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OFFICE OF THE AUDITOR GENERAL



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AUDITOR GENERAL

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December 23, 2008

Ms. Patricia L. Caruso, Director  
Department of Corrections  
Grandview Plaza Building  
Lansing, Michigan

Dear Ms. Caruso:

This is our report on our follow-up of the 2 material findings (Findings 1 and 2) and 2 corresponding recommendations reported in the performance audit of the Employee Discipline and Grievance Programs, Department of Corrections (DOC). That audit report was issued and distributed in December 2000; however, additional copies are available on request or at <<http://www.audgen.michigan.gov>>.

Our follow-up disclosed that DOC had complied with one recommendation and had not complied with the other recommendation.

If you have any questions, please call me or Scott M. Strong, C.P.A., C.I.A., Deputy Auditor General.

AUDITOR GENERAL



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# **EMPLOYEE DISCIPLINE AND GRIEVANCE PROGRAMS DEPARTMENT OF CORRECTIONS FOLLOW-UP REPORT**

## **INTRODUCTION**

This report contains the results of our follow-up of the material findings and corresponding recommendations and the agency's preliminary response as reported in our performance audit\* of the Employee Discipline and Grievance Programs, Department of Corrections (DOC) (47-614-98), which was issued and distributed in December 2000. That audit report contained 2 material conditions\* (Findings 1 and 2) and no other reportable conditions.

## **PURPOSE OF FOLLOW-UP**

The purpose of this follow-up was to determine whether DOC had taken appropriate corrective measures in response to the 2 material findings and 2 corresponding recommendations.

## **BACKGROUND**

DOC's employee discipline and grievance programs were established to discipline employees who violated DOC work rules and to address and resolve employee-management disputes. The framework for the DOC employee discipline and grievance programs is based on Civil Service Commission (CSC) rules and regulations, DOC policy directives and operating procedures, and various collective bargaining agreements. Administrative staff from DOC and human resource staff from CSC administer the discipline and grievance programs.

DOC's central office discipline coordinator and its Labor Relations Section manager oversee DOC's disciplinary process to help provide consistent treatment of and uniform penalties for DOC employees who violate work rules. These work rules, which are

\* See glossary at end of report for definition.

outlined in the DOC Employee Handbook, are designed to ensure the safety of DOC employees and the public and to prevent breaches in security that could result in a prisoner escape. DOC policy directive 02.03.100A summarizes the recommended disciplinary penalties for work rule violations when there are no mitigating or aggravating circumstances. The discipline standards\* were developed in response to concerns that there had been a lack of consistent disciplinary treatment from different facility administrators. The discipline standards do not apply to nonexclusively represented employees (NEREs).

When it is alleged that an employee has violated a work rule, DOC initiates an investigation to determine whether the work rule violation occurred. An investigative report is issued to the designated management representative. The management representative then holds a disciplinary conference, allows the employee to provide evidence, concludes whether a work rule violation occurred and, if so, recommends a disciplinary penalty. For all employees except NEREs, the employee's management representative can recommend and approve discipline for 25 work rule violations. For the remaining 17 work rule violations, as well as for any NERE violating a work rule, the management representative must forward the recommended disciplinary action to the discipline coordinator or Labor Relations Section manager for review and final approval of the disciplinary action. Employees who are not satisfied with their disciplinary action can initiate a grievance action.

Employees and management representatives attempt to resolve employee-management disputes locally. All employee grievances that are not resolved by an employee's management representative are forwarded to the Labor Relations Section, where they are assigned to a labor relations specialist who reviews the grievance and recommends an action to resolve the employee's grievance. Employees who are not satisfied with the recommended action to resolve their grievance can appeal the decision to arbitration or CSC's Hearings, Employee Relations, and Mediation. The discipline coordinator and Labor Relations Section staff defend DOC's actions in grievance hearings and arbitrations.

During the prior audit, DOC denied the Office of the Auditor General (OAG) access to some of the records and personnel necessary to complete the audit objectives. The OAG issued a scope limitation under *Government Auditing Standards*. DOC did not deny the OAG access to records or personnel during this follow-up.

\* See glossary at end of report for definition.

As of June 28, 2008, DOC had 16,472 employees within 41 prisons, 7 camps, 1 boot camp, 110 parole and probation offices, and various other work locations.

## **SCOPE AND METHODOLOGY**

Our fieldwork was completed from July through September 2008. We interviewed personnel from the Labor Relations Section, the Office of Personnel Services, and Operations Support and Administration and selected facility administrators and staff. We reviewed DOC policy directives, operating procedures, and Employee Handbook; CSC rules and regulations; and collective bargaining agreements of the Michigan Corrections Organization\* (MCO), the United Auto Workers\* (UAW), the Michigan State Employees Association (MSEA), and the American Federation of State, County and Municipal Employees\* (AFSCME). Also, we obtained an understanding of DOC's process for addressing Step 3 employee grievances\* and tested 10 grievances files closed between October 1, 2005 and July 31, 2008 for compliance with selected policies and procedures.

\* See glossary at end of report for definition.

## **FOLLOW-UP RESULTS**

### **ADMINISTRATION OF DISCIPLINE AND GRIEVANCE PROGRAMS**

#### **RECOMMENDATION AND RESPONSE AS REPORTED IN DECEMBER 2000:**

##### **1. Timely Resolution of Employee Grievances**

#### **RECOMMENDATION**

We recommend that DOC establish an effective process to address Step 3 employee grievances within time frames established by CSC and union contracts.

#### **AGENCY PRELIMINARY RESPONSE**

Although the DOC does not agree that finding 1 is material, the DOC took steps prior to the issuance of the preliminary analysis document which have significantly reduced the number of pending grievances. As of June 1998, there were 1155 pending grievances. As of May 2000, there were 291 pending grievances. The DOC will continue to strive to respond as timely as possible so that the number of pending grievances can be further reduced.

In finding 1, the OAG reported that there is an unwritten agreement between the DOC management and the unions regarding advancement of grievances and dismissal of claims. The DOC is unaware of any unwritten agreement between the DOC management and the unions regarding advancement of grievances and dismissal of claims. Civil Service rules and the various collective bargaining agreements have specific provisions in their respective grievance and appeals procedure regarding what is to occur if a grievance is not responded to timely.

In addition, the OAG reported in finding 1 that it did not observe that the DOC used decisions made in previous similar grievance resolutions and arbitration decisions to resolve similar disciplinary actions. It further concluded that potential efficiencies could be realized by applying grievance decisions and arbitrator rulings to similar grievance cases. The OAG has not recognized that elementary labor law treats discipline on a case-by-case basis. The DOC resolves grievances on a case-by-case basis by considering aggravating and mitigating circumstances. For contract interpretation issues, the DOC does look at other settlements or decisions

to determine if there is precedent. In addition, the DOC does look at precedent when evaluating a specific grievance.

### **FOLLOW-UP CONCLUSION**

We concluded that DOC had complied with this recommendation.

We reviewed DOC's procedures for processing Step 3 employee grievances and interviewed staff to gain an understanding of DOC's grievance process. We verified that DOC has continued to reduce the number of pending grievances from 291 as of May 2000 to 104 as of June 2008. In addition, we tested grievance files to verify that DOC now processes grievances within the time frames established by CSC and collective bargaining agreements, and we did not find any errors. We verified that DOC has continued to modify its discipline standards for employee work rule violations.

## **EFFECTIVE IMPLEMENTATION OF DISCIPLINE AND GRIEVANCE PROGRAMS**

### **RECOMMENDATION AND RESPONSE AS REPORTED IN DECEMBER 2000:**

#### **2. Management Information System**

### **RECOMMENDATION**

We recommend that DOC accumulate information on its discipline and grievance programs necessary for managers and administrators to monitor the effectiveness and efficiency of the employee discipline and grievance programs.

### **AGENCY PRELIMINARY RESPONSE**

Although the DOC does not agree that finding 2 is material, the DOC took steps prior to the issuance of the preliminary analysis document to develop a comprehensive personnel action tracking system. In January 2000, the DOC commenced development of a management information system that will include information on cases relating to arbitration, civil rights, disability management, discipline, equal opportunity and affirmative action, grievances, internal affairs, and litigation. A pilot is scheduled for July 2000 which will be followed by Statewide implementation. This system will allow tracking of grievances and disciplines from the time they are initiated.

## **FOLLOW-UP CONCLUSION**

We concluded that DOC had not complied with this recommendation.

We interviewed central office personnel and selected facility administrators and staff; reviewed summary reports available from the Personnel Action Tracking System (PATS); compared monthly reports prepared by the Labor Relations Section with corresponding PATS information; and tested discipline and grievance files for compliance with policy directives, operating procedures, and collective bargaining agreements.

We determined that DOC implemented the PATS database in 2000 to track employee disciplinary actions and grievances. As of September 8, 2008, the PATS database included 11,802 discipline records and 17,948 grievance records. However, we determined that PATS could not provide summary information, including:

- A word search engine to identify similar cases or similar circumstances within a case.
- Disciplinary actions by facility, by collective bargaining unit, by employee and case number, or by work rule violation number.
- Disciplinary actions resulting from a combination of multiple work rule violations.
- Disciplinary actions for which the discipline coordinator increased or decreased the recommended discipline.
- Step 3 grievance decisions modified or overruled by the Labor Relations Section.
- Number and percentage of grievances appealed to arbitration, hearings, or circuit court and upheld, modified, or denied.
- Number and percentage of grievances appealed to arbitration by collective bargaining agreement and upheld, modified, or denied.
- Number and percentage of decisions overruled at a subsequent step.
- Number and percentage of decisions overruled at a subsequent step by Labor Relations Section staff.

Without an easily queried and retrievable database, the discipline coordinator and the Labor Relations Section use limited staff resources reviewing PATS-generated

reports that can be hundreds of pages long when researching similar grievance decisions.

For the last three fiscal years, DOC's Automated Data Systems Oversight Committee has included rewriting PATS as one of its information technology priorities. However, because of competing priorities, DOC has not funded this project.

## Glossary of Acronyms and Terms

AFL - CIO	American Federation of Labor and Congress of Industrial Organizations.
American Federation of State, County and Municipal Employees (AFSCME)	Council 25 of this AFL-CIO-affiliated union represents DOC employees.
CSC	Civil Service Commission.
discipline standards	DOC's table of work rule violations with the corresponding recommended disciplinary penalty to be imposed, found in DOC policy directive 02.03.100A. DOC managers are expected to take into consideration aggravating and mitigating circumstances when determining a disciplinary penalty.
DOC	Department of Corrections.
material condition	A reportable condition that could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
Michigan Corrections Organization (MCO)	Local 526 of the Service Employees International Union (SEIU), an AFL-CIO-affiliated union that represents corrections officers.
NEREs	nonexclusively represented employees.

OAG	Office of the Auditor General.
PATS	Personnel Action Tracking System.
performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action.
Step 3 employee grievance	The third step of the grievance process established by CSC to resolve employee grievances in a timely manner. Employees not satisfied with the Step 2 grievance decision have a limited time period to appeal the decision. If the employee chooses to appeal the decision to Step 3, the designated management representative has 20 weekdays to hold a conference and issue a written decision.
United Auto Workers (UAW)	Local 6000 of this union represents DOC employees.



