

# FOP MEET & CONFER MEETING

## November 3, 2016

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Director Ryan greeted the group and addressed the agenda items.

Attendees: Senior Parole Officer Waldemar Mehner, Community Corrections and COII Lavina Tracy, ASPC-Perryville represented FOP. Also present from ADC were Director Charles L. Ryan, Interim Deputy Director Greg Lauchner, Carson McWilliams, Division Director of Offender Operations, Brad Keogh, General Counsel, Colleen McManus, Chief Human Resources Officer and Jacob Gable, Bureau Administrator of Administrative Services. Natalie Poff was present to take minutes.

### **SUBMITTED QUESTIONS AND ANSWERS**

On behalf of FOP, the following questions were submitted in advance:

**Question 1** – Rumored 12 Hour Shifts: The mention of 12 hour shift has made it through staff across the State. The lack of knowledge or understanding how it will be implemented is causing a great deal of chaos for Officers. The uncertainty of an individual's fate along with the lack of communication for each individual to feel that they have input on an action that will directly impact their future going forward with their employment causes a level of stress which affects each individual on a daily basis. Can you provide staff an understanding of where the Department sits on the stance of the 12 hour shift's along with providing an avenue of dialogue for staff to participate in topics such as Shift Seniority (shift preference), Supervisor hours, and Hardships (Higher Education, Family issues), etc.

**Answer 1** – Carson McWilliams responded: We are currently evaluating the cost effectiveness of the 12 hours shift concept. Not all units would change to 12 hour shifts due to cost effectiveness and the availability for some 8 hours shifts for staff and the needs of the complex. All CO IIs, sergeants and lieutenants in units that change to the 12 hour shifts would be affected. It would not affect CO IIIs, COIVs or captains. We plan to make a recommendation to the Director by end of November in order for a decision to be made in early December. If implemented, it would start mid-January, after a 30 day notice.

As in rotation of staff, consideration for the staffs personal needs will be attempted to be accommodated. With all things being equal if a preference was available, then the senior staff with continuous service would be given their choice of shift. We would have four shifts, 2 ams & 2 pms, each would work three days one week and four days the next, for a total of 7 days per 14 day PAR period. There would be no 15 minute briefing and all units would use a "read book" with a supervisor interacting with line staff to ensure information is passed.

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Director Ryan added that there are 738 vacant positions, therefore, we need to maximize the resources we currently have. We may have to reconstitute the 12 hour shift out of necessity which is a cost effective strategy. Each complex will be reviewed individually.

Mr. McWilliams reiterated that the 12-hour shifts would impact CO II's, Sergeants, and Lieutenants. CO III's and Captains would not be impacted. This will change the dynamics of operations as there will be more supervisors on shift which should reduce overtime issues and cross leveling. This will allow Officers to work in areas they are familiar with and increase team work and supervisor interaction which will ultimately help retention and employee satisfaction.

FOP stated that employees feel like they do not have the opportunity to communicate or give input pertaining to schedule changes and other decisions that impact the daily lives of employees. If there could be a focal point of contact/open lines of communication and more transparency that would help employees.

Mr. McWilliams stated that the Department has committee and could provide the names of its members as points of contact. Director Ryan instructed Mr. McWilliams to provide minutes or any information that is disseminated at those meetings to ensure consistent information is given.

**Question 2** – Shaving Waiver Forms: Though the Fraternal Order of Police supports a professional employee grooming and dress policy, we cannot support any act which may violate Federally Protected Rights of our members or any other individual. The rights to ones medical privacy are protected by HIPPA. The law does allow an employer to ask that information which is minimally necessary to determine if special circumstances exist which require a duty modification or other accommodation. To mandate employees to “voluntarily” sign away their HIPPA rights when a medical condition exists exceeds requesting medical information which is minimally necessary to determine an employees need for an exception. The Fraternal Order of Police opposes any mandate that an employee sign a form which states they “voluntarily” waive their rights. For this reason the Fraternal Order of Police requests the Department rescind the current policy on grooming specifically related to shaving and return the implementation of requiring the information which is minimally necessary. A diagnosis and expected duration of the condition from a licensed medical professional should be sufficient to determine if the need for a shaving waiver exists.

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**Answer 2** – Colleen McManus and Brad Keogh responded: An employee seeking a medical waiver for a beard is not required or otherwise “mandated” to execute a HIPAA Release. The Release clearly provides that it is voluntary and may be revoked at any time. In addition, the Release is strictly limited to the specific skin condition upon which the employee is predicating his request for a medical waiver for a beard. It is not unreasonably intrusive and does not require the release of any healthcare information other than the specific skin condition at issue. The Department is entitled to conduct a basic evaluation of an employee’s medical waiver request. The information provided by the employee’s medical practitioner is reviewed by ADC medical professionals, who make a recommendation regarding the request to management. An employee’s management is not involved in, and does not see information on, the medical condition itself, thereby further maintaining the employee’s privacy. The current grooming standards and process for seeking a medical waiver for a beard will not be rescinded.

**Additional Information:**

A letter from the Bihn and McDaniel Attorney Office dated October 14, 2016, was handed out at the meeting as well as Director Ryan’s response dated October 17, 2016. Click on the following links to see the aforementioned letters:

<J:\Meet and Confer\Bihn& McDaniel Letter Dated 10-14-16.pdf>

<J:\Meet and Confer\Director Ryan's Response dated 10-17-16.pdf>

Carson McWilliams advised that direction was given to the Wardens not to do anything with the HIPPA forms until the process to give fair and consistent review is in place. Mr. McWilliams advised that a recent statewide poll indicates that only one (1) NNTI and three (3) Administrative Inquiries have since stemmed from the Employee Grooming policy change for non-compliance and one case remains undecided. Mr. McWilliams gave direction to the Wardens to move forward with the disciplinary process for non-compliance, however, if employees who currently do not meet the shaving requirements are willing to comply, discipline would be waived.

Colleen McManus and Carson McWilliams explained that the medical review board consists of Derleen Spence, Occupational Health Administrator, Registered Nurse (RN) and Dr. Rowe, MD, both of whom review the medical documentation provided by the employees’ personal doctors, upon which they make a recommendation to the impacted Warden to approve or deny beard waiver requests. The Warden does not have the knowledge or medical expertise to determine if an employee’s request is legitimate, which is why the medical review board looks at each individual case. Ms. McManus advised if a Doctor releases full medical records to the Occupational Health Nurses, that

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is the fault of the Doctor's office, not ADC. She further advised that she is aware of one case in which a Doctor disclosed more medical history than required, at which point the OHN advised the Doctor's office and returned the documents. Ms. McManus will clarify the language within the HIPPA Waiver form and upon approval of the Director, the form will be published for ADC use. [Note: This has been completed]

Director Ryan stated that other public safety organizations are not permitted to wear beards and do not have an option to waive that requirement. Director Ryan stated the grooming/shaving policy was changed to ensure the safety of its officers when using Phantom Gas/OC spray. If the masks do not fit properly they are not effective. The grooming/shaving requirement also presents a professional image of the Department, which is important, just like safety is for fit testing.

A second level review may be considered however, the policy will not be rescinded.

FOP stated there is a lot of peer pressure to comply with the shaving requirement and further alleged that some supervisors are making a close case for hostile work environments by continually asking staff to shave in accordance with policy.

Director Ryan instructed Mr. McWilliams to reinforce the need for professionalism with respect to requesting waivers from staff.

**Question 3** – Max Custody: We understand that there is an intention to do away with maximum custody throughout the state eventually. Can you provide any idea of implementing this new housing or handling the special-needs category and how you will continue to house inmates that display violent behaviors towards other inmates and staff.

**Answer 3** – Carson McWilliams responded: Corrections Departments around the country are reducing their max custody populations, with a focus on more out of cell opportunities and effective programming to better prepare inmates for return to society. This is the best way to protect staff, inmates and the public after release.

Our plan for ADC is to reduce the current max custody population of 2900/3000 to around 2200/2300. We have already reduced 578 max beds to close in Central Unit, which has been working well for years now. Maximum custody in our minor's population was eliminated and now close custody in the highest custody they may be assigned to. We also plan to remove maximum custody from the female population and reduce it in the sex offender and protective custody populations.

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**Question 4** – DI 306: With a new 12 hour shift being talked about, our members whom are CO IVs and Captains are requesting an adjustment to the authorized hours in DI-306. The request is to expand an option to adjust hours, by at least one hour. The current approved work schedules for CO IVs and Captains: 0730 – 1630 hours, 0800 – 1700 hours, and 0830 – 1730 hours. The request is to add a 0700 – 1600 hours to the current options.

**Answer 4** – Carson McWilliams: Captains and COIVs will not be part of any adjustments in staffing to 12 hour shifts. They should work 0800-1700 in most cases.

FOP advised that the question stemmed from staff who car pool to and from work, and the imposition that would have on them.

**Question 5** – ADC Budget: Did the Executive staff submit to the Governor a request for a pay increase for staff. Can you provide information on the pay package submitted?

**Answer 5** – Jacob Gable responded: Yes, ADC did include a pay package request in the FY 2018 Budget Request. The requested pay package includes:

- (1) Funding to increase all security staff salaries by \$1,000
- (2) Annual merit pay for the security series. The merit pay plan ranges from 1-2% of salary and would be paid annually to eligible employees. The merit amount would not be added to base pay and would be dependent on employee job performance and eligibility.

The entire ADC Budget Request, including the requested pay package, is available on the ADC website and the following link:

<http://10.6.0.30/reports/FY%202018%20ADC%20Operating%20Budget%20Request.pdf>

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Director Ryan stated he submitted a decision package for an increase in pay for security staff for the last three consecutive years. Last year, sixteen decision packages were submitted. This year, only eight packages were submitted and the pay package was number one. Director Ryan acknowledged that the Department of Corrections' pay is not competitive and further stated that ADC ranks at the bottom of the Western eleven states in relation to pay.

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Director Ryan noted that 565 Correctional Officer positions were previously given up by Director Schriro in 2006 to help fund pay increases in the past by using vacancy savings. We cannot give additional Correctional Officer positions up to fund pay increases as those positions are critically needed; however, pay packages will continue to be a priority.

Close:

The Director encouraged the Employee Organization to utilize the opportunities they have to communicate the questions and concerns of their members more frequently, including taking advantage of his open door policy. Director Ryan thanked those who were in attendance.

cc: Executive Staff  
Wardens  
Paul O'Connell  
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