

PBA Local 382

Memorandum

March 30, 2011

As you know, the PBA is continuing in our agenda to make all necessary parties publicly aware of the issues and in fact the **atrocities** that sometimes occur behind our walls in regard to jail operations and the way in which officers are treated.

The response from county officials has been not only limited, but the one or two county officials who have responded, have responded in a way which absolutely was appreciated, but not at the level necessary to bring any type of closure. In these responses, I again readdressed the issues at hand, which I firmly believe could have been rectified by a simple phone call to jail management, but the issues continue to escalate and as I stated in past bulletins, I firmly believe that jail management is being encouraged to be antagonistic and only time will tell how long this ridiculous game will need to be played.

I can say that the county responses were more like **politically correct pats on my head** and I would have thought by now, that all involved parties would realize that pats on my head and empty words of support don't work on me. One particular and newly elected freeholder responded, but his response was not to offer closure, but more to chastise me for what **he thought** was a personal attack on his integrity, but he also offered the same empty politically correct claim that he was concerned for officers well being.

I redirected him to the line in the past PBA bulletin, which he **wrongfully took** as an attack on his integrity and I fully explained that he need not take offence, but since he took the time to give me a piece of his mind, I also questioned this **concerned freeholder** as to why he only responded to that **one line in the bulletin that he thought affected his own reputation** rather than responding to the pages and pages of legitimate concerns, that I've placed in the freeholders laps for months if not years on end?

I responded to this freeholder "confidentially" as opposed to my normal public type activity and I plan to keep it confidential on my part, but lets just say that I offered this freeholder an opportunity to seek some insight into the validity of my complaints and I basically challenged this freeholder to back up his empty words of support for us in a very daring, but proactive and legitimate way to **prove his concern**

for us. Its been weeks since this communication occurred and something tells me that **I will not be hearing from him again.**

In the mean time, please see the text below from an investigation request and complaint sent on the above date to the US Department of Labor in regard to management abuses and attacks on correction officers as it pertains to our rights under the FMLA.

This has been one of our hot button issues among many other things, but I point to this particular issue and the way in which ill officers and family members have been treated, as the **worst and most shameful thing ever done to us.**

We can bicker all day about jail operational issues and contractual labor issues and even though we disagree many times on the issues at hand, there is nothing in regard to operational and contract issues, that can be taken too personally.

However, when management tramples and the administration allows, condones, refuses to act upon and as I said...**encourages** management to trample on employees and employee family members who are suffering or caring for those who are suffering from horrific and life threatening illnesses, they have crossed the line and due to the administrations failure to intervene into these abusive practices, we now need to ask for intervention by the federal government.

Thank you for your time and continued support and please see the following text below.

Respectfully,

Joe Amato, President
PBA Local 382

March 30, 2012
Mr. Joseph Petrecca, District Director
US Department of Labor
North Jersey District Office
Wage & Hour Division
200 Sheffield St.
Room 102
Mountainside, NJ 07092

RE: Request for Investigation Regarding FMLA Practices – Essex County Jail

Dear Sir:

You may be familiar with me, my local labor organization and the department in which I am requesting to be investigated, because unfortunately, we've been down this road before.

On or about August 4, 2010, I made a formal complaint to the DOL regarding the way in which jail management was applying the terms of the FMLA and I in fact, received a response back then from a gentlemen by the name of John Warner. According to the response I received from Mr. Warner, a DOL Investigator by the name of Sonia Lizan-O'Halloran was assigned to the case, under case file number 1595528.

I certainly hope that's enough information regarding this past complaint in an effort to have it retrieved from your departments' files if need be. After I received the response from the DOL, who had advised me that they intended to investigate my claims, I had one or two phone conversations with another investigator whose name escapes me at the moment.

Ironically, after I made it known to our PBA membership and the county administration that an investigation was forthcoming, jail management quickly reversed themselves in regard to their questionable actions and the way in which they were treating those who applied for family leave.

At that point and upon managements reversal, I made the **grave error** of dropping the complaint as what I hoped would have been looked upon as a sign of good faith and I foolishly relied on my own opinion that just the thought of a DOL investigation occurring was enough to expect that jail management would not go down this questionable road again, **but I will not make that mistake for a second time.** I would like to either have the original case file reopened or to have an opportunity to explain why a new case file may need to be opened.

The current issues are a little more complicated than last time, which I would rather not put in writing at this time due to confidentiality concerns in regard to our individual members illnesses or the illnesses of family members, which brought about my need to request an investigation once again.

I would hope that should an investigation be undertaken by the DOL, it will include a complete review of our FMLA practices, an interview of all parties

responsible for implementing these practices, the way in which approvals and/or denials are occurring, the reasons why denials have occurred, the way in which monitoring practices are conducted and **most importantly**, an interview of those employees affected, who I believe can put a very clear face on the issues at hand by simply being provided an opportunity to explain their own individual stories on how they've been treated within what I firmly believe to be a very **slanted and antagonistic process**.

However, at this time and as an attempt to put a broad face on our concerns without violating any employees confidentiality concerns, it seems that jail management and other county officials came together at some point in the recent past and basically picked apart the FMLA to find ways to avoid the FMLA altogether or at least lessen FMLA requests.

At first, this re-examination of FMLA practices within our department seemed justified when I was informed of this meeting and I believe that the overall intent and through the very trusted and objective involvement of our County Human Resources Department was to get us on the right path, because our department was in fact experiencing an unusually high number of federal leave requests, but what began as what I believed to be **a justified fact finding mission to weed out abuse of the FMLA**, which did in fact uncover some abuses, has snowballed into an overzealous jail level attack on **anyone and everyone** who **legitimately applies** for leave or is trying to **legitimately maintain** a leave, which was already approved.

There seems to be a misguided attempt amongst jail officials to utilize the administrative tools given to employers within the federal guidelines in a **punishing manner** rather than a **guiding manner**, which I must assume these administrative tools were intended to be.

Unless I'm told otherwise after having an opportunity to speak to a DOL investigator, I would find it hard to believe that these law based administrative tools were intended to allow employers to seek out **slanted ways** to deny a leave request or to not allow an approved request to continue.

As we speak, this is exactly what's going on in our department whereas management, rather than simply accommodating those who are **legitimately** in need of a leave to be approved or **legitimately** in need to have their current leave continued, they have chosen to use their managerial rights under the FMLA in an intimidating, harassing, threatening and abusive manner.

I don't believe that these managerial rights under the FMLA, which are obviously meant to allow employers to investigate the validity of a leave request, were also intended to **“make things as hard and as stressful on an employee as possible”** in hopes that leaves will be rescinded or that future leave requests will be lessened by **making an example** of employees who request leave whether it be consecutive leaves or intermittent leaves.

For example, if an employer needs **“More Information”** on a leave application before they can approve a leave or to be comfortable that the information provided is sufficient enough to prove the validity of a leave request, employers are well within their rights to ask for **more information**, which again, we all agree seems perfectly logical.

However, how many times is management allowed to play their **“more information card”** and how many times is management going to send an employee back and forth to their doctor to get **more and more information** before it becomes obvious that these requests for more information are not intended to actually seek validity, but purely intended to harass the employee into dropping their leave request?

I'm sure you realize Mr. Petrecca that as correction officers we are not children and we do not appreciate these obviously childish games being played, whereas management is hiding behind federal guidelines meant to govern the FMLA and using these governing guidelines to a point of exhaustion and in a way to **deter employees** rather than accommodate them when their need for FMLA is **painfully legitimate**.

How long are we to accept **“Hey, the law says I can do it”** or **“I'm just doing what the law "allows" me to do”** as managements answers to why they are acting so irrationally toward ill employees or employees who need to care for ill family members and how long will management be permitted to beat their managerial options to death before it becomes painfully obvious that they are using these managerial options to try to scare away their obligations under federal law? Their actions are clearly meant to “annoy” and please allow me to give you an example of managements mind set, where they believe that they can **legally annoy people and harass people** and than insult our intelligence by claiming that it's the law.

Fitness For Duty Exams: Once again, I believe that we are all in agreement, that the federal guidelines provide that a fitness for duty exam can be used as an option to determine the validity of a leave request.

However, what management has done in the cases before us is that **they've simply blanketed everyone** who is **currently under an approved leave** and have

notified these officers that they must attend a fitness for duty exam by a county doctor.

So far, I've received notice from one particular officer on an approved intermittent leave, and after providing all of the proper medical information from his lifelong physician required of him to obtain the approved leave, that he has now been told by the "county doctor" who gave him a quick once over type of examination that **his illness is not serious enough** to remain under federal leave protection.

Again, I'd rather not state the **two very serious illnesses** that this particular officer battles from time to time, but they are in fact serious enough to fit the criteria and since when should we expect that the medical opinion of a doctor who has treated this man for years, is going to be thrown out the window for the opinion of a doctor who is employed by the county and I'm sorry to say that in **my opinion**, will do and say exactly what the county expects him to do and say?

This is only one example so far, but these FFD exams have just begun over the past week or so and I fully expect this scenario to be played out several more times before jail management concludes their ridiculous assault on these officers who are seeking this federal job protection.

These FFD exam requests were not sent out as an opportunity to seek the validity of a leave.

These FFD exam requests were sent out to **cause shock, fear and panic** of what will happen to you if you dare request a family leave **and management can rest easy knowing that their childish tactic worked like a charm**, but its I who got a call from an hysterical wife of an ill employee begging me to not allow her husband to lose his job or lose his ability to care for himself medically.

Its I and the PBA who is left to deal with these people and these families who are being attacked, because management thinks they are justified to inflict hardship and turmoil into their lives and than have the audacity to claim that federal law allows it.

What good is having this federal job protection, whereas jobs can be preserved without fear of job loss or fear of employer retaliation if management is going to be permitted to instill fear upon the employees who seek this federal protection and in fact utilize retaliatory measures beginning at the very moment the leave paperwork is submitted?

What do I consider to be "retaliatory" as opposed to justified validity based management options?

Incessant requests for "more information" as a way to deny a leave when all necessary information was in fact provided, **is retaliatory.**

Asking for a schedule of doctor visits when the nature of the illness or the erratic and uncontrolled way in which a particular illness presents itself, which makes it nearly impossible to provide a pre-determined schedule and then refusing that leave because no schedule was provided, **is retaliatory.**

Incessant requests for doctors' notes after a doctor already provided a certification of their patients' illness and need for time off, acknowledging that not every occurrence of this illness requires a doctor visit and then using the lack of a doctor note as reason to deny the leave request, **is retaliatory.**

Sending an ill officer who is under the protection of the FMLA and obviously not at his or her peak of health, for a fitness for duty exam to do nothing more than to inconvenience and intimidate this officer that his or her job may be in jeopardy and in an effort to pit the employee's doctor's opinion against the county doctors' opinion, **is retaliatory.**

These are only a few examples of the slanted way in which management has been abusing and misusing the power given to them under the law, which unfortunately has become a way of life behind our jail walls and this abuse takes on many different forms.

I implore you to intervene immediately into this manipulation and misapplication of this protection based federal law and rid our department of these abusive management tactics, which any fool can see have nothing to do with managerial prerogatives under the FLSA and are clearly meant to antagonize, cause grief, stress, hardship, and punishment upon those who dare apply for federal leave or once finally approved...dare not to cater to these ludicrous and constant management challenges in an effort to cancel an approved leave.

Aside from the legal aspect in the way in which these officers have been treated, there is also a moral aspect and I would again hope that an investigation and interview of affected officers will uncover the horrific and careless comments made to these officers either directly from jail management, from other involved parties who were forced to act at the demand of jail management, relay messages from jail management and I have one particular employee who was present at one particular time and overheard a management comment and directive given to a jail supervisor,

which I believe puts the entire issue into a nutshell and that directive was... **"TO HAMMER ANY OFFICER WHO CALLS IN SICK"**

I thought it best to make this general complaint on behalf of the entire and slanted system, rather than suggest that these numerous affected officers bombard the DOL office with individual complaints and I certainly hope that you'll agree that I've taken the right and justified course of action.

Thank you for your time and attention.

Respectfully,

Joe Amato, President
PBA Local 382