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IN THE MATTER OF AN INTEREST

ARBITRATION BETWEEN

THE STATE OF OHIO, OFFICE OF COLLECTIVE BARGAINING

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

SUPPLEMENTAL

OPINION AND AWARD

I. BACKGROUND

The instant matter was heard by myself on November 25 and 26, and December 1, 2 and 8, 1986. I was selected by mutual agreement of the parties to determine the definition of a "work area" as that term is used in Article 13 of the parties' First Collective Bargaining Agreement, specifically, Sections 13.02 - Work Schedules and 13.05 - Reassignments. Following the parties' submission of post-hearing briefs in support of their respective positions, I issued my Opinion and Award (hereinafter "Award") on

following the parties' receipt of my award and, if no agreement was reached within the sixty-day period, to submit their final offers within fifteen days to me for my resolution on a "best offer" basis. (Award pp. 70-72)

Consistent with my instructions, the parties met several times and attempted to reach a definition of "work area" for the employees of the several institutions covered by this dispute. Given the findings in the Award, and within the parameters set in that document, the parties negotiated the contractual language implementing the award for the four State agencies other than the Department of Rehabilitation and Correction. On August 31, 1987, a Memorandum of Understanding was executed covering the Department of Mental Health/Mental Retardation, Department of Youth Services, Ohio Veterans Home and Ohio Veterans Children's Home. This Memorandum of Understanding was a partial settlement of the work area dispute in the four above-named agencies; certain local issues involved in the resolution of the dispute remained to be worked out and I was asked to retain jurisdiction until January 15, 1988, to insure a complete settlement had been made. Presumably, since no further request for an extension has been made, the settlement of the work area dispute for the agencies other than for the Department of Rehabilitation and Correction is now final and complete.

For the Department of Rehabilitation and Correction, I defined "work area" quite differently from the definition for the other Departments. In "totally reject[ing] the Union proposal for a specific work assignment i.e., its 'Pick a Post'," I

adopted the Department of Rehabilitation and Correction's rotation system of work assignment. (Award p. 57) Specifically, I ruled:

> ... I find that a rotation system involving work assignment at a particular post for a six month period with rotation through the four distinct types of job areas indicated to exist by [Department of Rehabilitation and Correction Director Richard] Seiter, over a two years period, would give full play to the needs of Management while eliminating "slow rotation" and the abuse of power by representatives of the Employer. (Award p. 57)

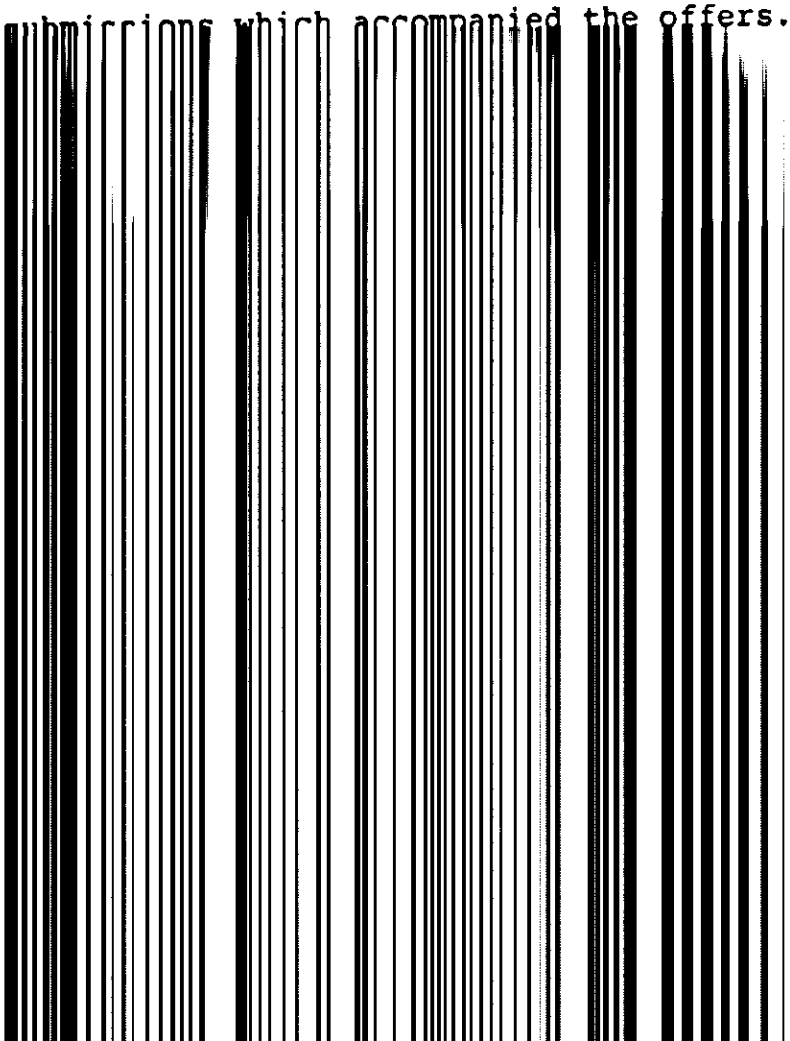
As was done with the other Departments, parties were directed to meet to negotiate specific contractual language directed at implementing the rotation system for the Department of Rehabilitation and Corrections. I stated:

> "The four (4) different types of work area are to be defined by the Parties and the rotation shall include one (1) job assignment in each over the course of two (2) years. The physical work area is defined as the entire institutional facility to which an employee is assigned on a regular basis, consistent with the State's proposal. (Award p. 71)."

However, the parties were unsuccessful in their attempts to negotiate the implementation of the Award as to this particular Department. Accordingly, the parties submitted a last best offer and extensive briefs and exhibits to me on September 4, 1987, and requested that I select and adopt the offer I found most consonant with the purport of the Award.

After receipt and careful review of the extensive submission of each party, I concluded that the respective offers were extremely close in their general scheme, although there were clearly substantial and important differences between the final

offer of the Union and the State. After discussion with the representatives of the parties, I determined that it would be useful and beneficial to remand the dispute to the parties for further collective bargaining. The parties thereupon requested that I serve as a mediator at a collective bargaining session scheduled for January 8/9, 1988, which was conceived to be a final attempt at a negotiated settlement. However, during the course of preliminary and informal discussions prior to the scheduled negotiations, the discussions broke down and the parties agreed that I should resolve the matter based on the last best offer of each submitted in September, 1987, and any submissions which accompanied the offers.



leaves open virtually the entire question for local negotiations. The Employer does concede, however, that its offer is to some extent inconsistent with the testimony of Employer witness and Department Director Seiter, since he had testified that the four (4) major, programmatic areas of rotation could be housing, non-contact areas, industrial program areas, and inmate accountability. Management insists that such a rotation is impossible, since 50% of the potential positions to be rotated

The Union also stresses that the State, both in its post-Award discussions with it, and in its final offer, has retreated from the testimony of Director Seiter given at the arbitration hearing. The State's representatives have taken the position that it would not be possible to come up with four (4) distinct types of work which would be roughly equivalent in terms of the employee complement needed to perform each type of work. Management has continued to categorize the work areas based on geography; it is clear, of course, that housing constitutes fifty (50%) percent of the possible work assignments. As long as Management does not recognize stress as the crucial determinant for work assignments, it could not follow my directive for assigning of a four (4) part rotation, since it would be "unworkable".

The Union emphasizes, however, that the directive in the initial Award was to have a specific post assignment for each six (6) month's rotational period, and that the key distinction was stress level, and not physical location. The Union argues that its plan for negotiating placement into the three (3) stress categories most closely reflects the determination that a particular assignment for an employee for six (6) months is appropriate, and that employees should be rotated among most and least desirable positions in an even-handed and structured way pursuant to clear standards. To the Union, its proposal is most closely in line with my directives, and also most satisfactory from the prospective of the bargaining unit employees who will be most closely affected by its terms.

Accordingly, the Union contends that its last best offer should be adopted by this Arbitrator.

IV. DISCUSSIONS AND FINDINGS

The Union's proposal on work areas recognizes that each facility is unique and particular stress levels for particular jobs in each institution must be separately determined. The Union's proposal on work areas reflects the need for local negotiations at each facility within certain parameters. These parameters are that the work areas shall be divided according to three (3) stress levels. The general thrust of the system results in an individual correction officer being required to spend no more than one (1) six month period out of every eighteen months in a high stress position.

The other aspects of the Union's proposal relate further to local work area negotiations and the flexibility provided for both sides under that system. Moreover, the Union proposal on rotation requires a joint labor-management effort to devise implementation language, with direct access to arbitration in the event the parties cannot reach agreement. The Union emphasizes that this proposal is completely in line with that agreed to by the parties in the other four State agencies. The Union proposes that the relief rotation occur within each discrete work area, so as to present the subversion of the distinct areas through institution-wide transfer of relief employees. Last, the Union proposal concerning new correctional facilities is that negotiation similar to that in the existing facilities occur.

Therefore, the proposal provides necessary safeguards against Management abuse and a resolution process identical to what the State agreed to in the other agencies, and consistent with the methodology or procedures in the current proposal for existing institutions.

Management, on the other hand, contends that its proposal recognizes the actual manner in which jobs are categorized and work is done in the existing correctional institutions while at the same time recognizing stress as one factor to be considered in work assignments. It points out that the four designated zones of rotation - Housing A, Housing B, Non-Housing and Relief, each comprise approximately 25% of the post assignments in each institution. Although Housing A and Housing B are not specifically defined due to the differences between the various institutions in their housing composition, it stresses that Section 7 of the Department's Final Proposal provides for discussions at the local level concerning these specific designations. Non-housing comprises another 25% of each institution's post assignments. Once again, the local labor-management committee would accomplish specific job assignments through negotiations using stress as one factor. If agreement could not be reached, Management would make assignments in each zone. Should changes in assignment occur for an individual, however, direct access to the grievance procedure could immediately occur. The Employer objects to the Union proposal which would permit grievances over <u>any</u> deadlock of the local labor-management committee, as effectively breaking this

arbitration up into small, local arbitrations to relitigate on an individual or local basis the issues involved in this current dispute. The Employer reasons that the Arbitrator rejected the seniority principle and gave Management discretion to assign correction officers at each institution, subject to the development of clear and fair standards. Its proposals satisfy this determination, without multiplying negotiations or transferring the issues that were to be resolved by the Arbitrator to each correctional facility.

In this case, the evidence presented clearly demonstrates that Director Seiter's testimony was not completely accurate when he suggested the four rotational groupings adopted by the Arbitrator. The proposals presented by both Union and Employer reflect the fact that my general outline was impractical and could not be effectuated in precisely the manner set out in my Award. However, the other determinations I made in the initial Award are still controlling. Thus, my rejection of the seniority principle or "Pick a Post" still stands. Moreover, a reservation of some discretion in the Employer to assign work duties in the paramilitary organizational structure must be recognized. A need for rotation that provides a mix of experienced personnel and opportunities for training is also required. However, as I noted, an individual job post and some consideration for the different stress levels of the jobs involved also must be built in to any fair system of rotation so as to comport with my Award.

The Union's final proposal obviously emphasizes the categorizing of jobs by stress level. In fact, that is the

only criterion on which the Union divides jobs within the universe of positions to be rotated. The Union structures the rotation based on a negotiated determination as to what constitutes a high-stress job, medium-stress and a low-stress position. Assignments are to be made on that basis, rather than geographic or physical location or concerns for training, security or a mix of experienced and inexperienced personnel. Placement of each particular job is to be done by local committee, and if impasse is reached, the logjam is to be opened by another foray to arbitration for each particularized grievance. For any specific six month period, an individual corrections officer does obtain an assignment to a specific job post under the Union plan.

That last point - a particular job for an individual during each rotational phase - was one of the requirements set out in my initial Award in this case. However, the final best offer is not to be evaluated solely in terms of one item, but as to which offer, on an overall basis, most closely comports with the requirements of my decision.

In this case, I believe that breaking the rotation down solely by stress level negates other obviously important factors. First, work area does have some relationship to the physical or geographic realities of each facility. Second, training needs, control of inmates, overall efficiency, and a mix of experienced and less-experienced personnel also are important factors in work assignment, although the stress level of each particular job has some bearing on a sensible rotation schedule. It is to be remembered, however, that Management's proposal for an A-Housing

and B-Housing unit recognizes differences in stress and attempts to accommodate those differences. Moreover, the remaining two rotational groupings also factor in stress, in Management's final offer. Most important, the offer does provide for completion at some point of the process, rather than negotiations being effectively transferred to local facilities, with a repeat of this arbitration being possible, only multiplied by an unspecified factor of however many disputes result from the parties remaining at loggerheads. I do not believe, in this case, that the Union's proposal really solves the problem of work area; instead, I believe it merely fractures it into many more parts of equal difficulty.

Therefore, I adopt Management's final proposal. It is my understanding that as to the definition of the term "work area" contained within Section 1 of the Department's proposal, the parties reached agreement. With regard to Section 2 of the Department's proposal, the Department has designated four zones of rotation - Housing A, Housing B, Non-Housing and Relief - which each comprise approximately 25% of post assignments for each institution. Although Housing A and Housing B are not specifically defined due to the differences between the various institutions in their housing composition, Section 7 of the Department's proposal provides for discussions at the local level concerning these specific designations. For example, institutions with larger populations that are stratified according to security levels, will divide their housing assignments between Housing A (more stressful, maximum security)

and Housing B (less stressful, minimum security). The smaller and newer institutions, with more general inmate populations, will simply divide their housing assignments by means of a mathematic or geographic formula using housing units. However, it is my understanding that under the Department's final proposal, Housing A will always include those segregated housing units such as Administrative, Disciplinary and Protective Control facilities. Housing B would always include the less stressful honor camps.

Section 4 of Management's offer, of course, clearly gives Management the ultimate right to assign an employee to a post assignment for a six month period. The Section does require a particular post assignment; the precise selection of who goes to what spot, clearly, is left with Management. Such assignments are not contrary to my initial Award. Moreover, the Department has voluntarily restricted its own ability to make assignments in at least two ways. First, the Department will only change an employee's post assignment prior to the end of a six month rotation period for "good management reasons." Second, prior to making any such change, the Department will notify the employee, and his or her union representative if she or he desires, of the reasons for the assignment change. Most important, any reassignment which the employee believes is not for "good management reasons" is subject to the grievance procedure.

Therefore, although the crucial discretion to make the original assignment is vested with the Employer, arbitrary

changes are prevented. The Union, of course, would have liked to have stress level rather than the other factors set out above as also involved in work area assignment to be the sole determinant for the initial post selection. My prior Award, however, determined that Management was permitted to have the discretion to ultimately delineate the precise placement of jobs within the four rational areas, after negotiations betwen the Local Labor/Management Committee, as long as standards were imposed which would limit the potential for abuse. Management's offer meets that test. I so hold.

Other aspects of the final proposal generally are no different from the Union proposal, except for Section 8, which does specifically reference the BFOQ question. I agree with the Department that Section 8 is necessary, in recognition of the Department's duty to protect the privacy and security concerns of inmates and to hire staff in maximum and close security institutions. The Section reflects a consent decree in the McDowell Sex Discrimination Litigation, a copy of which was supplied to the Arbitrator. Given the complex privacy issues recognized in the litigation involving the Department, I believe the inclusion of this provision is entirely understandable and justified.

For the reasons set forth herein, and in accordance with the standards provided in my prior Award, I select the Department's final proposal as most closely comporting with the requirements of my initial Award. I so find.

VI. AWARD

The Department's final proposal, attachment A to this Award, shall be adopted.

ELLIOTT H. GOLDSTEIN

ATTACHMENT B

UNION FINAL OFFER

A. Work Areas

Within thirty (30) days of this agreement, the local OCSEA Chapter President and up to two additional representatives, along with an OCSEA Staff Representative(s), shall meet with Management at each Correctional facility to negotiate the specific work areas through which the employees will be rotated.* It is the goal of the parties to resolve any work area disputes in these local negotiations. The work areas shall be divided up according to stress levels. That is to say, one work area shall be the lowest level of stress, another medium stress, another high stress, etc. There shall be three different work areas at each facility, unless mutually agreed upon to have some other number of work areas.

If agreement cannot be reached at such negotiations, the following procedure shall be used for the resolution of those work areas in dispute. Within forty-five (45) days of the signing of this memorandum, local officials from the appropriate facility and OCSEA Staff will meet with representatives from the Department of Rehabilitation and Corrections and the Office of

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*The definition of specific work area for rotational and staffing purposes shall exclude those positions which the parties previously have agreed to be in the category of Special Duty. These Special Duty positions shall continue to be staffed in accordance with the Letter of Understanding dated October 16, 1986 (copy attached).

Collective Bargaining in a good faith effort to resolve the remaining work area disputes.

In the event the parties cannot agree, the Union may grieve such work area changes utilizing the applicable provisions outlined in Article 25.07 and Article 25.10 of the collective bargaining agreement.

Special Duty shall be treated as a fourth shift, as per the written agreement between the State and the Union set forth in the October 16, 1986 letter.

B. Rotation System

Employees, excluding those in Special Duty assignments, shall be assigned one job assignment (for example, Cell Block C) within one of the locally negotiated work areas (as per Section A above) for a period of six months. At the end of six months, employees shall rotate to the next work area where they will be assigned one job assignment for the next six months. In order to provide for a staggered rotation so that each work area does not have a complete turnover of personnel every six months, fifty percent (50%) of the employees in each work area shall rotate (for the first time only) after three months. The remaining fifty percent (50%) will then rotate at the end of six months. Thereafter, all employees will rotate at the end of their six months served in the work area. The rotation schedule shall not affect the employees' shifts or days off. Furthermore, all employees shall go through the same rotation schedule, that is to say, if the

rotation goes from area 1 to area 3, to area 2 and back to 1, etc., then all employees shall rotate in that order. The specific rotation system, within the parameters set forth above, shall be devised at the local negotiations described in A above. Furthermore, if resolution cannot be reached at these local negotiations, the resolution procedure shall be the same as set forth in A above.

Employees in special duty assignments shall rotate every six months amongst the employees in special duty assignments. It is noted that in some instances Special Duty rotations may affect the employees shift or days off; however, the employer will make every effort to minimize this. If it becomes necessary for more than one employee's shift or days off. to be changed, the more senior employee(s) would retain his/her shift and days off provided he/she has the skills and abilities to do the job.

C. Relief

Within each work area, there shall be a reasonable number of relief positions utilized for the sole purpose of relieving positions within that work area only. The use of relief positions shall not exceed the current level of relief positions and shall not result in the reduction of currently filled positions unless mutually agreed to by the parties. A set number of "pure" relief positions to be used throughout the facility may be established, but only through mutual agreement between the Union and Management. It is further stipulated that no employee

shall be placed in a relief position for more than six (6) months in a one-year period.

D. Shift Canvassing

Within thirty (30) days of the completion of the local negotiations (as outlined in A above), each facility shall canvass employees as to their shift and days off preference as per the Collective Bargaining Agreement and the October 16, 1986 letter on the subject.

E. Integrity of the Work Areas

Management shall not change the make up and basic nature of the work areas so as to subvert the distinctness of the areas or the rotation system (as agreed upon at the local negotiations outlined in A above).

F. Allen, Madison, Dayton and Ross Correctional Facilities

At Allen, Madison, Dayton and Ross Correctional facilities, there shall be a second round of local negotiations to determine the work areas and the specific rotation system at the facility. These negotiations shall begin within thirty (30) days of the facility becoming fully operational. If agreement cannot be reached during these negotiations, the resolution procedure set forth in A above shall be used.

G. Work Area Negotiation Procedure for New Correctional Facilities

In the event Management constructs new facilities in addition to those addressed above, it shall provide timely notice to the

OCSEA Executive Director. Such notice shall be provided no later than thirty (30) days after staffing of the facility begins. Within sixty (60) days of this notice, the local negotiations team will take place and discuss the new work areas, as well as the rotation system at the facility. At these negotiations, there shall be three Union Representatives, plus the OCSEA Staff Representative(s). If agreement cannot be reached, the Union may grieve such work area changes utilizing the applicable provisions outlined in Article 25.07 and Article 25.10 of the Collective Bargaining Agreement.

ATTACHMENT A

DEPARTMENT'S FINAL PROPOSAL

DEPARTMENT OF REHABILITATION AND CORRECTION
WORK AREA ROTATION

Section 1 - Definition

"Work Area" in the Department of Rehabilitation and Correction shall be defined as the entire institutional facility to which an employee is assigned on a regular basis.

Section 2 - Rotation

The Department of Rehabilitation and Correction, being a "paramilitary organization," and bound to provide a "unique public service," shall rotate all employees through four areas of assignment as follows:

Zone 1 - Housing A
Zone 2 - Housing B
Zone 3 - Nonhousing
Zone 4 - Relief

Bargaining Unit 3 employees shall rotate once every six months. The Employer shall devise a rotation system whereby approximately 50% of the employees will rotate on one rotation schedule and the remaining 50% (approximately) of the employees will rotate on another rotation schedule. The intent is to develop a rotation which provides for a blend of employees new to a zone, with employees who are familiar with the zone assignment. Employees should normally work in each of the four zones over a two-year period; however, the rotation need not be consecutive in nature, e.g., employees may rotate from Zone 1 to Zone 3 to Zone 2 to Zone 4. Each individual institution shall establish a rotation system that complies with this article.

Section 3 - Special Duty/Canvass Procedure

"Special Duty" is defined as any post not assigned to first, second, or third shifts.

Each institution has developed a list of special duty posts which are considered a separate shift and outside the rotation system set forth above. Special duty posts shall be filled in accordance with a shift canvass conducted in accordance with the rotation negotiations. The procedure for the canvass and subsequent rotation will be the same as the procedure outlined in the October 16, 1986, letter from Deputy Director Seidler to Russell Murray, Executive Director, OCSEA Local 11, AFSCME, AFL-CIO (a copy of which is attached hereto).

The Labor/Management Committee shall, within 30 days of this agreement, analyze the effectiveness of the existing rotation schedule in the special duty assignments and suggest methods to address individual concerns with respect to special duty

rotations. The Employer recognizes the legitimate desires of special duty employees not to have changed hours of work and/or "good days' as part of the rotation system. The Employer will endeavor to minimize these changes.

Once the canvass is complete, employees may exercise their bid rights into or out of special duty not more than once in a 12-month period.

Section 4 - Post Assignments/Shifts 1, 2, and 3

The Employer shall canvass each institution in accordance with the procedure outlined in Section 3 above within 30 days of the execution of this agreement. Employees will exercise their institutional seniority rights to select their shift preference and their days off.

Upon completion of the canvass, the Employer shall assign each employee a particular post assignment. The Employer may change an employee's post assignment prior to the end of the six-month rotation for good management reasons. Prior to making such a change, the Employer shall state the management reasons to the employee in private, or in the presence of a union representative at the employee's option. The employee may grieve such post assignment changes in accordance with Article 25, Grievance Procedure, contained in the negotiated agreement between the State of Ohio and OCSEA/AFSCME, Local 11, AFL-CIO.

Section 5 - Relief Assignments

"Relief is defined as a zone made up of post assignments subject to daily reassignment based on the operational needs of the Department.

The employees who are assigned to relief posts in Zones 1, 2, and 3 shall normally work within the zone they are assigned for the six-month rotation. These relief assignments are designed to cover for "good days off" and scheduled absences.

The employees who are assigned to a relief post in Zone 4 may be assigned to work anywhere in the institution. These relief assignments are designed to cover for unscheduled absences, emergency transportations, union leave, and other such coverages that require having as much flexibility built into the rotation schedule as possible. Within the ability to meet operational needs, relief assignments in Zone 4 will be rotated through Housing A, Housing B, and Nonhousing during a six-month rotation period.

Section 6 - Rotation Rights

Employees exercising their seniority rights by bidding on an opening in a shift other than the one they currently work, which thereby takes them out of their scheduled rotation, waive their

opportunity to work in each of the four zones within a two year period.

Section 7 - Local Implementation

The local labor/management committee at each institution shall meet within 30 days of the effective date of this provision to discuss the implementation of the rotation system outlined herein. After such discussion, each institution shall determine the zone assignments, provide the local union with a copy of the zone assignments and post a copy of the zone assignments for employees to read.

The Employer will notify a representative designated by OCSEA Local 11, AFSCME, 90 days prior to the opening of any new institution. The parties agree to establish a representative labor/management committee to meet and discuss the implementation of a rotation system for the new facility. After the zone assignments are made, the Employer shall provide a copy to OCSEA, Local 11, AFSCME and shall post the assignments at the new institution as soon as reasonably possible.

Section 8 - Privacy and Security Considerations

In accordance with the pending resolution of the McDowell sex discrimination litigation (a copy of the proposed settlement is attached), the parties recognize the obligation of the Employer to hire female staff in Unit 3. The parties further recognize that the legitimate privacy and security concerns must be met. Therefore, the parties acknowledge that this Agreement will have to be adjusted by the Employer in maximum and close security institutions to meet these privacy and security concerns which result from this settlement.

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SETTLEMENT AGREEMENT

For the purpose of settling all class issues in the action styled McDowell, et al. v. Celeste, et al., Civil Action No. C-2-77-13, currently pending in the United States District Court for the Southern District of Ohio, the parties to this action, through counsel, adopt and agree to the following provisions, which they intend and expect to be entered, upon approval by the Court, as a Final Decree and Order:

I. PREAMBLE

A. This case is an employment discrimination class action under Title VII and Section 1983 in which female job applicants for the position of correctional officer challenge the Ohio Department of Rehabilitation and Correction's ("DRC") bona fide occupational qualification policy (the "bfoq policy") regarding work and duty assignments of correctional officers in Ohio's all-male adult penal institutions. This action was instituted on January 6, 1977, and, on August 1, 1978, was provisionally certified as a class action involving both alleged race and sex discrimination. Subsequently, in an order entered September 10, 1985, the Court decertified all classes except a class of female job applicants denied employment positions because of DRC's bfoq policy. On November 20, 1986, the Court, with the agreement of the parties and pursuant to 28 U.S.C. Section 636(c)(1), referred all bfoq issues to Magistrate Mark R. Abel for disposition. This Settlement Agreement concerns only those matters that remain certified as a class action and that were

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referred to the Magistrate for disposition; this Agreement has no effect upon any other issues in McDowell v. Celeste. The issues referred to Magistrate Abel for final disposition will be referred to as the "class claims" or the "class action."

B. The Parties have entered into this Settlement Agreement to resolve the discrimination claims of the female applicants for employment as correctional officers. The Settlement Agreement provides for a broadening of job opportunities for the Plaintiff class in close and maximum security institutions, establishes hiring goals for maximum,close, minimum and medium security institutions, and provides injunctive relief, and authorizes compensation for the victims of past discrimination. The Settlement Agreement envisions a four year transitional period which will permit the introduction of a specified number of female correctional officers into maximum and close security prisons and retains discretion in job assignments with the Defendants over this period. It includes a recognition by the Plaintiffs that during this transitional period the Defendants will be free to exclude female correctional officers from housing unit assignments in maximum and close institutions. Finally, it provides both parties, at the close of the four year period, with the opportunity and right to seek modification of the terms of this Settlement Agreement on issues involving the assignment of female correctional officers in maximum and close security institutions.

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C. Pursuant to the Order of the Court, entered March 5, 1981, this class action is limited to claims of female applicants for correctional officer positions which arose subsequent to August 8, 1975. From 1976 through 1986, the bona fide occupational qualification (bfoq), received three different formulations which affected the employment rights of female applicants. The initial formulation, implemented in 1976, essentially limited the opportunities for female applicants in male prisons to visiting room and mail room assignments. The second formulation, implemented in June 1985, opened approximately twenty-three percent (23%) of the correctional officer positions at male facilities to female applicants. Under the second formulation, limited non-contact and perimeter correctional officer positions were opened to female applicants in some of the prisons; women were excluded from all housing positions. With the exception of positions in the mail and visiting rooms, women were excluded from maximum security institutions. A third formulation was implemented in December 1986. All restrictions on female correctional officer assignments were removed in medium and minimum security institutions; in maximum and close security institutions females continued to be assigned to the visiting and mail room areas only. The specific bfoq formulations were received into evidence at trial as Defendants' Exhibits 1, 2, and 3.

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D. The Plaintiff class in the instant case comprises all female applicants for the position of correctional officer denied positions by Defendants because of the bfoq formulations whose claims arose no earlier than August 8, 1975 (Orders of March 5, 1981; September 10, 1985; January 14, 1987). For purposes of achieving a complete remedy, the class membership shall also include all female applicants for employment as correctional officers during the four year period ("transitional period") after approval and adoption by the Court of this Settlement Agreement. The Plaintiff class also will be referred to as "Plaintiffs" or "the class."

E. The Defendants to the class claims comprise: the Department of Rehabilitation and Correction ("DRC") and the all-male adult penal institutions under the administration of DRC; Richard Celeste, Governor of the State of Ohio; Richard Seiter, Director of DRC; and the Superintendents of the Defendant penal institutions during the period of time covered by this action.

F. This action was tried to the Court, United States Magistrate Mark R. Abel presiding, from January 20, 1987 to February 25, 1987. Both sides completed their presentation of witnesses and introduction of exhibits. The Plaintiffs however reserved the right to call an additional expert, George Sumner. Both parties have reserved the right to object to the introduction of certain evidence and materials into the record; subject to the provisions of the Settlement Agreement. Both sides have deferred

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acting on these objections, and Plaintiffs are not currently exercising their right to call their additional expert in light of this Settlement Agreement. The parties agree that in the event either side exercises their right under the terms of this Settlement Agreement for review or modification, the record made in these proceedings before the Magistrate will be available to support such motion and at that time any objections and rights which the parties have reserved and not exercised in light of the Settlement may be renewed.

G. After extensive discussions between counsel for the class and Defendants over three months, the parties have entered into this Settlement Agreement to expressly settle all issues between the class and Defendants. The parties intend this Agreement to be a full and complete settlement of all issues between the class and the Defendants. The parties further intend and agree that the remedial actions set forth in this Agreement are to be the complete remedy for any discrimination that the class may have suffered as the result of any actions by the Defendants.

H. In entering into this Agreement, the parties contemplate that the remedy set forth in Parts III, IV, and V will be implemented within the specific time periods set forth within this Agreement upon adoption by the Court. This period is referred to by the parties as the "transitional period," the conclusion of which shall terminate this class action subject to the right of both parties to first seek review or modification of the terms of

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this Agreement as provided in paragraph E of Part III. For purposes of enforcing this Agreement and Order and establishing the obligations of the Defendant, one year from the date of the Court's adoption of this Agreement shall be referred to as "the first anniversary"; the second year shall be referred to as "the second anniversary" and so forth, with all such dates being referred to collectively as "anniversary dates."

I. During this transitional period, Defendants will implement an employment policy ("transitional employment policy") to remedy past discrimination which will include numerical goals, as set forth in Part III, for maximum and close security institutions. Also, as set forth in Part V, during this period, Defendants will meet minimum hiring goals for medium and minimum security institutions. Further, as set forth at Parts III and V, newly constructed institutions also will meet minimum hiring goals when they open.

J. The parties contemplate that this Agreement will be entered as an Order by the Court after a hearing has been conducted on its fairness. Entry of this Agreement as an Order by the Court shall be the starting date of the various time periods set forth below, and will be referred to as "the effective date of the Order." Although the parties recognize that this Agreement may be

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modified in light of the hearing on its fairness, the parties have agreed to this settlement in the expectation that it will be entered as an Order, and believe this Agreement to be fair to all parties, administrable, and complete.

II. THE BASIS FOR THE AGREEMENT

A. The parties agree that institutional security, inmate privacy, the relationship between the two, and equal employment opportunities can be legitimate bases for a female correctional officer employment policy in Ohio penal institutions. The parties further agree that any restrictive female employment policy must be narrowly drawn so as to have minimal impact upon the equal employment rights of females desiring employment as correctional officers.

B. The Defendants admit that from 1975 until the present, the various bfoq formulations were unnecessarily restrictive of the employment rights of women, and adversely affected female applicants for positions as correctional officers.

C. The parties have entered into this Settlement Agreement in order to permit the introduction of a specified number of female correctional officers in maximum and close security institutions

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over the next four year period and to provide a remedy to those who have been unlawfully discriminated against as a result of the various bfoq formulations.

D. The policy changes set forth below will bring about a significant expansion of equal employment opportunity for women. Previously restricted assignments will be opened to female officers in maximum and close security institutions. In addition, at least fifteen percent (15%) of the correctional officer positions in medium and minimum security institutions will be held by female correctional officers within three years of the adoption of this Agreement.

E. This Agreement is to be considered valid and in compliance with Title VII and §1983 for the duration of the transitional period identified herein. However, nothing contained in this Agreement may be used in the review of the employment practices that is available as an option as described at Part III, paragraph E after the completion of the four-year transitional period, and the Agreement itself may not be used to the prejudice of either party. This Agreement neither confers validity on or makes any conclusion regarding the legal effect of the restrictions contained herein nor does the presence of an option in the Agreement for further review infer invalidity of the employment policy during the transitional period.

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However, Plaintiffs and the Plaintiff class agree that they are precluded from challenging the validity of any restriction contained herein on the employment of women in maximum and close security institutions during the duration of the four year transitional period. The parties agree to jointly move the Court to Order the implementation of the transitional employment practices described herein and to enter a finding that the female correctional officer employment policy during the transitional period complies with Title VII and §1983 unless the Court would modify the policy pursuant to Part III, paragraph E of this Agreement.

F. Entry of this Agreement and Order by the Court shall repeal the existing policy of the Defendants as set forth in Exhibit 3, policy order of December 15, 1986, and shall be replaced by the terms and provisions of the employment policy set forth herein.

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III. FEMALE CORRECTIONAL OFFICER EMPLOYMENT POLICY ("EMPLOYMENT POLICY") DURING TRANSITIONAL PERIOD

A. Maximum Security Institutions.

1) Southern Ohio Correctional Facility

At Southern Ohio Correctional Facility, (SOCF) DRC shall hire additional female correctional officers so as to insure that there will be no fewer than 24 female correctional officers employed at SOCF at the end of the transitional period. Additional female correctional officers shall be added to the seven (7) female correctional officers currently employed at SOCF, such that by the first anniversary date of the Court's Order there shall be no fewer than twelve (12) female correctional officers, by the second anniversary date no fewer than sixteen (16) female correctional officers, and by the third anniversary date no fewer than twenty (20) female correctional officers.

2) Mansfield Correctional Institution

At the new Mansfield Correctional Institution, DRC shall employ female correctional officers in such numbers so as to equal the ratio of females to total correctional officer staff as will be obtained at SOCF at the end of the transitional period. These female correctional officers shall be employed at the time the

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facility opens. Each female correctional officer currently employed at the Ohio Reformatory at Mansfield will be offered a position at the new Mansfield Correctional Institution or other adjacent facility.

3. Open Posts for Female Correctional Officers

With the agreed limitation as to the number of female correctional officers who are to be a part of the total correctional officer staff, all non-contact posts will be open to female correctional officers. In addition, some female correctional officers shall be assigned to work non-housing contact posts. The selection of the non-housing contact posts to be filled by female officers shall be committed to the discretion of the DRC.

B. Close Security Institutions

1. Marion and Lebanon Correctional Institutions

Within three years from the adoption of this Agreement, DRC shall have hired additional female correctional officers so as to insure that there shall be no fewer than twenty-eight (28) female correctional officers employed at each institution. By the first anniversary date, each institution shall hire no fewer than thirty-three percent (33%) of the difference between the current number of female correctional officers and a minimum number of

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twenty-eight correctional officers; by the second anniversary date, no fewer than sixty-six percent (66%); and by the third anniversary date, the minimum number of twenty-eight correctional officers shall be employed.

2. Warren and Lorain Correctional Institutions

At the new Warren and Lorain close security institutions, no fewer than 15% of the correctional officer positions shall be staffed by females at the time the facility opens.

3. Open Posts for Female Correctional Officers

The same standards for determing post assignments for female correctional officers shall apply to the close security institutions as to the maximum security institutions as contained in Part III (A)(3) above except that female correctional officers will be assigned during the transitional period to several additional specifically selected non-housing contact posts, including as examples recreation, transportation, clinic, and dining area.

C. All post assignments of female correctional officers under this Part III shall be subject to the existing collective bargaining agreement.

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D. No female correctional officer hired or re-assigned under this Part III will receive any form of retroactive seniority.

E. In recognition that this Agreement represents a settlement between the parties and establishes a transitional period for the increased utilization of female correctional officers under circumstances which vest broad assignment discretion in the DRC at maximum and close security institutions, each party reserves the right, at the conclusion of the transitional period, to move the Court for review or modification of the policy. The parties agree that any such motion must be made during the final three-month period of the four year transitional period. The parties further agree that any such additional review will be confined to the employment policy in maximum and close security institutions only, and the hiring goals, set forth in Part V(B) of the Agreement, will not be subject to further modification or review (except that the Court may determine, as set forth in Part V(G) of this Agreement, whether the hiring goals have been met and may, if it finds that the goals have not been met, modify Part V of this Agreement as appropriate to insure achievement of the hiring goals). Finally, to encourage flexibility and experimentation on the part of the Defendants in assigning female correctional officers to non-housing contact positions in maximum and close security institution, the parties agree that no presumption

favorable to the position of either party in this litigation shall be drawn from the absence or occurrence of any incident or threat to institutional security in connection with introduction of female correctional officers into maximum and close security institutions.

F. The terms and provisions of the employment policy for female correctional officers as contained in this Agreement shall apply to any new correctional institution and redesignation of any existing institution from a minimum or medium security level to a close or maximum level, and vice versa. Before the opening or redesignation of any institution, DRC shall inform the Court and the class by filing a description of the new or redesignated institution sufficient for the Court to determine the basis of DRC's security level(s) designation(s). In the event of the redesignation of an institution to a close or maximum security institution, each female correctional officer then employed at such an institution will be retained as a correctional officer or offered a position at an adjacent facility.

IV. MINIMUM AND MEDIUM INSTITUTIONS

A. There shall be no gender based discrimination in the eligibility and selection of individuals for correctional officer positions in minimum and medium security male institutions. Assignments shall be open to female correctional officers except

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for those positions where a substantial and primary task of the assignment is to conduct pat downs or strip searches. Those assignments may be reserved for only male correctional officers. Also, DRC shall maintain the discretion to assign both male and female correctional officers in such a manner as to maintain a gender balance.

B. The provisions contained in paragraphs C and D of part III apply to female correctional officers' post assignments and seniority at minimum and medium institutions.

V. HIRING GOALS

A. For the purpose of remedying any discrimination that may have occurred in connection with the past bfoq formulations, Defendants agree to attain the following hiring goals for female correctional officers.

B. At all medium and minimum security institutions, DRC will set and achieve hiring goals so that no less than 15% of total correctional officer positions shall be held by females at the end of the third anniversary of the Order of the Court. At each of these institutions which, on the effective date of this Order, less than 15% of the total correctional officer staff is female, a minimum 33 1/3% of the difference between the existing complement of female correctional officers and the number represented by 15% of the total correctional officer staff will be attained on each

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anniversary of the effective date of this Agreement. An institution at which females comprise 15% or more of the total correctional officer staff on the effective date of the Court's Order shall not be subject to this Part V so long as it retains this minimal level of female correctional officer employment. The parties agree that the 15% hiring goals shall be applied on an institution-by-institution basis. The following institutions currently are in compliance with this provision: Allen Correctional Institution, Dayton Correctional Institution, Hocking Correctional Institution, Madison Correctional Institution, Orient Correctional Institution, Pickaway Correctional Institution, and Ross Correctional Institution.

C. At the new medium and minimum security institutions which are currently not operational, no fewer than 15% of the correctional officer positions shall be staffed by females at the time each facility opens.

D. DRC agrees to promptly file with the Court and provide a copy to Plaintiffs' counsel EEO reports in a form deemed adequate by the Court for the purpose of monitoring compliance with the hiring goals set forth in this Settlement Agreement.

E. DRC agrees that any member of the Plaintiff class will be subject to priority hiring as a correctional officer who establishes with the Court by any of the three criteria contained in paragraph F of part VI that she applied and was rejected for

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employment prior to the change in the bfoq policy in 1985, to the following extent: if any group of three applicants certified for hire includes a member of the Plaintiff class under the "rule of three", as described in Ohio Admin. Code Sections 5120-7-09 or 5120-7-10, that member of the Plaintiff class will be hired in preference to the other applicants comprising the group so long as she meets then existing hiring requirements. However, all members of the class who applied for employment at Southern Ohio Correctional Facility and can establish with the Court that they met the three criteria contained in paragraph F of Part VI are eligible for priority hiring through the date of the adoption of this Order by the Court. To receive priority, any member shall inform the personnel officer at the institution to which she makes application for employment in writing of her eligibility to receive priority.

F. In the event that DRC fails to attain any of the hiring goals set forth in Part V, paragraph B, at any particular institution, the parties recognize that there may be legitimate, non-discriminatory reasons for this failure. In such an event, DRC shall promptly file a statement of explanation with the Court setting forth reasons and supporting evidence. It shall be Defendants' burden to demonstrate that such legitimate, non-discriminatory reasons exist.

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G. At the end of the third anniversary of tne Order of the Court, the Court shall determine whether the goals set forth in this Part V have been met. In the event that Defendants have failed to attain the hiring goals at any institution or institutions and fail to carry their burden of explanation and proof as set forth in paragraph F, the Court shall issue an appropriate order to insure achievement of the hiring goals at any affected institution.

VI. COMPENSATION OF CLASS AND ATTORNEY'S FEES

A. Defendants agree to pay into the registry of the Court the sum of 3.75 million dollars ($3,750,000.00, the "funds"). Plaintiffs acknowledge that this sum constitutes the complete settlement of all claims that the Plaintiffs in the bfoq action have for back pay, attorneys' fees, and costs, but this shall not preclude Plaintiffs' attorneys from making an application for additional attorneys' fees for work performed if they should establish that the terms and provisions of this Agreement have been violated by the Defendants and/or if the Court should order a modification of the female correctional officer employment or assignment policy of DRC in maximum and close security institutions at the end of the transitional period as provided by paragraph E of Part III.

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B. The distribution of these funds shall be administered by Plaintiffs' counsel under the supervision of the Court. Counsel for the Plaintiffs shall prepare a proposal for the distribution of funds, including schedules for submissions of claims, written proofs of claims, and proposed notice to the class. Except as provided in paragraph D of this Part VI, Defendants shall have no responsibility or obligations in connection with the administration of or distribution of the funds. However, in their discretion, Defendants may respond to or oppose Plaintiffs' proposals or otherwise move the Court in connection with the administration or distribution of the funds.

C. Plaintiffs' counsel are entitled to an award of reasonable attorneys' fees and costs. Plaintiffs' counsel shall apply to the Court for an award of reasonable attorneys' fees, compensable litigation costs, Court costs, and any other sums incurred in the course of or in the conduct of this litigation. The Court shall award reasonable attorneys' fees and costs.

D. Defendants may apply for reimbursement from the funds for the costs of notice to class members.

E. Back pay shall be distributed to members of the Plaintiffs' class who applied for and were rejected for the position of correctional officer subsequent to August 8, 1975 pursuant to the criteria set forth below. Primary back pay consideration shall be given to class members who applied and were

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rejected for positions as correctional officers prior to the change in the bfoq policy in 1985 (Defendants' Exhibit 2). Secondary consideration shall be given to class members who applied and were rejected for correctional officer positions from the effective date of the 1985 bfoq policy through the third formulation in December 1986. All class members who meet the eligibility criteria set forth below in Part VI (F) and (G), and applied for positions at the Southern Ohio Correctional Facility between August 1975 and the approval by the Court of this Agreement as an Order shall be entitled to back pay.

F. Back pay shall be dispensed from the funds deposited in the registry of the Court to each member of the Plaintiff class who can establish any of the following:

1) Her name appeared on a certification list for the position of correctional officer and she was not selected for a position at or about the time that the name appeared on the list.

2) She applied for the position of correctional officer and was not selected for that position at or about the time of the application.

3) She contacted an institution about work as a correctional officer, but was told that because of the existence of the bfoq she was ineligible and/or could not apply.

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G. Each claimant shall furnish reliable information that during the period or periods of time for which she claims backpay, she resided within the state of Ohio and was eligible, according to the minimal requirements established by law, to be employed as a correctional officer. In no event shall any individual member of the class be awarded backpay for more than a total of six years. In addition, any wages, earnings, disability compensation, or unemployment compensation received by any claimant during the period for which she claims entitlement to backpay shall be deducted from any backpay award.

H. A notice, attached to this Agreement as Exhibit A, will be sent to members of the Plaintiff class. Failure of the Exhibit to be prepared or attached at the time of the execution of this Agreement, however, shall not be considered material to the validity of this Agreement.

I. Upon receipt of all written claims, Plaintiffs' counsel shall make a report and recommendation to the Court regarding the merits of these claims and shall propose a final distribution of funds as back pay and to cover reasonable costs of administration of the claims procedure. Plaintiffs' counsel's report shall be filed with the Court within thirty (30) days from the last day on which members of the Plaintiff class will be allowed to submit their claims. Any monies remaining in the registry of the Court after payment of proven claims for backpay and reasonable costs for administration shall be returned to DRC. In the event that claims

for backpay and reasonable costs of administration, after payment of attorneys' fees and costs, exceed the fund on deposit in the registry of the Court, the Court shall, after recommendation of Plaintiffs' counsel, order equitable apportionment of these funds among the various claims.

J. Defendants agree to make available to the Plaintiffs' counsel such information in their possession as is necessary to evaluate individual claims, or in the alternative, make the records containing this information (as they are kept in the ordinary course of business) available to Plaintiffs' counsel. All requests for information by members of the Plaintiff class that are made to Defendants shall be referred to Plaintiffs' counsel. If any member of the Plaintiff class wishes to substantiate any claim for back pay through the testimony of an employee or agent of Defendant, Plaintiffs' counsel agree to allow such employee or agent to testify by way of deposition or, at the discretion of Plaintiffs' counsel, by affidavit. If Plaintiffs wish to use the testimony of an agent or an employee to establish backpay for more than one member of the class, Plaintiffs' counsel will consolidate all depositions of such agent or employee into one proceeding.

K. All materials submitted to the Court by Plaintiffs' counsel under the terms of Part VI shall be served upon Defendants' counsel. Defendants, through counsel, may respond to any of these materials and may demand a hearing upon any issues raised by this response.

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VII. GENERAL PROVISIONS

A. The parties agree that the actions set forth in Parts II, III, IV, V, VI, and VIII of this Settlement Agreement constitute the complete remedy for all claims of the class against all Defendants.

B. As soon as possible after the date of execution of this Agreement by the parties, the parties shall jointly submit a Proposed Order for Tentative Approval of Settlement Agreement to the Court for consideration and execution by the Court. At the same time, the parties shall jointly submit to the Court a Proposed Order Regarding Rule 23(e) Notice, and a Proposed Statement of Issues and Notice to Class Members providing for notice to class members of their right to object to the proposed settlement and to present such objections at a hearing to be conducted by the Court. As soon as practicable after the submission of these Proposed Orders, the parties shall schedule a conference with the Court, after which a scheduling order shall be entered, setting forth the manner by which notice shall be given to class members, setting a deadline by which written objections to the proposed settlement

must be submitted to the Court, setting a date for the hearing, and all other matters appropriate to the conduct of the hearing. Defendants agree to bear the expenses of providing notice to class members. These expenses will be reimbursed to DRC from the funds deposited with the Court, as set forth in paragraph D of Part VI.

C. After the hearing, the parties agree to submit a joint motion for the final approval of this Agreement. Defendants agree that the Final Decree shall contain an injunction prohibiting Defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from interfering with or hindering the acts set forth in Parts III, IV, and V of this Agreement. Plaintiffs agree that an order shall be entered upon their motion to dismiss with prejudice all claims against all Defendants in their individual capacities.

D. The Court shall retain jurisdiction of this action only for the purpose of monitoring compliance with the terms of the Order, for the entry of such further orders as may be appropriate to effectuate the provisions of this Order, and for any motions filed by either party at the close of this transitional period as provided in paragraph E of Part III to modify or amend the Defendants' correctional officer employment policy in maximum or close security institutions.

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VIII. TERMINATION OF COURT ORDER

At the close of the transitional period, if neither party has moved to modify or review the female correctional policy for close and maximum security institutions, as provided in Part III, paragraph E, and if the Court determines that the hiring goals in Parts III and V of this Agreement have been met, the Court shall enter final judgment dismissing all class claims against all Defendants with prejudice. If either party makes a motion to modify or review the correctional officer employment policy as provided in Part III, paragraph E, the Court shall determine whether the assignment of female correctional officers shall remain the same or be modified and, thereafter: a) if it determines the policy should be the same, enter a final judgment dismissing all claims against all Defendants with prejudice or, b) it if finds that the policy should be modified, make such an order that will include the changes in the policy that are to be made by DRC, after which such changes are completed to the satisfaction of the Court, a final judgment dismissing all class claims against all the Defendants with prejudice may be entered. The Order entered after the four year transitional period shall be considered an adjudication on the merits with full res judicata and collateral estoppel effect.

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IX. This Agreement is subject to approval by the Office of Budget and Management and reservation of 3.75 million dollars out of the 1986 fiscal budget for DRC by June 19, 1987.

ANTHONY J. CELEBREZZE, JR.
Attorney General

DATE: JUNE 19, 1987

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