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A 38-year-old state prison inmate was indicted Tuesday by a Sullivan County grand jury for allegedly throwing urine at a correction officer in Sullivan Correctional Facility.

Reginald Trammel, who is serving 5 to 10 years for a robbery conviction, was charged with aggravated harassment of an employee by an inmate, a felony.

According to the indictment, Trammel is accused of throwing urine at correction officer Peter Brickner in February at Sullivan Correctional.

Trammell is currently being held in special housing at Shawangunk Correctional.

Because of a long disciplinary record, Trammell will likely serve the maximum sentence time for his crime.

He was admitted to the system in 1993, sentenced to 5 to 10 years for the robbery conviction, said Linda Foglia, a DOC spokeswoman.

**- KRISTEN SCHWEIZER**

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## The Corrections Officer's Creed

I walk through the gate of wrought iron,  
under arbors of razor wire.  
The clanging shut of all the gates,  
is the start of my day.  
Wondering some where deep in my mind  
if I will walk out the same way.  
Voices raised in anger, are the first words of my day,  
garbage flying down from the tiers reign upon my head.  
Words of hate and ridicule are their daily song.  
Why you here boss man?  
What did you do wrong?.  
Not a blessed thing  
Human rights are a funny thing,  
guaranteed to us at birth.  
But as a guard within these walls,  
I am sorely hurt,  
I am spit upon, and cursed out loud.  
Have urine thrown upon me.  
All of this is by the ones,  
the government says should not be free.  
I guard the lowest of earth's scum,  
the guilty and the judged.  
Who have more rights than me.  
I spend my life as a free man,  
yet behind these walls of concrete and steel  
is where I am condemned to be.  
And all for the simple reason  
the inmates can not be freed.  
The bleeding hearts and liberal officials.  
Value the convict more than me.  
I am not a police officer,  
and often held with distaste.  
I go to work everyday,  
never a prayer is said.  
You don't hear the wishes of  
please be safe.  
No one ever remembers me.

As long as no inmate dies,  
as long as none escapes.  
Don't admit that they exist.  
You can safely sleep.  
I am there when you least care.  
To serve and to protect.  
I don't where the badge so bold,  
or carry a gun at my side.  
I only have my wits with me,  
to help me to survive.  
So when you hear of a corrections officer  
don't look upon us with disdain.  
We are not just security guards.  
We are the ones that keep this land  
from going totally insane.

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## Calif. Inmate With AIDS Virus Ordered To Wear Hood

OAKLAND, Calif. (Reuters) - A California prisoner infected with the AIDS virus was ordered to wear a mesh hood to court Monday after the judge expressed fear he would "spit his HIV-infected saliva at anyone near him."

Benjamin Pedro Gonzalez, 39, was ordered into the hood, which resembles a bee-keepers' bonnet, after a string of violent outbursts including punching and stabbing one of his own attorneys and slicing another inmate with a razor blade.

Gonzalez, a former ranch hand, is accused of butchering a woman from Livermore, California, in 1992 and has been called "the most violent offender" in northern California's Alameda County, the San Francisco Chronicle said.

"This defendant is an extremely manipulative, inventive and devious person," Superior Court Judge Jeffrey Horner said in court recently. "He is able to exploit even a momentary lapse in security."

Horner ordered the hood out of fear Gonzalez would "use his saliva as a weapon," the Chronicle said, noting that during pretrial hearings the prisoner appeared with mucus hanging from his beard. A court official contacted Monday confirmed the judge's order.

Along with the hood, Gonzalez will appear in court with his hands chained to a wooden chair and his feet affixed to the floor. No one -- not even his court-appointed attorney -- will be sitting near him, the Chronicle said.

After some three years of legal discussion over Gonzalez' mental competence to face separate murder charges in Oakland, Los Angeles and New York, Horner in July determined he had

been faking mental illness and ordered him to stand trial for the 1992 murder of Barbara Muszalski.

Prosecutors have said they will seek a sentence of 30 years to life in prison if Gonzalez is convicted.

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## "No smoking" plan being "phased in" by NYSDOCS

What follows is a condensed version;

The committee (consisting of 7 Deputy Commissioners and a rep. from CSEA , PEF and C-82) met on 4 occasions and developed a plan.

**PHASE-IN PERIODS** - The plan consists of 4 separate phases that span a 24 month period that will gradually bring about the transition to a smoke- free indoor environment.

**INITIAL START-UP** - In order not to unduly shock the system, the initial phase will not require any immediate changes but instead will be used as a period during which everyone will be placed on notice about the impending changes and the need to make preparations for such changes.

**DEVELOPMENT OF SUPPORT PROGRAMS** - Each facility will be responsible for developing support programs that are designed to assist employees and staff with smoking cessation efforts. This will include educational initiatives about the dangers of smoking.

### Phase 1

The plan will be implemented on November 19, 1998, to coincide with the Great American Smoke-Out. Phase 1 will span a period of 6 months. During this phase each facility will be responsible for ensuring that employees and inmates are notified of the plan to eliminate all indoor smoking and the timetable for implementation. Superintendents will meet with the ILC and IGRC to explain the plan. Facility training days will include segments about the dangers of smoking and cessation programs. Initiatives will also be undertaken at the facility level to teach inmates about the dangers of smoking. Nicotine patches will be sold in commissary.

### Phase 2

Commencing June 1, 1999 each facility will put into place additional smoking restrictions. Inmates will only be permitted to smoke within the confines of housing units, but not beyond. In mediums, no smoking in day rooms or television rooms. Max. facilities, smoking is restricted to cells, galleries, tiers. All outdoor smoking will continue to be permitted. Coinciding with this phase, a modification will be made to the rule book to make it a tier infraction for an inmate to violate any smoking restrictions.

### Phase 3

Commencing December 1 1999, inmates will only be permitted to smoke in their assigned

sleeping area. In mediums, inmates can only smoke in the immediate vicinity of their bed. In max., only in their cell. No smoking permitted outside of the cell. All outdoor smoking will be permitted. This phase will last 6 months.

#### **Phase 4**

Commencing June 1 2000, smoking will be PROHIBITED within all facility buildings Smoking will only be permitted outdoors. Since cigarettes will not be treated as contraband, it is incumbent upon those individuals who continue to smoke to comply with these new restrictions. During this 6 month period, all facilities will carefully monitor whether or not inmates and employees are substantially adhering to indoor smoking ban. At the end of Phase 4 the overall effectiveness and success of the indoor smoking ban will be evaluated. In the event that problems persist with enforcement of the indoor smoking ban, the DOCS will be forced to consider a change that would prohibit smoking entirely and make any and all forms of tobacco contraband. (inmate and employees)

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## **Prison guards seeking to oust union protest move to throw out some ballots**

Albany Times Union- 11/24/98

By James M. Odat  
Capitol bureau

### **Letter of the law deems officer's signatures invalid**

"B. Franklin" and "T. Jefferson" were able to get by when they signed the Declaration of Independence.

But prison guards are held to higher signing standards-at least when they try to toss out Council 82 as their bargaining unit.

A recent ruling by the state Public Employment Relations Board would invalidate ballots of more than 1,500 of the 9,000 officers seeking a vote on whether to retain or reject Council 82. The reason: Hundreds of signers used only their first initial and last name, a common style used by prison guards and other law enforcement officers. PERB said only a full signature is valid.

Brian Shanagher, president of the New York State Correctional Officers and Police Benevolent Association-an insurgent group seeking to oust Council 82- called the PERB ruling "lousy" and scheduled a news conference and rally for today to protest the decision.

He said his group will try to get the verifications required by PERB so that the insurgents, who want to set up an independent union, can achieve the necessary 30 percent of Council 82 membership needed for a vote.

Shanagher said the PERB ruling is merely an obstacle that will, at most, delay the ousting of Council 82.

The union, which has represented correction officers for nearly 30 years, has come under attack recently by guards who claim their pay and benefits lag behind officers in other states.

The current New York contract expires in March.

Union officials say the numbers are misleading and insist Council 82 adequately represents its members.

A vote that was supposed to end Thursday would have determined if the guards preferred the new group, Council 82 or no representation.

However, the union, led by Richard Abrahamson, is challenging the validity of ballots in an effort to defeat a decertification vote. "It's unfortunate that you have to spend money weeding out forgery and fraud," said Dan Curren, a spokesman for Abrahamson.

Council 82 is part of the American Federation of State, County and Municipal Employees.

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## Council 82 is "THE" choice for officers

Press Republican

Thursday, November 19, 1998

By Randy L. Barie

Within the next few months, all of New York State's correction's officers and several thousand law-enforcement personal will be required to make the most important decision of their careers. They will have to decide as to whether they wish to retain AFSCME/Council 82 as their representative union, or to vote in the newly formed New York State Correction Officers Police Benevolent Association known as NYSCOPBA.

Much of the recent dissatisfaction with Council 82 has centered on the last two contracts and the corruption exposed prior to 1995.

While I agree that these prior contracts were insufficient and that era of corrupt leadership was a terrible injustice to all our members, it's extremely important that everyone be made aware of what has occurred since that time before casting their ballot.

As a direct result of the exposed corruption and the last TUFCA challenge, Council 82 with AFSCME's assistance has been reborn.

Constitutional reforms now mandate that the union leadership in Albany is elected by each and every one of us, the members. The leadership must now answer to an Executive Board consisting of every local president elected by their membership from every facility and/or

law-enforcement group represented by Council 82.

Constitutional reforms mandating strict financial reporting to all Executive Board members provide a system of checks and balances unlike any other labor organization.

All local presidents receive a copy of and have the authority to approve or disapprove the proposed yearly budget for Council 82. Detailed financial reports of all salaries, benefits, allowances, reimbursements, checks issued and credit card expenses for all Council 82 employees and elected officers must now be submitted to every president for review and approval.

These reforms have resulted in a union that was near bankruptcy a little over three years ago that is today a union with over a \$3 million operating fund.

A union whose members could not even be heard, now not only dictates and mandates to its leadership in Albany, but if necessary can remove them from office.

A union that a little over three years ago was scoffed at by politicians, now is a major voice in Albany and has become a political power second to none.

A union leadership that couldn't be trusted has been replaced by a group that has accomplished more in just three years than any other in Council 82's history.

In January, for the first time, utilizing a proven professional negotiator and AFSCME assistance, this new Council 82 will start negotiating our next contract. In my 20 years as a correction officer, I have never anticipated or have been more confident in our union leadership and their potential for securing a contract that our membership can be proud of.

NYSCOPBA and its four founders have had much to say about Council 82 but have said very little about themselves.

They should tell our members that they are not in any way connected or affiliated with the real Police Benevolent Association, which represents the New York state police.

They should tell our members that their constitution does not have the provisions for one man, one vote or strict financial reporting and may lead to a repeat of the corruption of the early 1990's.

They should disclose that one of their own founders actually helped negotiate the last contract that they continually tout as a reason to leave Council 82.

They should tell the membership that because the negotiating committee must be in unanimous agreement on any contract before it is put to the membership for a vote, this individual could have prevented those zeros that he now promises not to accept as a representative of NYSCOPBA.

The negotiating committee listed on page 111 of the current contract between Council 82 and New York State clearly shows that NYSCOPBA has in fact helped negotiate and will accept a zero for our members.

They should tell our members that the \$1.7 a year saved by separating from a fiscally sound



experienced contract negotiating, politically powerful AFSCME has already been promised to an inexperienced, politically unknown law firm.

They should tell our members that while NYSCOPBA continues to stress certain improvements of the other states that have gone independent, that the total overall wages and benefits of correction officers in eight out of those 10 states have been severely compromised.

While Council 82 has had its share of problems on its voyage to success, our current wages and benefits are testimony to a proven success record.

A victory for NYSCOPBA at this point in time would be equivalent to abandoning a newly refurbished turbo-charged ocean liner for a canoe with no record of accomplishment or buoyancy.

Randy L. Barie is president of Local 1660, Altona Correctional Facility in Altona

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## **Council 82 Delays CO's Union Vote**

Chief-Leader 11/11/98

A challenge filed by the Law Enforcement Officers Union Council 82 of the American Federation of State, County and Municipal Employees has postponed a representation election previously approved by the Public Employment Relations Board for the state's 26,000 Correctional Officers.

PERB scheduled a Nov. 9 conference between the union and the New York State Correctional Officers & Police Benevolent Association (NYSCOPBA), the dissident faction seeking to oust Council 82.

### **Challenge Signatures**

The meeting will consider how to proceed on Council 82's allegations of irregularities in the petitions filed by NYSCOPBA seeking a bargaining representation election.

Council 82 alleged that the petitions contained several hundred signatures that included solely a first initial, rather than full name. It also cited 22 cases in which it alleged forgeries of signatures. PERB confirmed that eight of these cases were suspect. Finally, the union challenged showing-of-interest cards obtained through the mail as invalid.

"This is a stalling tactic by Council 82, because they know if they held the election today they would lose," President Brian Shanagher said in a telephone interview. He said that his group had collected over 9,000 signatures, while the challenges effected only several hundred. A showing-of-interest by more than one third of the membership is required to fore a representation election.

Mr. Shanagher pointed out that correctional officers are trained to sign only their first initials to prevent inmates from learning their first names from prison documents. "You don't want an



inmate calling you 'Hey Brian'" he said. "It's Officer Shanagher and that's all it's going to be. It keeps it professional."

Council 82 spokesman Daniel Curran denied that the union is trying to block the election. "We want it to be absolutely clear when we win that there are no outstanding questions," he said. "We want to protect the right of our members and see to it that this groups divisive tactics are thrown out in a timely manner."

PERB ordered its Director to investigate the NYSCOPBA petitions in a decision issued on Oct. 27, three days before the ballots were to go out to state prison officers. A PERB spokeswoman said that the agency was "trying hard to move this quickly," and was hopeful both sides would cooperate in resolving the challenges.

NYSCOPBA has campaigned for removing Council 82 based on the argument that an independent union, consisting of only correction officers, could secure better wages and conditions. It points to higher salaries won by unaffiliated correctional unions that split from AFSCME in other states.

It further charges that \$2 million paid annually to the AFSCME national headquarters by Council 82 as money wasted, and that the inclusion of other state employees in the union diverts its focus from the problems of jail officers.

The AFSCME Council, which has represented state prison officers for 25 years, has countered that the national union's lobbying and political action efforts have proven decisive in securing benefits for state prison officers. The has also charged that the NYSCOPBA group lacks collective bargaining experience and is manipulated from behind the scenes by an Albany law firm.

Meanwhile, in an apparent internal crisis, Council 82's Executive Committee fired the union's Legislative Director, John D'Alessandro, charging that he deceived the Executive Committee by securing a consulting contract to maintain the union's web site for his wife under her maiden name.

In an open letter to the union, Mr. D'Alessandro charged that the real reason for his firing was his opposition to "making large political donations with no measurable return, giving our mailing list to political organizations and refusing to submit legislation demanded by the membership."

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## **Elmira man admits guilt to federal drug charges**

Star-Gazette December 2, 1998

BINGHAMTON - A former Elmira correction officer pleaded guilty Tuesday to federal drug conspiracy for his part in a \$20 million cocaine ring. Michael E. Dean, 42, of Schuyler Avenue, Elmira, admitted through his plea that he assisted in transporting cocaine from Binghamton to Elmira while participating in a drug ring that prosecutors say had been operating since January 1990. Dean was charged with controlling between 400 and 500 grams of cocaine.

He could be sentenced to a minimum federal prison term of 20 years and be fined up to \$1 million. Sentencing is postponed pending the completion of additional information, authorities said.

Dean, suspended without pay from his job as a lieutenant at the Elmira Correctional Facility after his arrest, was one of more than 80 people arrested in June in the federal, state and local sweep called "Operation Golden Road".

Information was not available Tuesday night on what, if any, other disciplinary action was taken by state correction officials against Dean. Dean was 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.

Including Dean's disposition, federal prosecutors have netted 40 guilty pleas from 89 arrests and 94 indictments in Golden Road II. Five people indicted in Golden Road II remain at large.

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## **N.Y.S. Correction Officer Murder**

On Monday morning at approx. 2:45am, Officer Leon Watts was killed trying to come to the aid of the victims of an armed robbery at 103rd Street and Northern Blvd. in Queens, NY. Officer Watts had 1 1/2 years in as a Correction Officer and was currently assigned to Bedford Hills, C.F.. He was 27 years old and the father of one child.

It is believed that there were 5 men involved in his murder. It is to my understanding that one has been apprehended and we have a description and an artists sketch ([see attachment](#)) of one of the others. His physical description is Male, Hispanic, 20-25 years old, 5' 6" tall, thin build, light complexion. Wanted posters are being circulated not only in the NYC area, but around the state. If anyone has any information to this persons identity please contact Detective Gomez at 718-533- 2041.

The viewing hours for Officer L. Watts will be between 3:00pm to 9:00pm on Sunday 12/06/98 at Lees Funeral Home located at 160 Fisher Ave., White Plains, NY. The number is 914-949-0372. The funeral services will take place Monday 12/07/98, at the Full Gospel Christen Church, located at 400 Old Terrytown Rd, Greensburg, NY at 11:00am.

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## **Correction officers cry foul**

By Mark Violette  
(Ottaway News Service)

### **State owns stock in private prison company**

ALBANY -- State correction officers are steamed that New York's pension fund owns about about \$13-million-worth of stock in a Nashville, Tenn. company seeking to build a private prison

in the Catskills that they will threaten their jobs.

Council 82 which represents 21,000 prison guards, is strongly opposed to Correction Corp. of America plan to build a 1,000-bed prison on land it bought in Fallsburg, Sullivan County in 1997.

High ranking state officials including Gov. Pataki, Atty. Gen. Vacco, and legislative leaders have also taken a dim view of CCA, the largest operator of private prison in the nation.

Yet the states \$106 billion pension fund, which manages a vast stock portfolio on behalf of New York's 867,000 state and local retirees, owns 661,000 shares of CCA stock as recently as March 31, the end of the states fiscal year.

At that time the state's stake in CCA was worth \$25 million an investment that stunned prison guards.

"I was very surprised to find out that we had stock in that company", Council 82 President Richard Abrahamson said Friday. "We are state employees, and our pension fund is investing some of our money in a company who's business it is to put us out of work by taking over prisons and running them with non-union workers."

Before the recent global economic tale spin rocked the stock market, CCA was something of a darling on Wall Street, where the company was admired for its successfull bottom line approach to running prison for a profit.

Corrections Corporation of America which operates over 60 prisons across the United States, and several foreign countries, reported revenue of \$485 million through the first 9 months of the year.

Abrahamson said he has told State Comptroller H. Carl McCall, the sole trustee of the pension fund, that the state should not be investing in CCA.

"He said he understood our concerns but that his job is too get the biggest bang for the retirees' buck," Abrahamson said.

The state's holdings have since been reduced to about 500,000 shares. During the last year, CCA's stock has fluctuated from a high of \$44.50 to a low of \$15.50. On Thursday, CCA traded at \$25.88.

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## **Letter to US Attorney Gen. AFSCME REFUND**

12-05-98  
United States Attorney General  
James M. Hanley Federal Building  
Syracuse, N.Y. 13202

Dear Sir:

I am writing to you today as a New York State Correction Officer who is a member of the union Council 82 from Albany, N.Y. and who is also a member of A.F.S.C.M.E. I am inquiring what action the office of the United States Attorney General can take against A.F.S.C.M.E. (American Federation of State County and Municipal Employees regarding their 9 month period of failing to return to union members of Council 82 here in New York union monetary funds paid by the members for the explicit purposes of being used for political purposes. That is AFSCME uses a certain portion of the members dues to contribute money to campaigns of various political candidates which both myself and many other members object to.

I have followed all the criteria as outlined by the AFSCME Constitution as outlined in article 9 section 11 (see attached copy of this article from the AFSCME Constitution) and have sent my request for a refund for dues used for political purposes by registered/certified mail (see attached U.S. Postal receipt) during the designated dates April 1 to April 16, yet it has been 9 months and not to my knowledge any other member has not received this refund.

Also see the attached copy of a letter I sent to William Lucy the Executive Treasurer of AFSCME in Washington D.C. back in October of 1998 and I have yet to receive a reply.

Sir, this is an yearly ongoing game with AFSCME since the members must reapply annually for this rebate.

It is my opinion that your office and the courts would see a failure to repay the refund to the members over a 9 month period would be highly unreasonable and untimely.

One note our dues are payroll deducted by Council 82 and in turn Council 82 pays A.F.S.C.M.E

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Respectfully,

Thomas J. Short Jr.

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## Take Back our Union

A letters to the editor, Press Republican December 7,1998

In response to Wayne Roberts letter, "Vote progress not promise," one would think that he was voting for NYSCOPBA; because, after all, didn't Mr. Abrahamson promise that our pay upgrade was a done deal and as good as money in the bank? Also how about the promise of a veterans buy back bill, supposedly at a reasonable cost? Is that another done deal? I guess it really is done!

The main problem with C82 is your council president and all the Fat cats that are having a field day spending your dues. Recently, I had a chance to view a statement of expenditures of your dues money by union representatives. Two of the big expenses that I can remember were golf accessories, \$2,106.81; and baseball caps, \$15,140.19. Why would my union dues be used to buy golf accessories when I don't play golf? There was a list of other expenditures, such as pizza, chicken wings, pocket knives and pens (\$14,568.40), and other trinkets. I guess I

shouldn't under estimate the purchasing power of trinkets; after all, the native americans were duped into selling Mahattan Island for a few trinkets.

Mr. Roberts, you and I have only one thing in common: we are both correction officers. You have nine years experience, I will have 26 in February. You only see a small portion of the picture with your tunnel vision. If you only could have met union representatives from the early 1970's like Clayton Defayette, Steve Pague, the late Hollis Chase and Ulysses Sampica. These men had a real mission, they were a real sign of truth in progress. Lets ask our president and officials to buy their overtime meal for \$3.50 instead of \$30+. Above all, lets take control of our union and our \$10,000,000 dues.

Signed (John J. Downs)

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## Military Leave Case

### APPENDIX A

A-Opinion the United States Court of Appeals for the second Circuit, Decided March 14, 1994.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nos. 241, 528 August Term 1993

Argued September 27, 1993

Decided March 14, 1994

Docket Nos. 93-7273, 93-7333

LEE S. RUMSEY, DOUGLAS DIGERLANDO , MICHAEL RHODES, and THOMAS GRAVES, individually and as representatives of all persons similarly situated,

-V.-

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES and THOMAS COUGHLIN, as COMMISSIONER of the New York State Department of Correctional Services

Defendants-Appellants-Cross-Appellees..

Before: CARDAMONE MCLAUGHLIN and LAY,\* Circuit Judges. Honorable Donald P.Lay, Senior Circuit Court Judge for the United States Court of Appeals for the Eighth Circuit, sitting by designation 6a

In its March 2, 1993 judgment following a non-jury trial, the district court first found plaintiffs' rights 10 pass day: were protected by their collective bargaining agreement, and since Directive No.2212 denied plaintiffs an incident or advantage of their employment because of their military [reservist] obligations:, the

Department's action, the trial court concluded, also violated 38 U.S.C. ; 4301

(b)(3). it therefore made the following award plaintiffs: compensation for lost wages, measured by the salary the employees would have been paid had their pass days, not been reassigned, limited to the first 30 days compensable under N.Y.

Mil. Law ~ 242(5): damages to employees who had taken personal leave or vacation. Leave instead of applying for military leave; prejudgment interest and Attorney's fees. This calculation of plaintiffs' damages Was set forth in' the district court's February 19, 1987 decision and order, and explained further in its December 31, 1991 decision and order. In the later decision, the trial judge indicated that compensation or Lost wages to be measured at the overtime rate. Reflecting Both (1) the pay plaintiffs would; have received had the military days occurred on non-pass days (which would have happened absent defendants' rescheduling), and (2) that, since plaintiffs worked five full days. and had two military days that, absent rescheduling, would have been compensable the military days should count towards overtime for those weeks, in accordance with provisions of the collective bargaining agreement.

The Department appeals the ruling that held assigned pass days were and incident or advantage

of employment, and that further held the application of Directive No. 2212

7a violated both the collective bargaining Agreement and ss 4301(b)(3) of the Veterans' Act. The Department also appeals the damage award maintaining that (1) the Eleventh Amendment bars the award of retroactive monetary damages against the State; (2) If retroactive monetary damages are appropriate, they were calculated incorrectly: and (3) attorney's fees Are available through application of 42 U.S.C. ~ 1988. The plaintiffs have cross-appealed because overtime damages were limited to the first 30 days compensable under N.Y. Mil. Law 242(5). The award of prejudgment interest is not challenged on appeal. We pass to a discussion of these Issues.

## DISCUSSION

### I Plaintiffs' rights

#### A. Under The Collective Bargaining Agreement

We must ascertain first whether Directive No. 2212, which made employee- reservists perform their military duties on their regular days off,, violated the collective bargaining agreement. The district court found plaintiffs' right to assigned pass days, secured through an exercise of seniority, was a right protected by the labor agreement. We review this finding under the clearly erroneous standard, see Fed. R. Civ. P. 52(a), and that finding need only be plausible when examining the record as a whole. See *Anderson V. Bessemer City*, 470 U. S. 564, 573-74 (1985). Under Article 24 of the labor agreement the Department reserved to itself the right to make any job or shift assignment necessary to maintain the services of the Department. It is required to post for 30 days all permanent vacancies before making a permanent assignment. As

8a. related, employees select their work assignments by bidding on work packages that contain the particular shift to be worked, its location and the pass day or days off schedule. Because pass days are advertised to employees a combined package along with shift and work location, the successful bidder is awarded the entire work package.

Paragraph 24.2 further provides "(S)eniority shall be the basis by which employees shall select pass days." Seniority is defined in 24.1 of the labor agreement as "the length of an employee's uninterrupted service in title in a department or agency including sick leave, military leaves not to

exceed four years and other leaves of absence which do not exceed one year and Worker's



Compensation leave." The district court ruled that once an employee is assigned a work package the pass days are set and regularly scheduled for as long as the employee remains a member of that particular work-shift. The trial court also found that 15.3(e) Which provides that "(r)egularly scheduled days off shall not be changed for the purpose of avoiding the payment of overtime" protects employees from having their assigned pass days changed, The Department contends this provision merely restrains it as employer from making a hoc changes to an individual employ's pass days, but that it does not bar the Department from limiting overtime by making general policy decisions. The Department's argument has a plausible ring to it, but the plain language of 15.3 (e) is to the contrary. It prohibits the Department from changing pass days cast in the guise of a departmental policy, which in practice allow the Department to avoid the payment of overtime, whether the pass day change occurred once and only affected one employee or whether it occurred, as here, thousands of times and effected many employees.

9a

Nonetheless the department maintains, a November 1976 settlement agreement reached in a suit by campus police officers at the State University of New York (SUNY) at Plattsburg regarding the rescheduling of days off changed the application of 15.3 (e) for correction officers. The State Of New York Office of Employee Relations and Council 82 entered into the so-called Boas settlement agreement, which interpreted 15.3 (e) (then Article 16.3 (e) of a predecessor labor agreement) as follows: "(e)xcept in the case of an emergency or due to unforeseen circumstances, any employee whose posted regularly scheduled day off is changed shall be paid at the overtime rate that day." The SUNY campus police officers are covered by the same collective bargaining agreement as the correction officers, but they are on a work schedule where management posts job assignments 28 days before the work schedule goes into

effect,

Employees have to refer to the posted schedule to determine what shifts and rest days management has assigned.

The Department insists the Boas settlement applies to the correction officers and, after an employee's pass days are posted, they may be changed provided the employee is paid overtime for the changed pass day.

The Boas settlement attempted to reconcile the charge that the Department was making changes in days off to avoid paying overtime. Nevertheless, no evidence at trial showed

that the pass days of the correction officers before us were posted within the meaning of the Boas settlement. Nor is there any language in the settlement making it applicable beyond the SUNY system. Joseph Bress who signed the settlement on behalf of the State of New York testified at trial that he and Carl Gray, former Executive Director for Council 82, agreed that it applied to the Council 82 contract generally.

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## Blue Holiday

By Bill Farrell  
Daily News Staff Writer-New York City



Thursday, November 26, 1998

Several thousand state correction officers and police officers are also sharing in a not-so-happy holiday over their failure to win a decertification vote to oust Council-82/AFSCME as their bargaining representative.

More than 100 members of the newly formed New York State Correction officers and Police Benevolent Association held a protest rally in Albany Tuesday morning calling for new union elections.

This year, a N. Y. S. Public Employment Relations Board director ordered a vote based on petitions signed by more than one-third of the membership filed by New York State Correction Officers and Police Benevolent Association. The election was scheduled to be held this month. But the signatures were challenged by Council-82, and days before the ballots were to go out, the Public Employment Relations board upheld the challenge and ordered a probe. The board found that a number of signatures were signed with only an initial, and ruled that petitions must be signed with a full name.

So Tuesday, Correction Officers and Police Benevolent Association President Brian Shanagher led a vocal group of members outside the board's Albany office to protest the decision. "George Washington and Benjamin Franklin signed the US Constitution with first initials," said Shanagher. "For the past 30 years it was accepted by PERB, until now. We thought PERB [Public Employment Relations Board] was in the business of processing union elections, not obstructing them."

The board's investigation continues; no date for a new election has been set.

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