



**CRIVELLI & BARBATI, LLC**

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March 26, 2020

**VIA ELECTRONIC & US MAIL**

Marcus O. Hicks, Esq.,  
Commissioner  
New Jersey Department of Corrections  
Whittlesey Road  
P.O. Box 863  
Trenton, New Jersey 08625

Jennifer LeBaron, Ph.D.  
Acting Director  
New Jersey State Juvenile Justice Commission  
P.O. Box 107  
Trenton, NJ 08625-0107

**Re: Request for an On-Sight COVID-19 Testing Facility**

Dear Commissioner Hicks and Acting Director LeBaron:

I write this letter on behalf of the Coalition of Correctional Police Custody Staff Unions that includes the New Jersey Law Enforcement Commanding Officers Association (NJLECOA), the New Jersey Superior Officers Association (NJSOA), the New Jersey Law Enforcement Supervisors Association (NJLESA) and the Policemen's Benevolent Association, Local #105 (PBA 105). As a unified coalition of over ten thousand (10,000) sworn correctional personnel, we respectfully request that the New Jersey Department of Corrections (the "Department") and the New Jersey Juvenile Justice Commission (the "Commission") petition the Governor for the State of New Jersey to establish, to stand up and to fund an on-sight COVID-19 testing facility that is dedicated to New Jersey State Sworn Correctional Personnel. The Coalition firmly believes that such a facility will

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guarantee a rapid and accurate turnaround of COVID-19 tests to help ensure that our penal and correctional institutions be fully staffed at a highly functional and efficient level during this time of crisis.

As I am sure that you are both aware, in an attempt to curb the spread of COVID-19, strict protocols have been put into place by the Federal and New Jersey State Governments. In New Jersey, Executive Order No. 103 was signed on March 9, 2020 in response to the COVID-19 outbreak. The Executive Order invoked “a State of Emergency pursuant to N.J.S.A. App. A:9-33 et seq. and a Public Health Emergency as contemplated by N.J.S.A. 26:13-1 et seq.” Within the body of the Executive Order, the Governor makes it emphatically clear that all citizens and employers within the State are to follow the United States Center for Disease Control (CDC) COVID-19 Recommendations in an effort to “flatten the curve” and prevent the spread of the virus. The relevant CDC recommendations state:

Individuals that may have been exposed to the virus should undergo active monitoring, including restriction from work until 14 days after their last exposure. If they develop any fever (measured temperature greater than 100.00F or subjective fever) or respiratory symptoms consistent with COVID-19 (e.g., cough, shortness of breath, sore throat) they should immediately self-isolate (separate themselves from others) and notify their local or state public health authority and healthcare facility promptly so that they can coordinate consultation and referral to a healthcare provider for further evaluation. (Emphasis Added)

In addition to the foregoing, on or about the same day that Executive Order No. 103 was passed, the New Jersey Civil Service Commission passed guidelines for New Jersey State Governmental entities to follow during the declared State of Emergency. The New Jersey Civil Service Commission guidelines state:

Employees who have been exposed to or diagnosed with the COVID-19 virus will not be permitted to enter the workplace until they are either medically cleared (regarding those with COVID-19) or until the expiration of the recommended 14-day period of quarantine from the point of last exposure (regarding those who were exposed).

Unfortunately, we are starting to see positive COVID-19 test results amongst our sworn custody staff throughout the various institutions in New Jersey. A single positive test result, depending on the particular circumstances, may require not only the positive officer to absent themselves from work for an extended period of time, but also mandate that many more officers that had direct contact and/or exposure with the officer to also be absent from work for a minimum period of fourteen (14) days while they self-quarantine. Despite the fact that there are various testing facilities throughout the State of New Jersey, an officer in quarantine without COVID-19 symptoms will not be tested for the virus. Unfortunately, the current protocol will not allow for the test to take place. Based on the foregoing, should a single correctional facility receive multiple positive test results amongst its sworn personnel around the same time frame, the facility will

be crippled with a critical staffing shortage. Such a condition will thereafter demand that facilities operate short staffed leading to officers being overworked. The end result in such a situation will place personnel in peril and render institutions unsafe. Neither situation is acceptable to this Coalition, the Department and the Commission.

An on-sight testing facility that is dedicated to State Correctional Personnel will help remedy the imminent problems referenced in the preceding paragraph. Presently, in the State of New Jersey, approximately one (1) out of every four (4) COVID-19 tests that are administered return a positive result. Therefore, should these statistics hold true, a dedicated on sight testing facility will permit quarantined officers who were exposed to the disease to be tested short of the mandated fourteen (14) day quarantine period. Thereafter, once the predicted negative results are received, numerous officers will be permitted to return to work in a shortened period of time. Utilizing the dedicated testing facility in this manner will assist in preventing the critical staffing shortages that would otherwise be unavoidable.

We ask that you consider this request on short notice as the professionals are currently predicting that the State of Affairs in New Jersey is going to get much worse in a very short period of time. If you would like to discuss this issue in more detail, a meeting can be scheduled within a moment's notice. On behalf of the coalition, I thank you for your time and attention to this matter.

Sincerely,

**CRIVELLI & BARBATI, L.L.C.**

By: *Frank M. Crivelli, Esq*  
**FRANK M. CRIVELLI, ESQ.**

FMC/fc

cc: Trevor Beatty, President  
New Jersey Law Enforcement Commanding Officers Association

Edward F. Sullivan, President  
New Jersey Superior Officers Association

William Toolen, President  
New Jersey Law Enforcement Supervisors Association

William Sullivan, President  
New Jersey State Policeman's Benevolent Association, Local #105



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March 23, 2020

**VIA ELECTRONIC & US MAIL**

Marcus O. Hicks, Esq.,  
Commissioner  
New Jersey Department of Corrections  
Whittlesey Road  
P.O. Box 863  
Trenton, New Jersey 08625

**Re: Policemen’s Benevolent Association Local #105  
Hazardous Duty Pay**

Dear Mr. Hicks:

As you are aware, this office represents the Policemen’s Benevolent Association Local #105 (hereinafter “PBA Local #105” or the Local”), the sole and exclusive representative of those rank-and-file officers employed by the Department of Corrections, State Parole Board, and the Juvenile Justice Commission for purposes of collective negotiations concerning salaries, wages, hours of work, and other terms and conditions of employment. Please accept this correspondence as PBA Local #105’s formal request for the issuance of “hazardous duty compensation” in light of the circumstances faced by its members currently working at the various correctional facilities and institutions throughout the State of New Jersey.

The recent global outbreak of Coronavirus/ COVID-19 has created novel and unique circumstances for the members of PBA Local #105 and for all emergency personnel throughout the State of New Jersey. Due to Correctional Police Officers’ status as “essential employees,” the members of PBA Local #105

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Bar Admission: New Jersey

are required to continue to report for duty, despite the State of Emergency declared by Governor Murphy and the risks posed by COVID-19. Given the manner in which the virus is communicable and the fact that an individual can carry and transmit the virus without experiencing significant symptoms, I trust you would agree that ensuring appropriate personal protection equipment (“PPE”) is available to essential personnel working within the Department is of the utmost importance. As of the date of this letter, the members of PBA Local #105 have not been able to adequately avail themselves to the requisite PPE, as the same has not been provided at a sufficient level. This fact obviously poses a significant safety risk to the members of PBA Local #105, their families and to the individuals incarcerated in the State’s correctional facilities.

PBA Local #105 acknowledges and appreciates that the current pandemic is certainly unprecedented in terms of the scope of its impact on daily life. However, nonetheless, the State as the employer, has made certain safety assurances to the Locals’ members in its collective negotiations agreement (“CNA”). In particular, Article XXXVI of the CNA, entitled “Safety,” states the following:

- A. The State shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment and **will continue to provide appropriate safety devices for their protection and to provide a reasonably safe and healthful place of employment.**
- B. **The State agrees to provide adequate and regularly maintained sanitary facilities for employee use.** Each employee will maintain acceptable standards of personal hygiene and cleanliness in accordance with the requirements of his job.
- C. An employee must report incidents of unsafe or unhealthful conditions to his supervisor immediately. Complaints of unsafe or unhealthful conditions shall be promptly investigated. **Corrective action shall be initiated at the earliest time practicable to bring such conditions within established safety guidelines providing necessary resources are available.**
- D. **Employees shall not be required to work under conditions of work which are determined to present an imminent hazard to safety or health.** An employee whose work is temporarily eliminated as a result of the foregoing may be assigned on an interim basis to other work which the employee is deemed to be qualified to perform.

As previously iterated, the increased demand for PPE across the State and the Country at large has resulted in shortages. Taking this one step further I am sure that you will inform the Local that this is the reason why the State has not taken corrective action and supplied the adequate PPE. However, these facts do not excuse the State from its obligations to the Local’s members under the CNA, nor do they sufficiently address measures that should have been taken to adequately prepare for these conditions in advance. Although a large-scale pandemic such as COVID-19 might be considered unprecedented, it was certainly not inconceivable. Furthermore, the risks imposed by the virus, or any virus for

that matter, are likely exacerbated within the State's correctional facilities where individuals are confined in large numbers in extremely close quarters.

It is against this backdrop that PBA Local #105 requests that the New Jersey Department of Corrections exercise its statutory authority and authorize the payment of wages at a higher rate as an "exceptional emergency" exists that permits the same. Such an authorization and exercise of statutory authority is warranted given the heightened level of danger now associated with a Correctional Police Officer's duties coupled with the State's inability to ensure workplace safety. Each member of the Local now reports to work without PPE with the realistic possibility of being exposed to this deadly virus. However, what makes matters worse is that immediately after an officer's shift ends, he or she runs the horrifying risk of carrying the virus home from the jail and exposing and contaminating their family.

Payment of additional compensation during this time is permitted and consistent with the applicable law and governing administrative regulations. In particular, the Local's members are eligible for wage payments at the rate of time and one half (1 ½) under the New Jersey Administrative Code. N.J.A.C. § 4A:3-5.7(d) provides that when an agency head declares an "exceptional emergency" involving a critical service disruption that poses a danger to health or safety; under the appropriate circumstances, he or she may authorize such compensation (overtime wages) for work performed that is not covered by the job specification. *Id.*, see also N.J.A.C. § 4A:3-5.3(c). Moreover, Title 4A also allows for the establishment for an "emergency rate" of compensation to be paid to officers in such circumstances. See N.J.A.C. § 4A:3-4.19. Simply put, there is nothing in the governing administrative regulations that prevent the State and/or the Department from requesting and thereafter authorizing "hazardous duty pay" based on the "exceptional emergency" that is currently taking place.

In light of the foregoing, we kindly ask that you consider this proposal and agree to discuss this issue further with PBA Local #105 leadership in the immediate future. The essential personnel that make up the Local's membership are working hard and without a "safety net" to adjust to occupational challenges posed by this crisis and will continue to do so as obligated. We simply ask that the State and the Department take this into account, recognize the officer's efforts in light of the danger, and thereafter exercise the authority that is currently afforded to you in a reasonable and responsible manner.

I thank you for your consideration in this matter and anticipated cooperation. Should you have any questions or concerns, please contact my office at the email address or telephone number listed in the letterhead.

Sincerely,

**CRIVELLI & BARBATI, L.L.C.**

By: Frank M. Crivelli, Esq.  
**FRANK M. CRIVELLI, ESQ.**

FMC/mdr

cc: William Sullivan  
President, P.B.A. #105



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Jennifer LeBaron, Ph.D.  
Acting Director  
New Jersey State Juvenile Justice Commission  
PO Box 107  
Trenton, NJ 08625-0107

**Re: Policemen’s Benevolent Association Local #105  
Hazardous Duty Pay**

Dear Dr. LeBaron:

Please allow this letter to inform you that this office represents the Policemen’s Benevolent Association Local #105 (hereinafter “PBA Local #105” or the Local”), the sole and exclusive representative of those rank-and-file officers employed by the Department of Corrections, State Parole Board, and the Juvenile Justice Commission for purposes of collective negotiations concerning salaries, wages, hours of work, and other terms and conditions of employment. Please accept this correspondence as PBA Local #105’s formal request for the issuance of “hazardous duty compensation” in light of the circumstances faced by its members currently working at the various juvenile correctional facilities and institutions throughout the State of New Jersey.

The recent global outbreak of Coronavirus/ COVID-19 has created novel and unique circumstances for the members of PBA Local #105 and for all emergency personnel throughout the State of New Jersey. Due to Correctional Police Officers’ status as “essential employees,” the members of PBA Local #105 are required to continue to report for duty, despite the State of Emergency declared

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It is against this backdrop that PBA Local #105 requests that the New Jersey Juvenile Justice Commission exercise its statutory authority and authorize the payment of wages at a higher rate as an "exceptional emergency" exists that permits the same. Such an authorization and exercise of statutory authority is warranted given the heightened level of danger now associated with a Correctional Police Officer's duties coupled with the State's inability to ensure workplace safety. Each member of the Local now reports to work without PPE with the realistic possibility of being exposed to this deadly virus. However, what makes matters worse is that immediately after an officer's shift ends, he or she runs the horrifying risk of carrying the virus home from the jail and exposing and contaminating their family.

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