

PBA Local 382

Memorandum

January 6, 2012

To All Members & Other Interested Parties:

The PBA has taken the first step in the legal process to address the recent labor issues and legal issues within the terms of the recently signed ICE contract as well as the subsequent violations of our contractually negotiated terms and conditions of employment.

As promised, I am making the text of the grievance available for your review and unfortunately by the time I was done memorializing the facts and referencing the questionable clauses in the federal contract, the grievance is 9 pages long, but I would appreciate your time in reviewing these facts. Those of us in the business know that labor squabbles are nothing new, especially in a correctional setting and the PBA has been very successful in the past, because **we don't file frivolous grievances.** We only file grievances based on what we are entitled to and where the facts within the grievance are supported by law or by labor contract, **but this particular grievance has been caused by a very unique and new situation.**

Most, if not all of the grievances that were filed over the years were filed due to **differences of opinion** whereas **the issue may have been vague or debatable** and **where management needed to be shown through third party arbitration that they caused a violation of our contract terms.**

In regard to this particular grievance...**This is the first time in my nearly 11 years as your president and filing grievances that management has actually recognized the violation prior to causing the violation, admitted to the violation in a face-to-face meeting with the PBA and basically told us in essence..."Too Bad", "Do What You Have To Do" and "I Guess We'll See You In Court", and this is probably the worst, most careless, and most damaging position that management can take by not respecting our negotiated agreements, "purposely and knowing" causing a violation, not allowing us to negotiate further as to seek some sort of middle ground and then TELLING US TO OUR FACE..."We Don't Care".**

Thank you for your time and continued support.

Respectfully,

Joe Amato, President

PBA Local 382

Grievance Filed January 5, 2012

Filed By Joe Amato, President, PBA Local 382 of the Essex County Department of Corrections.
Filed on Behalf of All Currently Employed Members and Future Members of PBA Local 382.
(Rank & File Uniformed Personnel, Under the Rank of Sergeant)

This grievance has been **hand delivered** to jail management on the above date and the text has been **sent via email** to all involved county & federal government officials, all local and state PBA members/officials and all media outlets.

The PBA expects that this grievance is answered within **10 calendar days** in accordance with our labor contract Article 15, which specifies that the PBA may proceed directly to arbitration if the grievance is not answered within that timeframe.

The grievance is based partly on the below listed contract clauses & jail policies, and how they conflict with the contents of the ICE Contract signed by County & Federal Officials in August of 2011, which the PBA maintains causes several violations within their terms and conditions of employment and has subsequently caused violations in negotiated labor agreements with the PBA

Labor Contract Articles Violated:

Article 1: Purpose (Good Faith Clause)

Article 4: Retention of Existing Rights, Privileges & Benefits.

Article 7: Confidentiality of Employee Personnel Files.

Article 10: Seniority in Picking Job & Shift Assignments/Preferred Positions (Job Bids)

Article 12: Provides That the PBA Be Provided With All Information (Freeholder Resolutions & Jail Policy) Which Changes and/or Affects the Officers Terms & Conditions of Employment, As Well As Information Pertaining To Inmates Concerns.

Article 30: Recognized Job Titles.

Jail Policies Affected:

Job Bids – *Jail Reference Number PS.ADM.014*

Employee Disciplinary Procedures – *Jail Reference Number PS.ADM.002*

Personnel Files – *Jail Reference Number PS.ADM.019*

Agency Training – *Jail Reference Number PS.ADM.010*

Orientation Training – *Jail Reference Number PS.ADM.010.04*

Internal Affairs SOP – *Jail Reference Number PS.ADM.009*

Drug Testing – *Jail Reference Number PS.ADM.009*

This grievance is also partly based on conflicts with the ICE Contract, which affect the Terms and Conditions of Employment for “County Correction Officers” in Regard to Hiring, Job Assignments, Training, Certification, Obligations, and Officer Rights **within** State/County Law & Guidelines as provided through the following Agencies...

*NJ Department of Civil Service

*NJ Office of the Attorney General

*NJ Police Training Commission

*NJ Division of Pension & Benefits

*Essex County Prosecutors Office

I. Assertions, Concessions & Statement of Facts:

The PBA concedes that the theory of “Managerial Prerogative” has been widely and directly upheld within public labor case law and that in its **basic terms**, management is free to staff a public entity and deploy their workforce as they see fit.

However, the PBA asserts that public labor case law also provides the ability to negotiate contractual seniority clauses in the way that officers are deployed, assigned and receive other job related benefits.

The PBA asserts that they have in fact enjoyed this negotiated benefit within its contract with the county since 1971 and upon the opening of the new jail in 2004, a subsequent jail policy was negotiated and memorialized on this subject, (Job Bid Policy) which was necessary to recognize the changes in staffing and job assignments from the needs of the two former jails to the needs of the new jail and to maintain our contractual rights to be assigned by seniority. This negotiated jail policy in fact “strengthened” our contractual concerns with the full agreement, support and assistance of the jails former director and currently employed jail consultant Scott Faunce, by naming each and every job assignment within the jail as “preferred assignments” and attaching preferred days off (RDO’s Regular Days Off) to each job and which

prescribes that officers apply (bid) on each job as they become available. With that bid, officers are accepting and are entitled to the shift, post and RDO's assigned to their chosen bid.

It's important to note that **all job assignments within the jail were included in this process** except for those jobs that management maintained as jobs that should fall under Managerial Prerogative. However, it's also important to note that these managerial prerogative based assignments were for the most part "technical" in nature and not within the realm of inmate custody as other support positions are which relate to the care and custody of inmates.

With the advent of the ICE Contract, which originated sometime in 2009, jail management began to shift officers from county based job assignments to federal based job assignments and partially broke from the historical Job Bid process and maintained that these newly created "federal jobs" were going to fall within the parameter of "managerial prerogative" and asked that officers who wish to be considered for these jobs, apply in writing and in some cases were even asked for resumes.

Obviously at that point, the department had actually and unfortunately created two separate classes of officers in regard to our contract and negotiated jail policy in regard to job assignments.

- 1) Officers assigned to county based contractual bid jobs awarded according to seniority.
- 2) Officers "appointed" to federal based jobs according to managerial prerogative.

As the federal contract continued, the number of officers taken from county custody ranks and shifted over to appointed federal based jobs reached approximately **50 officers** and it's important to note that at this same time that the county was supplying manpower to the federal contract, the county also decided to remove BCI responsibility from the Sheriffs Department and replaced Sheriff Officers at the jail with approximately **15 correction officers**, changing the name of this unit from BCI to CRU (Central Reception Unit)

That's approximately 65 county custody officers who practically overnight were removed from the ranks of available manpower to be exclusively dedicated to the ICE Contract and BCI/CRU Duties.

Note: The PBA points to this time and this severe loss of county based manpower as the beginning of what led up to the recent violation of our negotiated agreements as the county began and continues to struggle with the manpower shortages that they **knowingly created** due to the staffing demands of the federal contract. Some of which the PBA points to as a duplication

of jobs that already existed such as Inmate Transportation and Inmate Processing for example and some of which the PBA points to as **“clerical” in nature** and **not within a correction officers job description** such as **record keeping, billing, and data entry duties**, which should be performed by civilian personnel and creates concerns within the guidelines of Civil Service & the Police & Fire pension in regard to **working out of title**.

In regard to the duplication of job assignments...the jail had long maintained a processing unit and transportation unit whose assigned officers were awarded those jobs through the aforementioned “bid process” and the introduction of detainees could have simply been incorporated into these existing units with much less added manpower, but the federal contract demanded **Special & Separate Processing & Transportation Units**, which ironically must be staffed regardless of whether or not detainees are actively being processed or transported.

This creates a severe waste of available manpower.

The PBA also points to other **staff-draining federal contract demands** as **“frivolous”** and **“pampering”** whereas the structural and operational makeup of the jail was not acceptable to the federal government and special details needed to be set up such as special contact visits with extended visiting hours, special recreation services with extended recreation hours, and special haircut guidelines whereas **the county was directed to build and maintain an actual “Barbershop” fully equipped with barber chairs and other barber type amenities.**

Note: The jail is operated and was constructed under the theory of “Direct Supervision”.

This means that all inmate needs and activities are provided within each housing unit such as haircuts, recreation and visits and **controlled by one officer** assigned to the unit.

Recreation facilities and visiting stations are attached to each unit and accessible without the inmate leaving the actual unit and haircuts are provided by simply providing the service and all necessary equipment within the unit.

This self contained method of inmate activity is clearly meant to **save money and manpower** and is currently the method used in the housing of county inmates, but due to the **demands of the federal government**, ICE detainees must be brought out of the housing units to **a satellite recreation room**, to **a satellite visit room** and to **a satellite barber shop** so they can **sit in an actual barber chair.**

This service must be provided on both the day and afternoon shifts (16 hours per day) and has created the need for a **virtual army of correction officers**, once again taken from the ranks

of available manpower and now assigned to secure the detainees and jail hallways as they travel to and from these satellite units and while they are in these satellite units as to provide these federally mandated services, which can be easily provided in the units by **one officer.** This has been a long debated issue between the PBA and management as to why these copious amounts of manpower was being given to the needs of the federal contract and not being replaced on the county side, along with the fact that it was creating overtime concerns and much of which was mandated overtime whereas several officers were being held for double shifts against their will on a daily basis.

Note: According to the federal contract, not only is the county earning more than 100 dollars per day per detainee, but the contract also provides that the county be reimbursed by the federal government according to hourly rates for specific manpower dedicated to the contract, which is even more troubling that these earnings and savings through federal revenue, **publicized to be approximately 50 million dollars per year** isn't at least being partially used to maintain and/or replace the manpower drained thus far by the federal contract demands.

On or about December 19, 2011 a meeting took place between the PBA and jail management, which we were told was going to be held in regard to proposed staffing changes. The meeting was attended, by Director Alfaro Ortiz, Associate Director David Boyd, and Anthony Perillo, who to the best of our knowledge is employed as a Liaison to the Director to oversee the ICE Contract, along with PBA Board members Tyrone Williams, Frederick Ludd and Louis Taiano as attendees.

In this meeting we again debated how the federal contract is draining departmental resources, which is not being replaced and jail management acknowledged the copious amounts of manpower that had been shifted to the demands of the federal contract. When we asked why the federal revenue wasn't being used to hire new personnel, we were told that the county executive was refusing to provide any federal revenue as to add any manpower to the jail and that he had instructed jail management to **work with what they have.**

We of course asked the question how the county executive expects that we operate on less manpower and less of a budget than we had prior to the addition of federal detainees and federal revenue and the answer we got was something along the lines of... "*It is what it is*" and that they planned to realign the staffing, which meant that several of the officers who had been

assigned to federal details or CRU were going to be reassigned back into county custody positions.

I spoke on the personal hardships that these reassignments would create for officers who applied for and were awarded the “appointed jobs” through good faith and that many of them gave up contractual jobs in favor of appointed job, but I conceded that we had no contractual/legal argument if these reassignments didn’t infringe on officers who’s job assignments were **contractually awarded**, but we were then informed that in order to show the most savings, they would need to explore the idea of **breaking our contractual agreement on bid jobs as well** and take away the preferred days off that had been awarded to officers, which according to our negotiated agreement vary between Friday & Saturday, Saturday & Sunday or Sunday & Monday.

At this point we were informed that no final decisions had been made and we would have another opportunity in what we were led to believe was going to be within that week to explore other less intrusive ideas (negotiate) before any contract and/or negotiated agreements would be broken and that if any changes were made, I would be provided with the information prior to the changes.

I made it clear that any violations of negotiated agreements were going to be met with a legal response from the PBA and the answer I received was that “they understood” and to “*do what I had to do*”.

The promise of further negotiation was broken as well and not only were the changes made without notice or further negotiation, but the officer’s who were reassigned were notified prior to the PBA’s knowledge and management had in fact arbitrarily and capriciously violated the terms of our agreements and took away preferred RDO’s from several officers who had been contractually awarded those days and were given non-preferred RDO’s.

Also, several of the officers who management claimed were going to be reassigned from their appointed jobs back to general custody assignments, were in fact reassigned to the jails processing unit, which also falls within our negotiated list of bid jobs, which must be applied for and awarded through seniority.

The distinction between “Bid Jobs” and “Appointed Jobs” was in fact spelled out and caused by management when in the past they insisted that certain jobs be “appointed” within

management's right of "Prerogative", but now they have caused further violations and animosity between officers by **appointing officers to negotiable bid jobs.**

The PBA also has a vested interest that all bid jobs currently vacated and which need to be offered and awarded within the bid job process, are awarded with the applicable days off as originally agreed upon.

II. Contents of ICE Contract Found to be in Conflict:

The PBA maintains that the county had a contractual obligation to provide the PBA with any and all information regarding the language of the federal ICE contract and in hindsight should have made the PBA aware of this information while the language was being considered and before any questionable language was agreed upon, which may infringe on officers rights and protections.

The PBA maintains that the demands of the federal contract have caused its membership job related and subsequent personal hardship due to the county's refusal to provide the necessary resources to provide the federal service without infringing on the rights and protections of county correction officers and the negotiated agreements between the county and the PBA.

The PBA maintains that the county custody shortages in which they knowingly and purposely created and by creating 2 classes of officers within one jail, has caused extreme animosity between officers and between the PBA and its membership as the PBA is left to address these mistakes and the recent actions of reversing some of these appointed assignments, has only made matters worse as the PBA is left to field the numerous complaints lodged by reassigned personnel.

1. Conflicting Contract Language & Terms

*First the PBA points to the way in which the county has allowed a breach in jail security by agreeing to a federal contract term, which states that ICE personnel are permitted to carry cell phones within the secured confines of the jail (Article 25 Page 17) and while cell phones have been deemed to be **contraband within the secured confines of our jail.** The possession of a cell phone within the secured confines of the jail is a chargeable offence according to the jails disciplinary policy and should an officer be caught supplying a cell phone to an inmate or allowing an inmate to use said phone, would be a career ending if not a criminal violation.

Our county cell phone policy is completely in line with what the PBA supports and expects in regard to the introduction of electronic devices into a correctional facility and completely in line with industry wide standards, but questions what makes a cell phone carried in the jail by ICE personnel less of a security threat should it wind up in the hands of an inmate, which it has several times? ICE personnel have been observed handing their cell phones to detainees on a several occasions.

The ICE contract seems to instill federal laws and employment guidelines be followed as if the jail and its uniformed personnel are now subservient to ICE. (Article 8 Page 6 & Refers to Attachment 6)

2. Language in Attachment 6 - Performance Work Statement (Conflicting Contractual Demands)

The PBA asserts that the following referenced terms within the federal contracts PWS are in conflict with the terms and conditions of employment for County Correction Officers.

Chapter 3 of PWS “Personnel”

***(Page 1)** States that non-academy trained officers are not permitted to work in particular parts of the jail that contain ICE detainees, *which the PBA maintains is a matter of state law that allows untrained correction officers to work in the facility in full capacity and without limitations for up to 12 months until they are academy trained except for armed positions. Furthermore the PBA asserts that as part of the federal contract, hundreds of detainees can be held in Delaney Hall, which has no officer presents at all. Therefore this demand is unwarranted and discriminatory.*

***(Section A Number 8)** States that the county shall not employ anyone who is a current employee of any federal agency including active duty military personnel, *which the PBA maintains is a joint matter between jail policy and state law. Jail policy provides the allowance of approved secondary employment for uniformed personnel without limitations and state law does not preclude active military personnel from being employed as a county correction officer.*

***(Section B Number 2)** States that employment consideration is contingent upon at least 5 years of residency within the United States and goes on to list a variety of personal and interpersonal skills for which an employee has one year of experience, *which the PBA maintains is not a requirement for a county correction officer under state law. State law requires an applicant for a county correction officer position to be a US citizen (period) and there are no*

“experience requirements” whatsoever in NJ Civil Service guidelines. The PBA also maintains that within the state testing process and the state sanctioned psychological exam process for a county correction officer applicant, all personal and interpersonal/behavioral skills are identified prior to employment and need not be determined by federal standards nor should it be a federal contractual matter.

***(Section C Numbers 1-10)** States that the county shall make employee health records available for ICE review, that any medical deficiencies are to be reported to ICE immediately and that ICE can order the employee to undergo a fitness for duty exam, *which the PBA maintains is a matter of confidentiality law in regard to the review of our medical records and asserts that ICE has no authority to order a county correction officer into a fitness for duty exam.*

This section goes on to set its own federal medical standards, specifically names certain diseases which the contract claims would preclude employment, *but the PBA maintains would not preclude employment under state standards.* The contract details a federal version of vision standards, which if not met would preclude employment, *which the PBA maintains is not within the medical standard set forth by civil service employment guidelines and the PBA again asserts that any and all medical defects are identified within state mandated medical guidelines in regard to county correction officer applicants and/or currently employed officers.*

***(Section D)** States that ICE can require the drug testing of an officer at any time for cause, that ICE is provided with drug screening results quarterly and must be provided the results of a failed drug test within 24 hours, *which the PBA maintains comes under the authority and guidelines of the NJ Office of the Attorney General and that ICE has no authority to order the drug testing of a county correction officer or to supersede state law which provides and governs how, when and why a county correction officer undergoes mandatory random drug testing and/or drug testing for cause. Nor is ICE entitled to drug test results as matter of confidentiality law.*

***(Section E)** States that ICE can order an inspection of an employee for contraband at any time for cause and if contraband is found, the county would be obligated to remove the officer from duty and inform ICE when the removal was made, *which the PBA maintains is a matter of county policy and state law/civil service guidelines in regard to the discipline, the level*

of discipline and/or the need for the immediate removal of a county correction officer. Nor is ICE entitled to information regarding the discipline or removal of a county correction officer.

***(Section F)** States first **7** and then **18** subsequent reasons for which ICE expects an officer to be removed from duty, *which the PBA maintains is not within the rights of ICE to determine. The PBA concedes that some of the **25 items** listed are in fact matters that would require disciplinary action, but the PBA asserts again that these matters are spelled out within jail disciplinary policy, and state Civil Service law, which determines the need for discipline or the level of discipline and/ or removal. The PBA also asserts that the county prosecutor has the lone authority in whether or not disciplinary charges are brought to a criminal level or left at an administrative level.*

***(Section G)** States that an officer cannot work beyond 16 hours a day, must have at least 8 hours off between shifts and that ICE must be informed to authorize any hours beyond 16 within a 24 hour period, *which the PBA maintains is an expectable term by any labor standards, but again questions why ICE is permitted to hold **authoritative control** over the hours worked by a county correction officer?*

This clause goes on to say that the 16 hour limit in a 24 hour period also applies to secondary employment and an officer's secondary employment hours counts toward the 16 hour limit, *which the PBA strongly maintains is ludicrous to accept or expect that ICE is going to dictate or place limits and/or restrictions on what a county correction officer does while employed off duty.*

***(Section J)** States that officers personnel files are to be made available to ICE upon request, *which the PBA maintains is a matter of confidentiality law and this confidentiality issue is also addressed within jail policy.*

3. Chapter 4 of PWS “Background & Clearance Procedures”

***(Section K)** States more requirements in regard to drug testing, which the PBA concedes is already required under state law, *but the PBA maintains that state law also provides a list of illegal substances, which are the target of the testing, but according to the ICE contract, ICE is permitted to expand on that list and again its mentioned that ICE is entitled to the results of the drug test, which the PBA again maintains is a matter of confidentiality and maintains that county correction officers shall only be tested for the illegal substances recognized under the Attorney General Guidelines.*

***(Section L)** This clause details several in-service type training requirements and states that failure to complete this training will result in removal from duty. This clause states the requirement for 120 hours of initial training and 40 hours per year as a refresher course. The section goes on to say that after training is administered, a “Proficiency Test” will be given, the contract sets scoring standards on this test of 80% or above and goes on to say that if after two tries, an officer does not pass the exam within the scoring range, the officer will be removed from duty.

*The PBA would gladly participate in any training initiatives as long as we are properly compensated, but the PBA maintains that this training cannot be deemed to be a condition of employment for current officers nor can this proposed training be a condition of employment for correction officer applicants. The PBA further maintains that the **only** testing and benchmarks, which must be achieved by a county correction officer or a county correction officer applicant as a condition of employment, is administered in accordance with state Civil Service guidelines (entrance exams) and through subsequent Police Training Commission Guidelines for the purposes of state certification and through the completion of training at the police academy. Any other training for a county correction officer would be considered informative only.*

End of Issues Regarding Conflicts Within the Language of the ICE Contract

III. Summary:

The PBA recognizes and supports that the federal ICE contract offers a very unique financial benefit to Essex County as a whole and the PBA concedes that the county has entered into this contract in good faith.

However, the PBA maintains that the federal contract has also distorted the administrations priorities and obligations to normal county jail operations and their obligations to uniformed personnel to honor long standing agreements which have now been violated as detailed above. Lastly the PBA asserts that prior to the ICE Contracts finalization, the county administration had failed to address unjustifiable authoritative language in the federal contract that permits ICE to hold authority over personnel matters and the PBA seeks to have that language addressed before it becomes problematic rather than wait until an officer’s employment or privacy rights are violated after the fact.

IV. Requested Rectification of Grievance

1. The PBA expects that all negotiated bid job issues remain in tact as earlier and historically negotiated and that the officers who recently lost preferred bid RDO's have their contractually awarded RDO's returned to them.

2. The PBA expects that all pending bid jobs currently vacated will be put up for bid with the same RDO's applied to each job as historically negotiated.

3. The PBA expects that any recognized and negotiated bid job assignments that have been recently filled by appointed officers, be put up for bid according to policy and contract.

4. The PBA expects that the language in the federal contract referenced above and for the reasons referenced above be stricken from the federal contract and that it is made clear to the PBA **in writing** that ICE officials have absolutely no authority in the personnel, investigative, medical, disciplinary, and all other job related matters, which fall under the terms and conditions of employment for a county correction officer.

5. The PBA expects that each and every clause of the federal contract as referenced above is addressed without exception.