

CALIFORNIA CORRECTIONAL SUPERVISORS ORGANIZATION

April 17, 2009 - Weekly Update

San Quentin Riot: There was a riot involving 450 inmates at San Quentin, on April 16th, between Black and Hispanic inmates that broke out in the dining hall. Unfortunately, CCSO Sgt. Jacob Zipperlen was injured with chemical burns to his hand and arm when a stun grenade went off while he was holding it. Apparently, Sgt. Zipperlen had pulled the pin and was ready to toss it, when staff went into the area he was preparing to toss the grenade to. Sgt. Zipperlen did not toss the grenade and did not have time to safely toss it to another area before it went off in his hand. CCSO tried to make contact with Sgt. Zipperlen, but was not able to make contact with him. We will continue to seek contact with him to offer assistance. We wish him a complete and speedy recovery.

Voluntary Personal Leave Program Discontinued (VPLP): The VPLP program has been discontinued and there have been some members who have questions concerning this program loss. The Voluntary Personal Leave Program allowed excluded employees to bank part of their monthly paycheck by converting one or more days to time on the books. This time could be used as vacation time or cashed out when a person retired. Very few employees took advantage of this program and once the furlough program started there was almost no participation. Therefore, the State per DPA rule 599.737 (d) cancelled this program. CCSO is not happy to lose any excluded employee program, but this Organization was shown that employees simply were not using the VPLP. With that information, CCSO has not chosen to oppose the discontinuation of the Voluntary Personal Leave Program.

SB 434(Benoit): CCSO was on hand to support CDCR in their efforts to introduce SB 434(Benoit) at the capitol this week. SB 434 would create criminal penalties for anyone engaged in smuggling cell phones into prisons. Cell phones have been used to help in at least two inmate escapes from minimum –security conservation camps, used by gang leaders to order assaults on other inmates and staff, and to coordinate the timing of prison uprisings. CCSO is urging members to support SB 434 for their own safety and for the safety of inmates.

Litigation Updates

Managers Pay (M06) Litigation: The M06 litigation concerns managerial employees who are being paid less than their counterparts or who are not receiving benefits commensurate with those they supervise. CCSO filed a second amended complaint on June 6, 2008 and CDCR/DPA filed their answer on July 7, 2008. There is no trial date set and the court has not yet established a pre-trial calendar. This case is a perfect example of the back logs in the court system that delays CCSO litigation for years. Goyette & Associates are earmarking the option of making a motion for Summary Judgment.

3.125% Retro Pay Litigation: The 3.125% CCSO lawsuit was stayed until the courts heard CCPOA's lawsuit. CCPOA lost their lawsuit and is appealing the decision. CCSO filed a motion to lift the stay and we won our motion to lift the stay. Goyette & Associates fought hard to win this motion, as Judge McMaster could have held the stay until all appeals were ruled upon. With the stay lifted, CCSO is now in the process of preparing discovery requests which will be issued to DPA to obtain all documents held by DPA and/or CDCR which are relevant to the pay issues for rank and file and supervisory employees of CDCR for the time period at issue. CCSO will also evaluate exactly how the CCPOA case failed at trial. The court, on July 9th, will hopefully set a trial date for this case.

OIG/POBOR Violations: This POBOR violation case seeks to clarify the application of various statutory provisions (related to Internal Affairs investigations of CCSO members) to OIG and CDCR, and to force OIG and CDCR to acknowledge they must comply with these statutory protections. Specifically, the case focuses on the conduct of OIG investigators in their investigations of two sergeants, and how such conduct

violated the applicable sections of the Government Code. These CCSO sergeants were not notified of their status as subjects or witnesses prior to the IA interviews, they were denied the right to a representative of their choice, and the OIG investigators acted in a threatening and offensive manner during the investigations. CDCR was included in this action as a Defendant under the theory that CDCR acted *in concert* with OIG when it had OIG conduct the investigation at its request and when it compelled cooperation and scheduled the interviews at the institution where they both worked at during their work hours. Each also believed they would be subject to discipline through CDCR if they did not cooperate. We continue to believe that this case, once resolved, will clear up much, if not all, existing confusion over OIG's role in CDCR internal investigations leading to discipline of CCSO members, and to what degree the Government Code provisions apply to OIG's actions. July 20, 2009 is the scheduled trial date on this case.

Inquiry Process Litigation: A civil action seeking declaratory and injunctive relief is being considered to prevent the 'inquiry' process from permitting questions about alleged misconduct (misconduct most often alleged by inmates, and of a serious nature, such as use of force, code of silence, inappropriate conduct, etc.), which can circumvent the protections provided under POBOR. Based on five pending administrative appeals for the CCSO sergeant, the evaluation of further action cannot be completed until the administrative appeals are resolved. Goyette's office is making a motion to consolidate four appeals for the sergeant and to dismiss the other appeals since the adverse action for the appeals were issued by CDCR after the sergeant was terminated. If Goyette's motions are successful, CCSO will determine if civil action is warranted.

POBR Tape Recording Violation - CCSO vs. CDCR/Cate: This lawsuit challenges CDCR's interpretation of a section of the DOM that, according to CDCR's position, does not allow CCSO representatives to keep or retain control over their own tape recording devices or tape recording records following the representation of a CCSO subject member in an Internal Affairs interrogation. We believe this is in violation of Government Code § 3304, which gives the peace officer the right to tape record his or her interrogation. Implicit in this right, is the right to keep and maintain those tape recording records. After we served CDCR and Secretary Cate with CCSO's Complaint for Injunctive Relief and POBOR violations in early March, 2009, we were contacted by the Deputy Attorney General representing both Defendants, to inform us that Defendants would be filing a Demurrer. Our office just received Defendants' Demurrer. The hearing date for this Motion is set for June 9, 2009. The basis for the Department's Demurrer is the assertion that their "new" policy does not violate POBOR because it distinguishes between witness and subject tapes. However, the new policy cited in the Department's Demurrer is not the same policy as provided on the CDCR website, which is the same policy that CCSO provided at the time of litigation. The difference between the policy provided to us (and the policy on CDCR's website and in the actual DOM) and the new one, as provided in the Demurrer (and available as a separate document attachment on the website), is the new language about distinguishing between witness and subject tapes, confirming that subject tapes cannot be taken. The "updated" policy is not the same policy that appears to be trickling down to the employees and OIA investigators; second, despite the updated policy, occurrences like the one encountered by Attorney Mike Lackie on March 6th are still taking place (CDCR OIA demanded Mr. Lackie's recording immediately following the IA interview of a CCSO member - Lackie refused to give up the tape). Until we prevail on the Demurrer, CCSO's attorney cannot motion the Court for a restraining order or injunction because there is a genuine dispute about which policy is in effect, which policy is being used, and which one the court needs to restrain via an injunction. Once the Demurrer has been decided CCSO's legal will file a TRO and/or Preliminary Injunction on behalf of CCSO and CCSO members. We will attempt to obtain a TRO based on the ongoing POBOR violations, which demonstrate that, despite being sued for such conduct, the state continues to violate and neglect CCSO members' rights. CCSO attorney is in the process of contacting other CCSO attorneys to get a detailed account of their experiences similar to Mr. Lackie's, for use in obtaining a TRO and preliminary injunction, as the Court will want to see evidence of an ongoing violation, which is causing irreparable harm that cannot later be rectified by a claim for damages.

Take Care and Be Safe!