

GRIEVANCE FORM

(Please Type or Print)

Revised: March 1, 2003

LOCAL Grievance Number: _____
Facility (or Agency): _____

DO NOT WRITE IN THIS BOX

NYSCOPBA Grievance Number: **CON** _____

Aggrieved Employee: _____

LOCAL Union Rep: _____

Phone Number/ext. _____

Date Submitted: _____

Date of Occurrence: March 10, 2025

_____ Contract Article Violation(s): CBA Articles 8, 12, 14, 22, 27

STATEMENT OF FACTS:

On March 10, 2025, I received notification from the Department of Corrections that my employment was terminated per Section 14.10 of the Collective Bargaining Agreement (herein "CBA") between the Department of Corrections and Community Supervision (herein "DOCCS") and NYSCOPBA. Section 14.10 provides "any employee absent from work without authorization for ten consecutive workdays shall be deemed to have resigned from their position if the employee has not provided satisfactory explanation for such absence on or before the eleventh workday following the commencement of such unauthorized absence."

Section 14.10 is, however, silent and ambiguous as to whether the Department has an obligation to request the referenced explanation or if it must be volunteered by a NYSCOPBA member. Section 14.10 also fails to designate to whom such explanation must be directed, or in what form, or what is considered a sufficient explanation to satisfy 14.10 of the CBA, thereby constituting a patent ambiguity contained within the CBA. The termination of my employment under an ambiguous provision violates the just cause standard for discipline provided in Article 8 of the CBA.

Despite the ambiguities contained in Section 14.10, explanation was provided by myself, NYSCOPBA leadership and local facility representatives, to both DOCCS personnel generally and Commissioner Martuscello. Explanation was provided within the requisite timeframe noted in Section 14.10 above. DOCCS personnel and Commissioner Martuscello were made aware that my absences were excusable under the CBA and New York Labor Law Section 27-A which provides:

Every employer shall: (1) furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees; and (2) comply with the safety and

health standards promulgated under this section.

Similarly, Article 22 of the CBA provides “The Employer shall provide safe working conditions for the protection of employee well-being.”

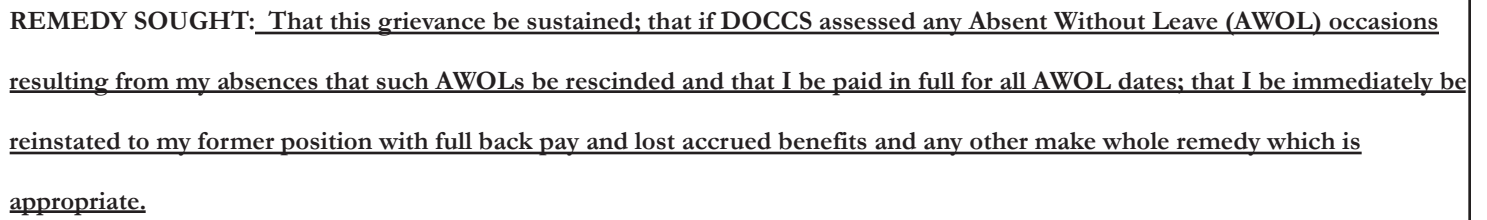
Additionally, Article 27 of the CBA provides, “With respect to matters not covered by this Agreement, the Employer will not seek to diminish or impair during the term of this Agreement any benefit or privilege provided by law, rule or regulation for employees without prior notice to the Union and when appropriate, without negotiations with the Union, provided, however, that this Agreement shall be construed consistent with the free exercise of rights reserved to the Employer by Article 6 of this Agreement.”

As was communicated to both DOCCS generally and Commissioner Martuscello, the conditions of employment in _____ Correctional Facility were in plain violation of New York Labor Law Section 27-A and CBA Articles 22 and 27 for reasons, including but not limited to, improper staffing levels, unconscionable work hours, physical violence and drug exposure. At no point in time have I resigned from my position with DOCCS, nor should my absences constitute AWOL occasions without excuse to trigger Section 14.10 of the CBA, since sufficient reason for my absence was provided as noted above.

Since explanation was provided to both the Department and Commissioner Martuscello, my absences were excusable and DOCCS violated the above cited CBA Articles by terminating my employment summarily.

Additionally, prior to termination of my employment, DOCCS, unilaterally and without notice or Notice of Discipline, terminated my health insurance in February 2025. Such termination was in violation of Articles 8 and 12 of the CBA. DOCCS did not provide me with notice of this discipline via a Notice of Discipline with an allegation of misconduct, or by any other notice. Such notice is required to implement discipline under Article 8 of the CBA.

Article 12, Section 12.1 provides, “The State shall continue to provide all the forms and extent of coverage” pertaining to Health, Dental and Prescription Drug Insurance. The CBA provides DOCCS with no avenue to summarily and without notice terminate health insurance benefits for a full-time employee. The unilateral and uncommunicated termination of my health insurance constitutes a penalty imposed by DOCCS to a NYSCOPBA member circumventing Article 8 of the CBA and therefore is a violation of the CBA.



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STEP 1 DECISION

Date of Review:_____

Date Received:_____

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Superintendent or Designee: _____ Date Answered: _____

Date Received:_____

Received by (Union Official):

APPEAL TO STEP II

II

FACTS OF APPEAL:

[illegible]

Signature: _____ Date Appealed: _____