the other hand, had two black eyes, a strained thumb, bruises to his head, neck and shoulders and ribs.

"All of the police officers testified they never struck him and they testified he initiated it by swinging at them and missing," Gaffney said.

Thomas, however, was in a disciplinary special housing unit at the time. He has a prison record noting more than 25 disciplinary marks, at least six of which note attacks on officers, said a spokeswoman at the state Department of Correctional Services. Thomas is confined to special housing through Sept. 11, 2003, meaning he's locked down alone 23 hours each day with an hour for exercise.

Thomas, 45, of the Bronx, was convicted of second-degree murder in 1981 in the Bronx. He also has convictions for assault with a deadly weapon, kidnapping and escape.

He will be eligible for parole in July, 2019.

Even so, Gaffney questioned why Thomas would try taking on four correction officers, most of whom were bigger than him. "You'd have to be an idiot to take these guys on." Ulster County District Attorney Michael Kavanaugh said his office reviewed the circumstances and shrugged off any concern about Gaffney's allegations against the guards.

"Our view was they used reasonable force under very difficult circumstances," Kavanaugh said. "I respect their (the jury's) opinion, but I do not agree with them."

Thomas was prosecuted by Assistant District Attorney Elisabeth Krisjanis before Ulster County Court Judge J. Michael Bruhn. Thomas has since been transferred to the SouthPort Correctional Facility.

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## ATTICA PRISON GUARDS STAGE RALLY

News Article from the "THE DAILY NEWS" out of Batavia, NY.

### **ATTICA PRISON GUARDS STAGE RALLY, CALL FOR RESIGNATION OF STATE UNION LEADER IN WAKE OF ASSAULTS.**

ATTICA ---- About 30 correction officers belonging to the New York State Law Enforcement Officers Union Council 82, Local 1040, picketed across from the Attica Correctional Facility Thursday.

The guards, led by Richard Harcrow, demanded the resignation of Richard Abrahamson, president of the statewide Council 82, saying Abrahamson did not do enough to protect the safety of guards after inmate attacks on Attica guards last weekend.

Harcrow said the protest was organized on behalf of 14 officers who were assaulted over the weekend before the total lockdown at the Attica Correctional Facility.

"Last Friday, correctional officers at Attica had full knowledge that more assaults on officers would occur. We asked the (state Department of Correctional Services) to lock up the entire prison." They refused, "Harcrow said.

Harcrow said as a result of the refusal for a total lockdown, six more officers were assaulted. Harcrow said additional assaults could have been avoided had the facility been locked down sooner. "The refusal to lock up the entire institution was nothing short of a lack of regard for the safety and lives of correctional officers and their families," said Harcrow.

Harcrow called the alleged inaction "unconscionable, reprehensible and possibly criminal." " I am outraged that Council 82 would take a position contrary to the safety and well being of correctional officers at Attica," said Harcrow. "I am disappointed that our statewide union, who we pay our hard-earned dues to each month, has demonstrated a lack of concern for the officers who were assaulted."

Union members cheered at Harcrow's statements. "Things may not look too bad from behind Richard Abrahamson's desk in Albany, but in the blocks here in Attica, we are in an extremely dangerous environment with no support," Harcrow said.

Harcrow said Abrahamson and prison management downplay violent incidents, without regard for the

safety of the corrections officers. "When you file a report for a violent instance, it's called an "unusual incident," which is not routine" said Harcrow. The number of corrections officers injured prior to the total lockdown was equivalent to the average injuries for a six-month period, Harcrow said.

Harcrow said the assaults could have been avoided if Abrahamson and prison officials had listened to the concerns corrections officers expressed prior to the lockdown.

"It's like me being your father and sending you down the river. That's what he (Abrahamson) did to us," said Attica corrections officer Michael Yackeren.

Yackeren and other crowd members expressed concern for better quality of representation at a state level. "He should be representing the officers, not management. He should be backing the officers," said Carl Caterbury, vice president of Local 1040.

Union representatives from Wende, Collins and Gowanda correctional facilities attended the "informational picket" to show support for their "brothers and sisters in the union," one picketer said.

Abrahamson did not attend the protest but stopped by THE DAILY NEWS thursday evening to express his opinion. "The whole incident at Attica is unfortunate, but it is not unusual. There are assaults on staff every day in every facility across the state, " said Abrahamson.

Abrahamson said the nature of the job as a corrections officer requires some risk to violence and disease inflicted by inmates.

"Our people accept inherent risks of working in the facility," Abrahamson said. He said he stands by previous statements he made to the press that support the decision prison management made in delaying the lockdown.

In a previous interview, Abrahamson said, "If every time you heard something was going to happen, you shut down the prison, it would never run. Assaults on the staff are not unusual."

Abrahamson said as a correction officer of more that 20 years, he knows the risks of working as a guard. " I haven't forgotten where I came from. I'm going back someday, and I want to go in with my head up," Abrahamson said.

Abrahmsmon was elected president in 1996 and plans to eventually return to corrections. " To insinuate that I'm out of touch is a downright lie. When I go back to Attica, I get the same feeling in my stomach that I got when I worked there," said Abrahamson.

Abrahamson said Harcrow used his position as local union president to "get across an agenda to tear down the union." Abrahamson said the picket is a result of some "infighting" within the union. He said Harcrow is using the lockdown to create an upheaval of officers that would result in the abandonment of the current union, and the acceptance of a new union, Corrections USA.

Abrahamson was elected to a two-year term as president last July. "There is no way I would resign from this position," Abrahamson said.

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# "BOOS and BRAVOS"

News Article, from THE POST STAR, Editorial section, titled, "BOOS and BRAVOS" dated, Nov. 11, 1996.

James G. Marshall - Publisher - Editor.

Boos to the leaders of Council 82, particularly new President Richard Abrahamson, for failing to consult local presidents and guards before endorsing the environmental bond act. On the eve of last Tuesday's bond act vote, Mr. Abrahamson took it upon himself to speak for the entire union and endorse the proposal.

Members were rightly upset. There's a precedent for their ire; just two years ago, the then -leaders of their union endorsed Gov. Mario M. Cuomo for re-election without consulting the locals. Mr. Abrahamson ran for president on a platform of opening up the lines of communication between the membership and state officers. But he's taken the membership's criticism of the endorsement with a grain of salt, saying if they thought he made a bad call, they could vote him out of office.

That is certainly true, but it's not the kind of attitude members expected when they put him in office. This may have been a genuine slip-up from a novice president who's just learning the ropes. Or it may signal a return to business as usual. Only time will tell.

End of Article.

Note: The membership had no input concerning the "paid" commercials that C82 delivered for the Environment Bond Act supporters. They used our "money" to promote a "blank check" for the politicians to spend, without any commitment from those same politicians to give NYS Correction Officers a return for their investment.

Note: 1997 - C82 President Richard Abrahamson drops lawsuit against DOCS "hatchet man" Tom Testa. This decision was also made without any membership input. Testa was eventually promoted to a high position, in the training division of DOCS, management confidential.

Note: 1998 - C82 President Richard Abrahamson sides with management and against Attica Correction Officers, in a statement to the press. Eight Correction Officers were assaulted by inmates, in unprovoked attacks. Attica's local president Rick Harcrow, and Ex. VP Carl Cantabury, inform management that unless they lock down the entire facility immediately, they have information that more Officers will be assaulted. Management denies request. Six more Officers are assaulted the next day.

Attica's local leaders Harcrow and Cantebury then do what real leaders should have done. They went to the media, and blasted management for their indifference toward the safety and lives of all their brother and sister Officers at Attica. In the same news article where Harcrow and Cantebury are putting themselves on the line for their members, C82 President Richard Abrahamson sides with management and supports their decision that resulted in six more Officers getting assaulted.

The Officers at Attica sent a message to Richard Abrahamson at a "Press Conference" called by Rick Harcrow a few days later. They called for the resignation of Abrahamson as President of C82. Abrahamson responds by accusing Harcrow of using his position, "to tear down the union." Abrahamson states to the press, "There is no way I would resign from this position."

It appears that Rich Abrahamson has learned the "Company line" well. It is obvious that he has decided not to put any shade on his "affair" with DOCS. He is an embarrassment to every Correction Officer that works behind the gates. Politics aside, we are in deep trouble with this man at the helm.

I salute Attica's Officers, especially their leaders Rick Harcrow and Carl Canterbury. They went to the media to inform the public that NYS Correction Officers have a very dangerous job. They also exposed management as either incompetent or irresponsible state employees, by their lack of action and indifferent attitude taken during the Attica assaults. Those are the type of leaders that I get excited about.

Thank you Attica, thank you for setting an example of how real union leaders should conduct themselves against the tyrannical rein of DOCS. That rein must be exposed and brought to an end.

Dave Stanson

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## Staff Rep Seniority Dates

Following is the Seniority list of Council 82 Staff Reps. List is from the 1992-94 Contract.  
( Prior to the NEW 82 coming into existence).

Walter Cavanagh 4 Feb 80  
Douglas Di Geriando 15 June 80  
Ed Dean ( retired) 23 Jan 83  
Joe Kraft \* Feb 83 (Facility Staffing)  
George Ottaviani 9 May 84  
Robert Zellar 9 May 84  
Chet LaDuke 1 Oct 84  
Dale Sears 8 Aug 85  
Robert Falzone 25 Nov 85  
Rich Lesniak 29 Jul 87  
Ludwig Kleinschmidt 16 May 88 (Forms, Enforcer, Graphics, Field Staff)  
Robert Patterson 18 May 89  
Charles Cambarreri 29 Oct 90  
Dennis Middaugh 29 Oct 90  
Wendel Hill 23 Sept 91  
Peter Killian 16 Jan 92  
Dan Kulgowski 20 Jan 92  
Phil Sawyer 24 Feb 92  
William White 2 Mar 92  
L. John Brooks 10 Aug 92  
Alphonso Rogers 24 Aug 92  
John Beachy 22 Feb 93  
Ernest Benevento 22 Feb 93  
Jim Mann 20 Sept 93 (Grievances)  
Adam Cassiack 4 Oct 93 (Training Coordinator)  
John Stanforth 7 Feb 94 (Health & Safety)

\*\*\*\* As I stated. These are from the 94 Contract. Wish I could be more up to date, but the NEW Contract has not been posted anywhere. Once again, feel free to post the NEW document on the C82 Web site. There is no reason not to.

Or is there ?

Herb Wild

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## Staff Rep Salaries ( 92-94)

Hiring Rate	1 Dec 94	\$44,098.00
Job Rate	1 Dec 94	\$49,484.00
5 Year Rate	1 Dec 94	\$50,831.00
10 Year Rate	1 Dec 94	\$52,176.00
15 Year Rate	1 Dec 94	\$53,523.00

Monthly Car Allowance:	\$500.00
Weekly Per-Diem:	\$160.00
Overnight Per-Diem:	\$30.00
Training Bonus:	\$450.00
Evaluation: ( added to salary also)	\$450.00

\*\*\*\* Please note, these salaries and benefits are from the 92-94 Staff Rep Contract. 0-4-5% . A new Contract has been negotiated under the New 82 . Please post it and give the membership some insight as to what they gave these Staff Rep Employees in the New Contract ?

( They got a zero and still made 9% over a 3 year contract , how we doing? ) Herb Wild

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## Staff Employees Contract.

There has been discussion as to the wherabouts of the elusive Staff Reps Contract . Since no one seems to want to post this document, I can only post items from the 92-94 Contract . Please feel free to quote the changes to the items I submit . Do they still exist or not ? And how were they replaced ? Herb Wild

Article 10 10-1 : Any employee who has a death in his immediate family ( spouse, parent, children, stepchildren, foster children, sister-brother , grandparent , grandchildren, parent in law, brother in law, sister in law, son in law daughter in law, aunt or uncle, or anyone living in his/her household, shall be granted five consecutive days of bereavement leave of absence with no loss of time or pay up to a maximum of fifteen (15) days a calendar year and which shall not be deducted from any other paid leave

benefits.

Article 11 11.1 : All bargaining unit employees who contract or incur a non-employment related illness or disability, or who are quarantined by health authorities, resulting in their absence from their regular duties, shall be eligible to receive their full pay for all such absences up to a maximum of one ( 1 ) year, in a case of substance abuse, this eligibility will be at the sole discretion of the Executive Director.

11.2 : For this purpose of this article, absence brought about as the result of illness in the immediate family of the employee ( spouse and children) that requires his presence shall be considered the same as personal illness and therefore, the employee is eligible to use this provision for such absences up to a maximum of one ( 1 ) year at full pay.

11.5 : Upon exhaustion of sick leave benefits pursuant to Art 11.1 and 11.2 and the employee shall be eligible for leave of absence without pay for one ( 1 ) year.

#### Article 15 Personal Disability Insurance

15.1 Employees covered by this agreement will be covered by a disability insurance plan in the amount of \$800.00 per month and paid for by the Employer.

Thats it for now, but there is MUCH MORE to come. Please feel free to answer the question as to whether these benefits still exist in the NEW Staff Reps Contract. Thanks. Herb Wild

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