

August 10, 2020

Daniel Luna, Union Representative
Service Employees International Union (SEIU)
1801 Excise Avenue, Suite 101
Ontario, CA 91761

| | |
|--------------------------------|---------------------------------------|
| GRIEVANT NAME: | All SEIU Represented Employees |
| UNION GRIEVANCE NUMBER: | N/A |
| INSTITUTION LOG NUMBER: | N/A |
| CDCR GRIEVANCE NUMBER: | G01-20-0030 |



Dear Mr. Luna:

This is the joint Departmental response to your grievance dated July 29, 2020, and received in the California Department of Corrections and Rehabilitation (CDCR) Office of Labor Relations (OLR) and California Correctional Health Care Services (CCHCS) Labor Relations Unit (LRU) on July 28, 2020. CDCR and CCHCS will henceforth be referred to as the Department.

The grievance was filed directly at the third (3rd) level on behalf of All Service Employees International Union (SEIU) represented employees statewide when the alleged violations occurred. This grievance alleges a violation of Sections 10.3 [Occupational Hazards] and 10.25 [Infectious Disease Control (Excludes Units 15, 17, 20 and 21)] of the Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20 and 21 Memorandum of Understandings (MOU). The grievance also alleges a violation of the California Code of Regulations (CCR) Section 5199 [Aerosol Transmissible Diseases]. In issuing this response, the Department does not waive any defenses or rights with respect to the grievance.

Specifically, the grievance alleges:

"CDCR's Division of Adult Institutions (DAI) and CCHCS violated the contract by requiring employees to work where an immediate and recognizable threat exists to their health and safety. DAI and CCHCS continue to expose represented members at the State's Prisons to a work environment that is resulting in uncontrolled COVID-19 outbreaks by continuing to allow inmate movement, and not fully enforcing all health and safety guidelines. Due to the present health crisis, Nurses are forced to work longer hours and be redirected to other worksites. Initially, CDCR limited COVID-19 spread by halting inmate movement, and county intakes. After movement and county intakes resumed towards the end of May, the number of prisons with COVID-19 outbreaks quadrupled. Outbreaks at Chuckwalla Valley State Prison (CVSP), Corcoran and San Quentin show that Management failed to prevent the further spread of COVID-19 patients from CIM to San Quentin and Corcoran show failed protocols and missteps between DAI and CCHCS which caused further spread when inmates are moved. Health and safety guidelines intended to limit and prevent the spread of COVID-19 are not being followed.

Starting the week of July 13, 2020, SEIU Local 1000 identified health and safety concerns at each institution. Some of these prisons have already had serious COVID-19 outbreaks and CDCR/CCHCS should still be able to prevent outbreaks if they take all possible and reasonable steps to prevent them. The most common health and safety violations include but are not limited to the following:

- *Inadequate supply of hand sanitizer machines and disinfecting wipes*
- *Common areas at worksite are not being cleaned throughout the day*
- *No training received on the state's COVID-19 health and safety guideline*
- *Employees are not getting noticed when someone at your worksite has tested positive for COVID-19*
- *Not everyone at institutions wears a mask*
- *Six foot physical distance is not being maintained at worksite*
- *Failure of adequate testing of staff and inmates*
- *Transfer of inmates without adequate testing*
- *Failure to quarantine or isolate inmates with suspected exposure*
- *Failure to maintain adequate internal command or control*
- *Failure to provide safety protocols to protect staff from infection*
- *Inadequate supplies and types of PPE"*

The requested remedies are listed below:

1. *"Take all necessary steps to ensure employee health and safety"*
2. *"Ensure that each institution has a COVID-19 incident command center with both medical and custody staff"*
3. *"Have a clear written plan for spaces/areas that will be utilized to isolate/quarantine suspected and COVID-19 confirmed inmates at each institution."*
4. *"Ensure that management at all levels understands their responsibilities and role in preventing the further spread of COVID-19."*
5. *"Halt the movement of inmates between prisons and intakes from counties."*
6. *"Ensure that DAI and CCHCS are doing everything possible to maintain six foot physical distance between person (including allowing all employees possible to telework), providing adequate hand sanitizer and disinfectant wipes and are enforcing that everyone wear masks/or face coverings"*
7. *"Ensure that all employees are trained with the latest State of California health and safety guidelines and that all employees are noticed about possible COVID-19 exposure at their worksite."*
8. *"Any other appropriate remedy deemed just and proper."*

The grievance is overly broad, lacks specificity, and does not provide any information or documentation regarding how the Department has violated the MOU. The burden of proof in the grievance process rests with the Union and refers to the responsibility placed upon the moving party, the Union, to prove the truth or correctness of the allegations. Based on the information submitted, it could not be determined the date or time the alleged violations occurred, the names and classifications impacted by the alleged violations, or whether the alleged violations, even occurred. The lack of facts and documentation in the grievance hindered Management's ability to complete a thorough review of the allegations, and respond to SEIU's concerns. Although, the grievance is lacking critical information due to the seriousness of the allegations and to promote harmonious labor relations, the general merits of the grievance will be addressed.

The Departments response is as follows:

The Department's top priority is the safety and wellbeing of all those who live and work in our institutions/facilities. The Department has, and will continue to provide SEIU with COVID-19 daily updates, which demonstrates our efforts of transparency and our commitment to promoting open communications/information sharing with your the labor organizations. This grievance will illuminate the steps the Department has taken

to ensure the health and safety of our employees, incarcerated individuals, visitors, volunteers and contractors throughout the Department in which the majority has been previously shared with your organization. These events are also outlined on our website: <https://www.cdcr.ca.gov/covid19/updates/>

A timeline of events taken by the Department is outlined below:

March:

March 4, 2020 - California Governor Gavin Newsom declared a state of emergency due to the COVID-19 pandemic; and shortly thereafter the Department Operation Center (DOC) was activated. The DOC is a command center for the Department, and as stated in their objective, establishes general strategy and appropriate contingency considerations. The DOC works with the Unified Command Group (UCG), which includes the California Department of Public Health (CDPH), Office of Emergency Services (OES), California Occupational Safety and Health Administration (Cal/OSHA). These agencies collaborate when providing direction and guidance to the Department.

March 11, 2020 - To prevent the spread of the virus, normal visiting was cancelled; and fact sheets, posters and additional information about COVID-19 were distributed to the inmate population. In addition, the memorandum titled *2019 Novel Coronavirus (COVID-19)* was released, which provided staff with guidance, resources and information regarding the virus.

March 12, 2020 – Based on guidance from the CDC, the Department allowed all institution staff, contractors and volunteers to carry and use alcohol based hand sanitizer. This directive was given in a memorandum titled *AUTHORIZATION FOR PERSONAL USE HAND SANITIZER WITHIN ADULT INSTITUTIONS*.

March 13, 2020 - The Department issued a memorandum titled *Message to employees regarding COVID-19 (new coronavirus)* reiterating the Department's commitment to protecting and supporting both staff and the individuals in our custody, and keeping everyone informed with the most accurate and current information. The Department released a memorandum titled *CORONAVIRUS (COVID-19) UPDATE* which stated effective March 14, 2020, second (2nd) watch, all persons entering the secure perimeter of the institutions would be subjected to mandatory screening questions. The mandatory screening was proactively implemented to protect our staff and inmates, and to prevent the spread of the virus.

March 14, 2020 – The Department established a staff management plan that maximized telework to the extent possible, while at the same time allowing for effective social distancing for those that remain in the office/institution/facility. To protect the health and wellness of employees during the crisis, the Department took into consideration and promoted stay-at-home directives from state and local public health departments. Consistent with public health needs arising from this emergency, the Department implemented a telework plan, which took into consideration the mission critical functions and services.

March 16, 2020 – Governor Newsom issued an executive order advising those age 65 years and older, and those with underlying health issues, are advised to self-quarantine, self-isolate, or otherwise remain in their homes to reduce the transmission of COVID-19. The Department implemented the Governor's order by allowing staff in these categories to request to work remotely.

March 17, 2020 – The Department issued a statement addressing the hard choices being made, *"including conducting verbal screenings at entrances, canceling visiting*

statewide, and other measures that impact our day-to-day operations". The statement reiterated that "We must stress to all of you the seriousness of the threat we are facing. As we are watching other countries, states, and cities combat this virus, understand that where they are today could be where we are tomorrow. This possibility must be taken seriously and all instructions for preventive measures must be followed. Current health care guidelines must be adhered to and now more than ever we must work cohesively to keep everybody safe." The Department took additional measures, including stopping all transfers of out-of-state parolees or inmates for thirty (30) days, postponing parole suitability hearings, and not allowing volunteers or rehabilitative program providers to enter the prisons.

March 19, 2020 – Inmate transfers were limited to only essential movement, and on March 21, 2020, Reception Center inmates were quarantined for fourteen (14) days.

March 24, 2020 – The intake of inmates and youth was suspended along with inmate transfers to Conservation Camps as a preventative measure.

March 27, 2020 – Mandatory temperature screenings were implemented for all people entering the prisons and community correctional facilities.

March 29, 2020 – Inmates were allowed hand sanitizer in approved areas, and under supervision.

April:

During the month of April, it was announced the prison population would be reduced; and the Department had launched an enhanced version of the population case tracker. A memorandum titled *COVID-19 Personal Protective Equipment (PPE) Guidance and Information* was released reiterating the importance of social distancing and that face coverings are mandatory. In addition, inmates who were out of CDCR custody for more than one day to attend court hearings were required to wait until intake resumed to be accepted back into CDCR, and 1,928 inmates were transferred to alternate institutions to create physical distancing. The COVID-19 Response FAQ page was redesigned for increased functionality and easier navigation.

April 6, 2020 – Information, guidance and posters regarding Personal Protective Equipment (PPE) requirements were distributed and posted in high traffic areas throughout the institution. The posters reinforce the six (6) foot social distancing requirement, and provides guidance for individuals who must be within six (6) feet of suspected/confirmed COVID-19 individuals for a prolonged period of time. A *COVID-19 Quick Reference Pocket Guide* was provided and intended to be kept on your person as a resource for PPE, quarantine, isolation and surveillance. California Prison Industry Authority (CALPIA) began to manufacture face coverings to meet the needs of our staff and inmates.

April 7, 2020 - The Division of Juvenile Justice (DJJ) stated they would provide education via distance learning. The Department suspended the transfer of inmates from Reception Centers through April 22, 2020. A revised memorandum titled *REVISED COVID-19 MANDATORY 14-DAY MODIFIED PROGRAM* was released. The purpose of the memorandum was to reduce staff and inmate exposure to COVID-19, including, but not limited to, placing markers on the ground in six (6) feet intervals to maintain social distancing, the placement of acrylic glass at staff entrances, and instead of multiple housing units eating together, inmates would be provided meals in their cells, or one housing unit would eat at a time to ensure social distancing.

May:

In May, the Department released an *Enhanced Patient Testing Tracker* to provide testing and results data by institution; set up temperature-controlled tents at California Institution for Men (CIM) for medical triage, testing, and treatment; released a memorandum titled *COVID-19 GUIDANCE FOR DAILY PROGRAM REGARDING SOCIAL DISTANCING FOR CELL OR ALTERNATIVE/DORM STYLE HOUSING OF EIGHT PERSON COHORTS* regarding mitigating the exposure of staff and inmates to COVID-19, which included announcements being made throughout the day reminding everyone to wear a face covering, social distance, continue to clean and disinfect your immediate area and all touch points. All custody and support staff received On-the-Job (OJT) training regarding the contents of the aforementioned memorandum. An additional memorandum was released titled *COVID-19 PATIENT MOVEMENT FOR MENTAL HEALTH TREATMENT* regarding precautions to be taken when patients must be moved between the Department and the Department of State Hospitals. With the exception of CIM, transfers from Reception Centers and restricted housing resumed on May 18, 2020, to other institutions.

The Department began surveillance testing at all adult institutions, and announced intake from county jails would resume the week of May 25, 2020, in a very limited, controlled manner. In normal circumstances, intake is allowed throughout the State, however, North Kern State Prison (NKSP) and Wasco State Prison (WSP) were accepting intake from only four (4) counties. During the week of May 26, 2020, mandatory testing for staff at CIM and Avenal State Prison (ASP) began in an attempt to prevent further spread of the disease, and to alert staff who may have been exposed. Upon the recommendation of CDPH, the Department identified employees who could be utilized as contact tracers to prevent the spread within our department and to support existing state and local public health departments. Contact tracing has been used by public health departments for decades to slow the spread of infectious diseases, like COVID-19. Contact tracing helps public health workers connect with anyone who might have come in close contact with a person who has tested positive for COVID-19 and provide them with support and resources, including access to free, confidential testing and medical care, if needed. This helps to stop the virus from spreading further.

June:

During the month of June, the Department implemented mandatory staff testing for COVID-19 at San Quentin State Prison (SQ) and California State Prison, Corcoran (COR); required any inmates to have tested negative for COVID-19 within seven (7) days of a scheduled transfer to a different facility; and a memorandum titled *UPDATE TO THE MARCH 13, 2020 MEMORANDUM MESSAGE TO EMPLOYEES REGARDING COVID-19* was released which provided updated safety guidelines for employees. The Department once again suspended all intake from county jails through June 29, 2020. Pursuant to the directives from the Governor and CDPH, the Department issued a memorandum titled *GUIDANCE FOR THE USE OF FACE COVERINGS IN HEADQUARTERS AND REGIONAL OFFICES* reiterating the expectation of all staff to wear face coverings, as all staff and inmates had been provided face coverings. To reduce the population, and slow the spread of the virus, CDCR published an overview of the plan to expedite the release of eligible inmates who have 180 days or less to serve. To address the COVID-19 outbreak at SQ, a Unified Command (UC) center was put in place to coordinate custody and medical responses. The team is composed of experts from CDCR, CCHCS, OES, Emergency Medical Services Authority, CDPH, and Cal/OSHA.

July:

In July, the Department continued its efforts to slow the spread of COVID-19 and announced mandatory statewide staff COVID-19 testing plan, and at SQ, staffing contingency plans were activated and additional resources were redirected from nearby institutions. The Department issued a memorandum titled *STAFF WEARING FACIAL COVERINGS IN INSTITUTIONS* reiterating how *"wearing face masks while working in an institution is challenging; working in an institution during the COVID-19 pandemic intensifies these challenges and adds pressures resulting from the demands. In recognition of these unprecedented times, supervisors and managers must be vigilant in the enforcement of the face covering directive, while understanding that the wearing of face coverings is difficult or uncomfortable for some individuals and in some cases precluded by a medical condition or the perception by some staff that the wearing of face coverings is difficult or uncomfortable."* The memorandum goes on to state that for *"individuals who do not adhere to this directive, it is expected that supervisors and managers utilize the progressive discipline process as outlined in the Department Operations Manual (DOM), Article 22, Employee Discipline policy, in addressing staff who fail to comply with the June 11, 2020, directive."*

A page was created on the Department's website with information regarding the preparedness efforts concerning COVID-19. At SQ, alternative care sites were created for inmates diagnosed with COVID-19, and to quarantine inmates that were potentially exposed. In addition, N95 masks were provided to all staff and are required to be worn while performing duties on institutional grounds. N95 mask are a particulate-filtering face piece respirator that meets the U.S. National Institute for Occupational Safety and Health N95 classification of air filtration, meaning that it filters at least 95% of airborne particles.

The Department announced additional actions to further reduce the inmate population, and maximize space statewide. It was estimated that 8,000 inmates could be eligible for release by the end of August in addition to the 10,000 inmates released since the start of the pandemic. This reduction in population assists with ensuring social distancing in the institutions, and slowing the spread of the virus. The suspension of intake from the county jail was extended to August 9, 2020.

In addition to the actions outlined above, the Department continues to care for the health and wellness of its workforce and has been working to accommodate those who have been impacted by this evolving situation. The Department continues to work diligently with California Department of Human Resources (CalHR) and labor organizations on how we can best keep our workforce protected and provide for mental health of our staff as well as protect them from the spread of COVID-19.

The Department has worked diligently to ensure appropriate cleaning supplies, including hand sanitizers and disinfecting wipes, are available statewide. The Healthcare Facilities Maintenance program has increased the frequency of cleaning and sanitation, including laundry services, to seven (7) days a week. If an institution or program requires additional cleaning material or supplies, they can be requested through the DOC.

The grievance alleges nurses are being forced to work longer hours, and are being redirected to other worksites due to the pandemic. This grievance does not provide any documentation to support this allegation, however, Section 20.8.17(H) [Transfers] of the BU 17 MOU states *"Employees holding bid assignments shall not, except in cases of emergency or as otherwise provided for in this section, be involuntarily transferred to another assignment."* As we are currently in a state of emergency,

nurses have been temporarily reassigned, both voluntarily and involuntarily, to other institutions to assist with the COVID-19 pandemic response. To alleviate the need for mandates and redirects, the Department is accelerating civil services hires to fill vacancies and hire registries. In addition, Section 4.1(B) [State's Rights] states:

*Consistent with this Contract, the rights of the State shall include, but not be limited to, the right to determine the mission of its constituent departments, commissions, and boards; to maintain efficiency of State operation; to set standards of service; to determine, consistent with Article VII of the Constitution, the Civil Service Act, and rules pertaining thereto, the procedures and standards of selection for employment and promotion, layoff, assignment, scheduling and training; to determine the methods, means, and personnel by which State operations are to be conducted; **to take all necessary action to carry out its mission in emergencies**; to exercise control and discretion over the merits, necessity, or organization of any service or activity provided by law or executive order. The State has the right to make reasonable rules and regulations pertaining to employees consistent with this Contract, provided that any such rule shall be uniformly applied to all affected employees who are similarly situated. (emphasis added)*

SEIU alleges a violation of Section 10.3 [Occupational Hazards] which, in summary, states if an employee believes they are being required to work in an area where there is an immediate and recognizable threat, they will notify their supervisor. The supervisor shall consult with their higher level management and supervisory staff. Due to the current pandemic, they would consult with the DOC, prior to issuing direction on whether the work area is deemed safe. The DOC reviews and addresses these types of concerns, and as such, we find no violation of Section 10.3.

The grievance also alleges a violation of Section 10.25 [Infectious Disease Controls], which requires in-service training on infectious disease control for all employees in twenty-four (24) hour institutions; notification to staff that were potentially exposed to an outbreak of an infectious, contagious, or communicable disease; and that the State shall utilize the best guidelines available. Training on infectious disease is part of the Department's annual mandatory training, in compliance with the SEIU MOU and CCR, Title 8, Chapter 4, Subchapter 7, Article 109, Section 5193(a). When staff may have been exposed to an outbreak of an infectious, contagious, or communicable disease, they are promptly notified. Based on this information, we find no violation of Section 10.25.

The last allegation asserts a violation of CCR Section 5199 [Aerosol Transmissible Diseases], however, no documentation or evidence was provided to show how the Department violated this CCR. Due to the lack of information, the Department finds no violation.

In regards to requested remedies one (1) through seven (7), they are neither granted nor denied, as the Department is currently practicing all of the requested remedies. The Department has, and will continue to take all necessary steps to ensure the health and safety of our employees. Every institution has an Incident Command Post (ICP) which includes joint leadership of custody and health care, and works with our DOC. The ICP ensures prompt communication and the dissemination of information to address any and all concerns, including but not limited to, ensuring inmates are able to be safely quarantined to prevent further spread of the virus. The Department has provided direction to all staff, including managers and supervisors, regarding

everyone's responsibility in preventing the spread of COVID-19. As of June 29, 2020, all intake from county jails has been suspended. CDCR will continue to move inmates if necessary in compliance with our policies and procedures, and to meet the health and safety of our inmate population.

It is of the utmost importance to the Department to ensure the health and safety of our staff. As stated above, the department has provided all staff and inmates face coverings to prevent the virus from spreading. As reiterated above, all staff have been directed to wear face coverings, and for staff that fail to comply with this directive, it is the expectation that the progressive discipline process be utilized. Per the DOC, all institutions have been issued hand sanitizer, disinfecting wipes, and posters reiterating the importance of social distancing. The DOC continually monitors supplies at all institutions, and has a process in place to restock supplies. As stated earlier in our response, training on health and safety guidelines has been provided.

In regards to the eighth (8th) requested remedy it is denied as it is vague and ambiguous.

Please rest assured the Department does not take the above allegations lightly. The Department has gone above and beyond to ensure the health and safety of all staff and people within its care, including, in brief, creating a webpage with COVID-19 information, disseminating memorandums, posting information, and providing information daily to the unions. The Department continues to work with all appropriate entities, including Cal/OSHA, OES, and CDPH. While the Department has taken steps to stop the spread of COVID-19 within our institutions/facilities/offices, it is up to each and every employee to share in this responsibility as we are all in this together. As such, we encourage staff to utilize the supplies and equipment made available for use as well as adhere to the Departmental policies and practices surrounding COVID-19. Furthermore, we encourage employees to bring issues forward when Departmental policies and procedures are not being followed so they may be addressed in the appropriate venue, such as at the specific institution or via the DOC.

Based on the information presented above, the grievance is denied and the requested remedies are resolved. Should you need further information or clarification, please contact Jessica Russell, Labor Relations Representative, CDCR, at (916) 500-2263 or Rionna Jones, Labor Relations Manager I, CCHCS, at (916) 691-3834.

Sincerely,



MARGIE MCCUNE
Assistant Chief, OLR
CDCR



ROBERT RAMIREZ
Chief, LRU
CCHCS

cc: Department Operation Center
Candace Murch, Chief, OLR, CDCR
Migdalia Siaca, Deputy Director, CCHCS
Margie McCune, Assistant Chief, OLR, CDCR
Robert Ramirez, Labor Relations Manager II, LRU, CCHCS
Amanda Skibby, Labor Relations Manager I (A), OLR, CDCR
Rionna Jones, Labor Relations Manager I, LRU, CCHCS

Encl: *AUTHORIZATION FOR PERSONAL USE HAND SANITIZER WITHIN
ADULT INSTITUTIONS
2019 Novel Coronavirus (COVID-19)
Message to employees regarding COVID-19 (new coronavirus)
CORONAVIRUS (COVID-19) UPDATE
COVID-19 Personal Protective Equipment (PPE) Guidance and Information
REVISED COVID-19 MANDATORY 14-DAY MODIFIED PROGRAM
COVID-19 GUIDANCE FOR DAILY PROGRAM REGARDING SOCIAL
DISTANCING FOR CELL OR ALTERNATIVE/DORM STYLE HOUSING OF
EIGHT PERSON COHORTS
COVID-19 PATIENT MOVEMENT FOR MENTAL HEALTH TREATMENT
UPDATE TO THE MARCH 13, 2020 MEMORANDUM MESSAGE TO
EMPLOYEES REGARDING COVID-19
GUIDANCE FOR THE USE OF FACE COVERINGS IN HEADQUARTERS
AND REGIONAL OFFICES
STAFF WEARING FACIAL COVERINGS IN INSTITUTIONS*