REPORT PURSUANT TO ARTICLE 14

NEW YORK STATE *CIVIL SERVICE LAW* SECTION 210(4)

CONCERNING AN ILLEGAL STRIKE BY CERTAIN PUBLIC EMPLOYEES

OF THE EXECUTIVE BRANCH OF THE STATE OF NEW YORK

Part I – Circumstances Surrounding Commencement of Strike

Beginning on February 17, 2025, and ending on March 10, 2025, approximately 10,000 Correction Officers and Correction Sergeants employed by the Department of Corrections and Community Supervision (DOCCS) engaged in an illegal strike in violation of Section 210(1) of the *Civil Service Law*. This strike was limited to DOCCS. The strike began at two correctional facilities on February 17 and, by the afternoon of February 23, spread to thirty-eight (38) of the forty-two (42) correctional facilities operated by DOCCS.

The strike was initiated and perpetuated by Correction Officers and Correction Sergeants who are public employees represented by the employee organization New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA). Their positions are in the bargaining unit known as the Security Services Unit (SSU). The strike began when Correction Officers and Correction Sergeants at multiple DOCCS facilities refused to work to protest certain facets of their employment. The issues cited by employees included but were not limited to: demands for additional compensation; complaints about excessive overtime and short-staffing; alterations to statutory retirement benefits; and safety concerns related to implementation of the Humane Alternatives to Long Term Solitary Confinement Act (referred to as the “HALT Act”).

The State made significant efforts to terminate the illegal strike. Those efforts, falling into several categories, are summarized below.

Part II – Efforts Used to Terminate the Strike

Application for Injunctive Relief

On February 19, 2025, consistent with the obligations of the Chief Legal Officer of the State of New York (State) under *Civil Service Law* Section 211, the Office of the Attorney General - *i.e.* the State's Chief Legal Officer - commenced a special proceeding in accordance with Articles 4 and 63 of the *Civil Practice Law and Rules* (CPLR) and Article 14 of the *Civil Service Law* (commonly referred to as the "Taylor Law"), seeking an order to enjoin therein named Respondents NYSCOPBA and fictitious employees John Doe and Jane Doe from engaging in a strike, including engaging in, causing, instigating, encouraging, condoning or in any way aiding or abetting a strike or other concerted

stoppage of work or slowdown by any public employee or employees of DOCCS, or picketing, congregating, or walking back and forth within one hundred feet of any DOCCS correctional facilities.

That same day, February 19, at an *ex parte* hearing, the Order to Show Cause with Temporary Restraining Order (Order) was granted by a Justice of the Supreme Court in Erie County, New York (Index No. 802914/2025). That Order directed that the unspecified employees were immediately restrained from engaging in the strike and further directed that NYSCOPBA forthwith distribute the Order to its members and instruct such public employees to not engage in the strike. Despite the Court's Order with specific restraint of the Correction Officers' and Correction Sergeants' illegal activity and the directive that NYSCOPBA instruct its members to cease such illegal activity, the strike continued and expanded to many additional correctional facilities. Since the original filing on February 19, several Amended Verified Petitions have been filed that add and remove individual Respondents. Additionally, the Office of the Attorney General, on behalf of the State of New York, moved for contempt charges against the individually named Respondents in accordance with Section 211 of the *Civil Service Law* and Section 750 of the *Judiciary Law.*

Executive Order No. 47 of Governor Kathy Hochul

On February 19, Governor Kathy Hochul issued Executive Order No. 47 which declared a statewide disaster emergency in connection with the illegal strike. Among other emergency actions, the Governor ordered approximately 6,000 members of the New York National Guard into active service to restore order, protect the public, protect DOCCS employees who remained at work, and protect the incarcerated population. Members of the New York National Guard remain deployed throughout DOCCS and will remain there for some time due to the extraordinary crisis caused by the illegal actions of those engaged in this strike.

Executive Order No. 47 also suspended certain provisions of the *Civil Service Law* to allow for an increased rate of overtime pay for individuals performing overtime in connection with the illegal strike. Consistent with the Governor's Executive Order, the increased rate was intended to recognize individuals who continued to work within correctional facilities during the illegal strike and to incentivize striking employees to return to work. On February 20, the State signed memoranda of agreement with the Civil Service Employees Association, Inc., Local 1000 AFSCME, AFL-CIO (CSEA), NYSCOPBA, and the New York State Law Enforcement Officers' Union, Council 82, AFSCME, AFL-CIO (Council 82) establishing an emergency overtime rate of 2.5 times an employee's regular hourly rate for qualifying overtime. On February 23, the State concluded a similar agreement with the Public Employees Federation, AFL-CIO (PEF). CSEA, Council 82 and PEF each represent bargaining units that include public employees who work within the correctional facilities of DOCCS. At the time this Report was issued, those agreements have been extended through May 9, 2025.

DOCCS – Path to Restoring the Workforce

On February 20, DOCCS Commissioner Daniel F. Martuscello III issued a memorandum to all facility Superintendents describing the actions taken above and delineating further steps that DOCCS would take to bring an end to the illegal strike. The additional steps outlined in the February 20 memorandum included, but were not limited to, suspending elements of the HALT Act--pursuant to authority vested in the Commissioner of DOCCS by law--that could not safely be operationalized under the state of emergency; rescinding the "70/30 memorandum" dated February 10; a commitment to refrain from pursuing discipline against Correction Officers and Correction Sergeants who immediately returned to work; and highlighting that the National Guard would stay in place until operations were stabilized. The Commissioner also pledged to work with NYSCOPBA through the mediation process to address issues of concern.

Mediator Martin F. Scheinman, Esq.

Additionally, as the situation became more dire during the week of February 17, the State and NYSCOPBA retained the services of Mediator Martin F. Scheinman, Esq. in the hope that the parties could come to a resolution that would end the illegal strike. Although the first formal mediation session did not take place until Monday, February 24, representatives of the Office of Employee Relations (OER), DOCCS and NYSCOPBA participated in pre-mediation discussions with the Mediator between February 19 and February 21, 2025.

The following week, commencing on Monday, February 24, the parties convened for four consecutive days before reaching a mediated Consent Award late on the night of Thursday, February 27, 2025. The tentative Consent Award would have provided a number of benefits to members of the SSU including, but not limited to, the temporary suspension of certain provisions of the HALT Act, pursuant to authority vested in the Commissioner of DOCCS by law; the implementation of certain measures to reduce mandated overtime, including a weekend voluntary overtime differential; the formation of a committee on scheduling practices; a referral bonus program for the recruitment of additional staff; improved screening of legal mail for contraband; an agreement by DOCCS to refrain from disciplining employees who engaged in the illegal strike pursuant to Article 8, entitled, Discipline, of the collective bargaining agreement between the State and NYSCOPBA covering members of the SSU if they returned to work by the deadline set out in the Consent Award; the continuation of an increased overtime rate for a specified period of time; an agreement to retain a National Guard presence for a certain period of time; and a commitment for the Department of Civil Service to expedite a review of a previously-submitted reallocation request.

The tentative Consent Award was the subject of a Governor's press release and statement. DOCCS similarly publicized the Consent Award by posting on its website a complete copy of the Consent Award, along with a summary of its contents. DOCCS also put out information pertaining to the tentative Consent Award through social media. Additionally, automated phone calls were made and text messages were sent to over 11,000 DOCCS employees to advise them of the terms of the tentative Consent Award.

The parties agreed that the tentative Consent Award would not formally be executed until there had been "substantial compliance" with the Temporary Restraining Order of the State Supreme Court, meaning that the Correction Officers and Correction Sergeants who were engaging in the illegal job action were required to return to work. As part of the Consent Award, it was agreed that all employees needed to return to work to their assigned Tour on Saturday, March 1. The mediated Consent Award was never executed; enough employees did not return to work on March 1 to achieve substantial compliance.

Direct Communications by DOCCS

At multiple points during the strike and thereafter, DOCCS communicated directly with its employees to convey critical information to the workforce about the strike, about its impact on operations and to update employees on DOCCS actions designed to address their concerns. The communications that were part of efforts to end the strike are summarized below.

Date	Title	Description
2/19/2025	Temporary Restraining Order (TRO)	TRO – Actions taken by NYSCOPBA members.

2/19/2025	Increased Overtime Rate	Executive Order – Overtime 2.5 times regular rate for those working in a correctional facility.
2/20/2025	Path to Restoring Workforce	Executive Order – Authorizes National Guard to be deployed to NYS correctional facilities, and outlines additional steps taken by the Department.
2/20/2025	Strike – National Guard	Expectations for engagement with National Guard deployments
2/22/2025	Increased Overtime Rate 2.5 Times Regular Pay Rate	Temporary increase to overtime for NYSCOPBA, Council 82 and CSEA for 30 calendar days from February 17, 2025, or until Governor determines operational conditions warrant a return to regular overtime rates.
2/23/2025	Responding to Your Concerns – An Update on Illegal CO Strike	Update to Incarcerated Individuals.
2/24/2025	Increased Overtime Rate 2.5 Times Regular Pay Rate	Temporary increase to overtime for PEF for 30 calendar days from February 17, 2025, or until Governor determines operational conditions warrant a return to regular overtime rates.
2/27/2025	Increased Overtime Rate 2.5 Times Regular Pay Rate	Temporary increase to overtime for M/C for 30 calendar days from February 17, 2025, or until Governor determines operational conditions warrant a return to regular overtime rates.
2/27/2025	Brief Update	Update to staff working in or supporting a correctional facility.
3/1/2025	Pre-Hearing Segregated Confinement for Certain Acts of Misconduct	To clarify certain acts of misconduct that can result in pre-hearing segregated confinement under HALT Act.
3/2/2025	Body Image Scanning	Visitors will be subjected to body scanning.
3/3/2025	Directive #4943, Body Worn Camera	Reiterated that Directive concerning Body Worn Cameras still applied.
3/18/2025	Updates: End of Strike and Use of force	Update to Correctional Facility Staff.
3/19/2025	Updates: Use of Force and End of Strike	Update to Incarcerated Individuals.
3/21/2025	Workplace Bullying/Return to Work	Staff reminded of the expectation to maintain professional conduct in the workplace at all times.
3/28/2025	Recover, Recruit and Rebuild	Update to Correctional Facility Staff.
3/31/2025	Staff Wellness – Work Schedules	12-hour shifts, RDOs and approval to change to 8-hour work shift.
4/1/2025	Dangerous Contraband and Drug Interdiction	Detecting contraband in mail.

4/7/2025	Extension of 2.5 Overtime through May 9, 2025	Governor has extended additional overtime compensation through May 9, 2025.
4/7/2025	Memorandum of Agreement between NY State and NYSCOPBA	MOA of March 8, 2025, fully implemented.

Additional Direct Communications by the State of New York

In addition to the direct contacts from DOCCS summarized above, at multiple points during the strike, additional representatives of the State communicated with DOCCS employees to convey critical information regarding the impact of continued participation in the illegal strike on the participants' employment and benefits. These messages warned employees to stop striking and return to work, communicated the existence and the terms of the Mediator's tentative Consent Award, and advised striking employees that they were on unauthorized leave, that their health insurance was in jeopardy of being terminated, and of the ultimate termination of their health insurance.

More specifically, from February 25 through March 11, OER, in conjunction with DOCCS and the Department of Homeland Security and Emergency Services (DHSES), conducted an outreach campaign of twelve (12) automated messages involving telephone and text messaging, designed in part to urge striking employees to return to work. These messages are summarized below.

Date	**Time**	**Calls**	**Texts**	**Nature of Message**
2/25/2025	7:19 pm	11,596	11,520	Initial Warning to Return to Work
2/28/2025	3:42 pm	0	11,587	Notice of Mediator Award – Text
2/28/2025	4:18 pm	11,595	0	Notice of Mediator Award – Telephone
3/1/2025	4:40 pm	11,582	11,580	AWOL Warning 1
3/2/2025	11:58 am	11,570	11,567	AWOL Warning 2
3/2/2025	4:02 pm	11,572	11,544	AWOL Warning 3
3/3/2025	4:44 pm	3,995	3,990	NYSHIP Benefit Termination Warning
3/4/2025	8:12 pm	147	148	Directed NYSHIP Benefit Termination Warning
3/5/2025	5:24 pm	46	46	Directed NYSHIP Benefit Termination Warning
3/6/2025	4:57 pm	56	56	Directed NYSHIP Benefit Termination Warning
3/7/2025	5:09 pm	28	28	Directed NYSHIP Benefit Termination Warning
3/11/2025	8:30 am	49	49	Directed NYSHIP Benefit Termination Warning

After efforts in mediation failed to resolve the strike, between March 1 and March 7, DOCCS Commissioner Daniel F. Martuscello III also undertook a listening tour of DOCCS facilities and the workforce to learn firsthand from employees of DOCCS what it might take to work with the union to end the strike. Commissioner Martuscello visited and/or participated in phone calls covering twenty-one

(21) Correctional Facilities during this period. These efforts led directly to re-engaging the union in discussions to try once again to bring the strike to a conclusion.

Discussions with Union Leadership on March 7 and 8

On the evening of March 7, DOCCS Commissioner Martuscello, OER Director Michael N. Volforte and Commissioner Jackie Bray of DHSES met with NYSCOPBA's senior leadership in an effort to reach an agreement on measures intended to address employee concerns and end the illegal strike. Those discussions did not result in consensus.

On the afternoon of March 8, the same group reconvened in another effort to come to an agreement on measures that would end the strike. After several hours of discussion, the parties agreed to and signed a Memorandum of Agreement (MOA). The MOA represented the final attempt to resolve the illegal strike and set forth a series of measures designed to address concerns voiced by employees participating in the strike. Implementation of the MOA was conditioned upon a return to work of at least eighty-five (85) percent of Correction Officers and Correction Sergeants by the morning of March 10. A significant number of striking employees returned to work and the strike ended. However, not all striking employees returned to work; having continued to participate in an illegal strike despite the numerous efforts and communications described herein, approximately 2,000 employees were deemed to have resigned in accordance with Article 14.10 of the collective bargaining agreement between the State and NYSCOPBA. An initial dispute over whether the staffing threshold required by the MOA was met on the morning of March 10 was resolved by the parties on April 7, 2025, and the terms of the March 8, 2025, MOA are in effect.

Part III – Public Employees Who Caused, Instigated and Encouraged the Strike

As set forth above, the strike beginning on February 17, 2025, and ending on March 10, 2025, was engaged in by several thousand public employees in the titles of Correction Officer and Correction Sergeant across nearly all (38 out of 42) of DOCCS' correctional facilities. There can be no question that each individual employee who participated in the strike bears responsibility for its lengthy continuation and corresponding significant and ongoing damage to the operations of DOCCS and to the State generally. As detailed below, OER is working with DOCCS to review records and confirm the identity of participating employees (*see* Part IV below) and OER will make strike determinations and take appropriate actions consistent with the requirements of Section 210(2) of the *Civil Service Law.*

NYSCOPBA's culpability in causing, condoning or encouraging the strike will be determined by separate proceedings before PERB which, as of the date of this Report, have yet to begin. However, certain facts are clear. On the day the strike began, NYSCOPBA's Vice President for its Western Region, Kenny Gold ("VP Gold"), openly joined striking employees at Collins Correctional Facility. VP Gold, who is a Correction Officer employed with DOCCS at Orleans Correctional Facility, also holds a position as a NYSCOPBA Executive Board Member. In addition, more than 170 of approximately 360 local union representatives of NYSCOPBA who work within the correctional facilities of DOCCS – which includes Correction Officers and Correction Sergeants in elected local positions of Steward and Chief Sector Steward – resigned their positions with NYSCOPBA and either resigned from State service or participated in the strike.

Additionally, NYSCOPBA's ongoing communications during the strike to its members intimated that the strike was justified until such time that the State/DOCCS agreed to the demands made to DOCCS at

the outset of the strike. For example, in a statement to its members on March 6, the union stated, “Do not mistake our intentions or motivations, we want to reach an agreement that gets our members back to work as soon as possible, but we cannot allow our desire for a quick result to jeopardize our ability to obtain a fair agreement that adequately safeguards our members’ health and physical well-being and ensures their ability to reclaim a work-life balance in the immediate future.” Clearly, the union appears to have seen a return to work as being conditioned on reaching a “fair agreement” with the State, despite the illegal nature of the strike and the Temporary Restraining Order issued by the State Supreme Court to that effect. Similarly, in a March 6 written statement from the NYSCOPBA Executive Board to NYSCOPBA members, the union told Correction Officers and Correction Sergeants that “we will not be intimidated” and “we will not back down.”

Ultimately, as stated above, the determination of whether NYSCOPBA as an employee organization violated the prohibitions of Section 210(1) of the *Civil Service Law* will be determined through proceedings held before the Public Employment Relations Board pursuant to Section 210(3)(c) of the *Civil Service Law*.

Part IV – Proceedings Pending Against Those Participating in the Strike

In accordance with Section 210(2)(d) of the *Civil Service Law*, the Chief Executive Officer (CEO) of the government involved must investigate any allegations of strike activity by public employees. In the case of the State of New York, the CEO is the Governor. However, pursuant to *Executive Law* Section 653, the Director of the Office of Employee Relations may act as the Governor’s agent in discharging the powers and duties conferred by the Taylor Law. Accordingly, for purposes of Sections 210 and 211 of the *Civil Service Law,* the Director of OER, Michael N. Volforte, will issue the strike determinations required of the Chief Executive Officer.

As it is apparent that there have been violations of Section 210 of the *Civil Service Law*, the Director of OER has begun the process of requesting information from DOCCS concerning employees who refused to work on one or more days during the period beginning on February 17, 2025, and ending on March 10, 2025. Pursuant to the provisions of Section 210 of the *Civil Service Law*, the Director of OER will notify by certified mail each employee who is found to have engaged in a strike action at their work location and the date(s) thereof. Each employee also will be notified that they may object to the Director’s determination within twenty (20) days of the date of such notice by filing a sworn statement of the facts upon which they rely to show that such determination was incorrect.

The effect of a determination that an employee was on strike for one or more days subjects the employee to penalties which the public employer must impose pursuant to Section 210(2)(f) of the *Civil Service Law* “not earlier than thirty nor later than ninety days following the date of such determination.” This penalty is deducted from the employee's salary in an amount equal to twice the daily rate of pay for each day or part thereof that it was determined that the employee violated the provisions of the Taylor Law. In computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on days where an employee was absent without leave, or AWOL, and hence was not paid for the day.

Dated: May 9, 2025