

**MEMORANDUM OF AGREEMENT
AND
STIPULATION OF SETTLEMENT**

MEMORANDUM OF AGREEMENT AND STIPULATION OF SETTLEMENT

made this 15th day of November, 1995 by and between the City of New York, a municipal corporation in the State of New York (hereinafter "City"), and the Correction Captains Association, Inc. (hereinafter "CCA")

WITNESSETH:

WHEREAS, the City is a public employer as defined by the New York State Civil Service Law and the New York City Collective Bargaining Law, and

WHEREAS, the CCA is an employee organization as defined in said laws; and

WHEREAS, the CCA has instituted a grievance, Case No.: A-4152-92, alleging contract and rule violations involving rescheduling of tours of duty and shift reduction that has resulted in arbitration awards dated November 12, 1993, and May 16, 1994, issued by Arbitrator Carol Wittenberg; and

WHEREAS, Arbitrator Carol Wittenberg has retained jurisdiction to resolve outstanding issues, and

WHEREAS, the CCA has moved to confirm said arbitration awards and the City has cross moved to dismiss the petition to confirm and vacate such awards, index no.: 1318791-94, and

WHEREAS, the CCA and City have held meetings to mutually settle all matters concerning the issues in the arbitration awards and the aforementioned court case; and

WHEREAS, the CCA and the City have agreed upon the terms of a settlement in the aforementioned matters.

NOW THEREFORE, it is hereby agreed by and between the parties as follows:

1. Post Coverage

(a) the following Correction Captains posts shall not be shift reduced and shall be covered during all tours consistent with their days and tours of operations:

1. Security
2. Control Room
3. Receiving Room
4. Movement/Classification
5. Housing
6. Inmate Activity
7. Medical Service
8. CPSU
9. Investigation involving interviewing inmates
10. Food Services
11. Other posts marked "Y" in Appendix A attached hereto.

(b) the following Correction Captains posts shall be eligible to be shift reduced:

1. General Office
2. Personnel
3. Personnel Probe
4. Headquarters/SOD (except Rikers Island Security)
5. Central Office/60 Hudson
6. Classification (no security duties)
7. Other posts marked "N" in Appendix A attached hereto.

These posts in Section 1 (b) shall be eligible to be shift reduced except when they have the same level and amount of inmate contact and supervision as a post in section 1 (a) supra.

(c) the parties agree to form a committee to discuss which other posts shall be eligible to be shift reduced. The following are the Correction Captains posts to be discussed:

1. Programs
2. Environmental Health
3. Other unnamed posts heretofore unidentified

This committee will consist of three (3) representatives from the CCA and three (3) representatives from the City. In the event the committee cannot agree on a determination, the issue of whether or not such post can be shift reduced will be submitted directly to binding arbitration in accordance with the contractual grievance procedures and the NYCCBL. The parties agree that Carol Wittenberg shall be the arbitrator and has the jurisdiction to resolve which posts can be and which posts cannot be shift reduced.

2. Backfill

The parties mutually agree that posts that are permitted to be shift reduced, the posts indicated in section 1 (b) supra, do not have to be backfilled during any absences such as annual leave, sick leave, training in the Academy or the Range, release time, jury duty, etc. Notwithstanding the above, the Department of Correction (hereinafter "DOC") shall conform with the authorized staffing level of all positions in section 1 (b) supra. The posts in section 1 (a) shall always be backfilled for all purposes.

3. Deployment

The CCA recognizes the right of the DOC to deploy and redeploy its employees in accordance with its managerial rights enumerated in the NYCCBL and in accordance with this Memorandum of Agreement and Stipulation of Settlement and the provisions of the current Collective Bargaining Agreement.

4. Future Staffing

The City agrees to provide the CCA with seven (7) days' notice to meet and confer with the CCA before any changes are made to any of the posts referenced in this Memorandum of Agreement and Stipulation of Settlement or any proposed new post to be established. This shall not prohibit the Department of Correction from staffing new facilities or expanding or contracting a current facility as long as the staffing complies with this Memorandum of Agreement and Stipulation of Settlement. Such modification cannot violate the express terms or spirit of this Memorandum of Agreement and Stipulation of Settlement.

5. Operations Order

The parties will agree upon the terms of a new operations order to be issued concerning issues that are directly or indirectly affected by the provisions of this Memorandum of Agreement and Stipulation of Settlement.

6. Retroactive Pay

The parties agree that each Correction Captain that has been a Correction Captain for the entire June 6, 1991 through September 1, 1995 period shall receive a lump sum payment in the amount of \$2,000.00, less applicable withholding in full satisfaction of the retroactive liability due or may be due as a result of the two (2) Wittenberg Arbitration Awards and the action in New York State Supreme Court Index No.: 1318791-94. Captains that were in that title for a portion of the above period shall receive a pro-rata portion of the \$2,000.00 lump sum for the period of their tenure as a Captain within the above stated period.

7. Termination of Litigation

The CCA agrees to withdraw its motion to confirm the Wittenberg Arbitration Award and the City agrees to withdraw its cross motion to vacate these awards. Index No.: 1318791-94. The parties agree to waive any rights of appeal they have or may have regarding the aforementioned Arbitration Awards and in the action in New York State Supreme Court.

8. Miscellaneous Tour of Duty

The parties agree that the provisions of this Memorandum of Agreement and Stipulation of Settlement are the agreed upon rules and guidelines for establishing miscellaneous tours of duty in the DOC effective with the execution of this Memorandum of Agreement and Stipulation of Settlement. These rules and guidelines are indicated below:

- a) The parties agree that Administrative Code Section 9-116 provides the statutory authority to establish tours of duty which are distinguished by starting times.
- b) For a tour of duty to be considered a bona fide miscellaneous tour of duty the DOC must comply with all of the provisions below:
 1. The DOC must authorize and approve the post to be established within the parameters of the permissible starting times as permitted by statute and this Memorandum of Agreement and Stipulation of Settlement; and

2. The post must be designated on the facility's table of organization which must be approved by both the Chief of Department and the Commissioner of Correction; and

3. At least twenty-four (24) hours advance notice is required to be given the individual Captain when assigning to a miscellaneous tour of duty. An employee who is assigned the duties of a particular post on a miscellaneous tour of duty within the same platoon shall not perform the duties of any other post.

4. In the event a Captain is assigned to a miscellaneous tour of duty in violation of these guidelines then such event shall, in the first instance, be counted as one of the annual 10 rescheduled tours. If the annual 10 rescheduling day credits have already been used then the assignment to a miscellaneous tour in violation of these guidelines shall be compensated, in addition to the regular rate of pay, by the payment at overtime rates for all hours of work outside of the regularly scheduled tour of duty. In this regard it is expressly understood that the arrangement herein is predicated exclusively upon the special circumstances of this matter and shall not be construed as an admission by the DOC or the City of New York that it has violated any provision of the Collective Bargaining Agreement between the DOC, the City of New York and the CCA, nor shall it be construed to represent any policy or procedure of the City of New York or the DOC nor shall it constitute a precedent for the determination of any other dispute between the DOC, the City of New York or the CCA.

The annual 10 rescheduling days must be accomplished in accordance with the current collective bargaining agreement, DOC orders, side letters, and past practices.

5. A Captain who is properly assigned to a miscellaneous tour of duty in accordance with these guidelines shall not be considered to have been rescheduled.

9. This Memorandum of Agreement and Stipulation of Settlement supersedes all previous arbitration awards and court decisions concerning the matters stated herein. The parties further agree to forebear from any appeals to the Arbitration Award Case No. A-4152-92 and the action in the New York State Supreme Court Index No. 1318791-94.

10. The parties agree that any disputes that arise under the terms of this Memorandum of Agreement and Stipulation of Settlement or the Collective Bargaining Agreement involving the terms of this Memorandum of Agreement and Stipulation of Settlement are to proceed directly to binding arbitration with Carol Wittenberg as the designated arbitrator. However, upon the notice of a grievance or dispute that arises under the terms of this Memorandum of Agreement and Stipulation of Settlement or the Collective Bargaining Agreement and prior to scheduling the

arbitration hearing there shall be a meeting at the Mayor's Office of Labor Relations with representatives of the Mayor's Office of Labor Relations, the DOC and the CCA present within seventy-two (72) hours of such notification. The parties agree that within twenty-four (24) hours of such meeting the issues in dispute will be resolved or if not resolved an arbitration hearing shall be scheduled as soon as possible. The parties confer upon the arbitrator the jurisdiction to decide disputes and grievances as defined herein, in accordance with the Collective Bargaining Agreement and in accordance with the applicable law.


11. The parties may mutually agree to waive the time limits provided for in paragraph four and ten supra.

12. The City of New York acknowledges and agrees to the terms of the "Flying" letter dated October 23, 1995, attached, which will be considered incorporated for all purposes as if fully stated herein.

13. The grievants and the Union, jointly and severally, hereby release the DOC and the City of New York from any and all claims, whether at law, in equity, or in any proceeding arising by virtue of the Department's Rules and Regulations or the Collective Bargaining Agreement between the City of New York and the Union, which grievants and the Union may now have or which they may have had heretofore in connection with the underlying dispute in Case No. -A-4152-92 and Index No. 1318791-94.

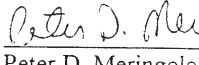
14. This Stipulation of Settlement shall not be construed as an admission by the DOC or the City of New York that it has violated any provision of the Collective Bargaining Agreement between the Department, the City of New York and the Union.

AGREED AND ACCEPTED
ON BEHALF OF THE CITY OF NY



Randy E. Levine
Commissioner of Labor Relations

AGREED AND ACCEPTED
ON BEHALF OF THE CCA



Peter D. Meringolo
President

APPENDIX A

SECURITY Y/N	POST	POST DESCRIPTION	ARDC	GMDC	GRVC	RMSC	AMKC	CFM	JATC	RBC	OBCC	WEST FAC	BKHM	BCF	QHDH	BXHDH	MDC	MTF III
N	013	FACILITY OPERATIONS	(1X5)	(1X5)			(1X5)			(1X5) /VAC. REL								
N	014	DISCIPLINE & SUPPORT OPERATIONS					(1X5)											
N	014C	ADMINISTRATION			(1X5)													
Y	036	MENTAL HEALTH					(1X5)											
Y	041	VISITS	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)
*	046	PROGRAMS	(1X5)	(1X5)	(1X5)	(1X5)	(2X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)
Y	048	INMATE ASSIGNMENT		(1X5)			(1X5)	(1X5)										
*	066	ENVIRONMENTAL HEALTH	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(2X5)	(1X5)
N	012	SPECIAL ASSIGNMENT	(1X5)															
Y	014	INTEGRITY & DISCIPLINE	(1X5)	(1X5) /VAC.														
N	027B	SPRING CLASSIFICATION	(1X5)															
Y	046B	INNER DEVELOPMENT	(1X5)															
N	012	VACATION RELIEF				(1X5)		(1X5)										
N	055	SPRING COMM. WORK						(1X5)										
Y	060B	SECURITY FISHER						(2X5)										
Y	014B	GPS ADMINISTRATOR							(1X5)									
Y	060C/060D	STEP SUPERVISOR					(3X5)											

Notes: All Hearing Area, Rearing Areas, Control Rooms, Home for Beer Limited. There is agreement for both sides that there are security posts that must be filled 24/7.

APPENDIX A

SECURITY Y/N	POST	POST DESCRIPTION	ARDC	GMDC	GRVC	RMISC	AMRC	CFM	JATC	MC	OBDC	WEST FAC	BRCDMA	BCF	OHDMA	BX/DMA	WDC	MTE BR
Y	028	ADMINISTRATION/ RECREATION									(1X7)			(1X5)				
Y	043	ASSIGNMENT/ CLASSIFICATION									(1X5)							
Y	055	ANNEX RECREATION									(1X7)							
Y	014A	OPERATIONS/ RECREATION			(1X5)													
Y	014B	DISCIPLINE/ RECREATION			(1X5)													
Y	060B	SECURITY TESTING	(1X5)															
Y	031	FOOD SERVICE	(2X5)	(2X5)	(2X7)	(2X7)	(2X7)	(2X7)	(2X7)	(1X5)	(1X7)	(2X7)	(1X5)	(2X5)	(1X5)	(1X5)	(1X5)	(1X7)
Y	060/060B	SECURITY	(1X5)	(1X5)	(1X5)	(1X5)	2-(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)
Y	063	INVESTIGATIONS	(1X5)	(1X5)	(1X5)		(1X5)	(1X5)	(1X5)		(1X5)		(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)
Y	051	INMATE ACTIVITIES	(1X7)	(1X7)	(1X7)	(1X7)	(1X7)	(1X7)	(1X7)	(1X7)	(1X7)			(1X5)	(1X5)	(1X5)	(1X5)	(1X5)
Y	034	MEDICAL SERVICES	(1X5)	(2X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)		(1X5)	(1X5)		(1X5)				(1X5)
Y	065/065B	SEGREGATION AREA	(2X7)															
Y	037	CLASSIFICATION/ MOVEMENT							(1X5)									(1X5)
Y	024	ASSIGNMENT/ MOVEMENT																(1X5)
Y	024	MOVEMENT CONTROL	(1X5)	(1X5)			(1X5)	(1X7)						(1X5)	(1X5)	(1X5)	(1X5)	(1X5)
N	011	PERSONNEL	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)	(1X5)								
N	015	GENERAL OFFICE																
N	037	CLASSIFICATION					(1X5)					(1X5)				(1X5)	(1X7)	

Note: All Housing Areas, Recreational Areas (Indicate Areas) and General Offices Have Not Been Listed. There is agreement by both sides that these are security posts that must be filled at all times.

APPENDIX A

SECURITY Y/N	POST	POST DESCRIPTION	SOD	TRANS	ELPPM	ELPPM	MCH	BNCTS	BXCTS	OCCTS	BNMCTS	SSD	CID
Y	002	MEDICAL WARD			(2X7)	(1X2)	(3X7)						
Y	013	"A" CAPTAIN	(3X7)		(3X7)	(3X7)	(3X7)						
N	014	ADMINISTRATION			(1X5)	(1X5)	(1X5)	(1X5)		(1X5)	(1X5)	(1X5)	
Y	035	MEDICAL SERVICES			(1X5)		(1X5)						
N	012	VACATION RELIEF									(1X5)		
Y	081	CRIMINAL COURT "A"						(2X7)	(2X7)	(2X7)	(3X7)		
Y	083	CRIMINAL COURT "B"							(1X5)	(1X5)	(2X5)		
Y	085	SUPREME COURT "A"						(2X5)	(2X5)	(1X5)	(1X5)		
Y	089	SUPREME COURT "B"								(1X5)	(1X5)		
Y	084	CRIMINAL COURT "C"						(1X7)					
Y	089	RICHMOND COURT "A"						(1X5)					
Y	0108	INTERSTATE TRANS.		(1X4)									
Y	010C	INTERSTATE TRANS.		(1X4)									
Y	013	TOUR COMMANDER		(1X7)									
Y	014	FLEET OPERATION		(1X5)									
N	015	ISLAND COURT CONT.		(1X5)									
N	019	DRIVER TRAINING		(1X5)									
N	076	COURT MOVMT. CNTRL.		(2X5)									
Y	060	SECURITY		(1X5)									
N	076	VEHICLE MAINTENANCE		(2.5)									

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SECURITY Y/N	POST	POST DESCRIPTION	SOD	TRAMS	BHPW	EHPW	KCH	BKCTS	BXCTS	OCTS	MARKCTS	SSO	CID
Y	041	VISITS	(1X5)										
Y	055	WORK DETAIL	(1X5)										
N	066	CENTRAL CONTRL DESK	(3X7)										
Y	060	E.R.U.	(1X5)										
N	060A	E.R.U. OPERATIONS	(1X5)										
N	060B	E.R.U. INSPECTIONS	(1X5)										
N	064	CANINE CORPS	(1X5)										
N	056A	COMMUNICATIONS REPAIR UNIT	(1X5)									(1X5)	
N	012A	EXECUTIVE OFFICER/TASK FORCE										(1X5)	
Y	055	HARTS ISLAND WORK DETAIL										(1X5)	
*	077A	TASK FORCE										(1X5)	
*	077B	TASK FORCE										(1X5)	
*	077C	TASK FORCE										(1X5)	
*	077D	TASK FORCE										(1X5)	
*	078	LAUNDRY/PRINT SHOP											(1X5)
Y	079	EVENING SUPERVISOR											(1X5)
*	080	BAKERY/TAILOER											(1X5)