

MINUTES

BOARD OF CORRECTION

October 23, 1984

A regular meeting of the New York City Board of Correction was held on October 23, 1984 at 2:00 p.m. in the offices of the Board of Correction, 51 Chambers Street, New York, N. Y.

Members present were Chairman Peter Tufo, Vice-Chairman John Horan, Mr. Angelo Giordani, Mr. Wilbert Kirby, Mr. David Schulte, and Mrs. Rose M. Singer.

Excused absences were approved for Mr. David Lenefsky and Mrs. Barbara Margolis.

Chairman Tufo presented a brief history of the space standard amendment process and summarized recent discussions between Board and Department staffs, and Chairman Tufo, Commissioner McMickens, and Criminal Justice Coordinator Kenneth Conboy. He reported that discussion of the Board's proposed caps on populations in dorms has continued. Impartial observers have affirmed that the Board was not negligent in giving adequate notice about caps to Department staff throughout the months that the standard amendment was discussed. Kenneth Conboy was convinced that development of the amendment had been proper. The Department had had to respond to negative pressure on the possibility of caps from the Mayor's office. Commissioner McMickens had requested the opportunity to present the Board additional information on the impact of caps, and Chairman Tufo has invited her to appear before the Board at today's meeting.

Mr. David Schulte asked whether the substance of the Board's space standards work had been affirmed by the Mayor as proper. Chairman Tufo stated that the Board was prepared to affirm its decisions in terms of a response to the Mayor's letter which questioned the space standards process. Chairman Tufo had waited to respond to the letter until the Board could meet to determine a proper response.

Mr. Wilbert Kirby stated that while he had made a motion to pass the space standard, he asked that the record state he did not recollect discussing caps or moving the caps issue to a vote. He stated that his intent in making the motion was to promote a better usage of current space by allowing sentenced and detainee space to be used interchangeably. As the concept of caps was not the same thing as space footage limitation, Mr. Kirby did not affirm the use of caps by his statements. Mr. Kirby stated that he had not been sent a copy of the letter from the Mayor and had not seen materials

proposing caps at the time of the May meeting. Chairman Tufo stated that the entire proposed space standard amendment, including caps, had been distributed to Board members at the meeting during which the space standard had been discussed and approved. Chairman Tufo added that Mr. Kirby's original intention in moving the standard to a vote did not reflect that Mr. Kirby approved of the caps, only that he intended that the matter be brought to a vote. The vote on that date to approve the standard was recorded to have been unanimous, but if Mr. Kirby now realized that he had intended to cast a negative vote, his vote now could be recorded as negative. Mr. Kirby stated that he probably would vote to approve the entire standard, but he would like it known that he had not intended to introduce caps specifically.

Mr. Schulte asked if the Board was in any way compromising the physical constraints of the system by reducing the square footage to 60 per inmate. He asked if the standard had yet gone into effect. Chairman Tufo responded no and stated that if the current draft standard goes into effect, the Department will comply with a standard for sentenced population in July 1985. Apart from caps, little debate remains on the standard, except the issue of inmate access to toilets at all times. Chairman Tufo stated that Board staff analysis showed that if all caps were in place, only 10 sentenced beds would be lost, and in emergency situations variances could be granted to allow Department use of those spaces. Mr. Schulte suggested that the variance mechanism might allow the Department to implement the caps easily. Chairman Tufo answered that the Department probably would prefer a concrete rule with which they could comply to a rule they would have to make excuses for not following. Mr. Schulte asked if caps were included in the standards of other appropriate jurisdictions. Chairman Tufo stated that the ACA and State Commission standards applied a 60 square foot per inmate rule. Executive Director Richard Wolf, said that State Commission did not apply caps. ACA caps are set at 16 for detainees and 50 for sentenced inmates housed in dormitories.

Mr. Schulte suggested that the application of caps by the courts might show that the Board was enacting an accepted population control mechanism. Chairman Tufo remarked that a Board cap standard would add weight to the court's caps, thus making it more difficult for courts to accept any application by the Department for relief from court caps because the Board's caps would also apply.

Commissioner McMickens and Department staff joined the meeting at 2:30 p.m. Department staff present were First Deputy Commissioner Peter Seitchik, Chief of Operations Gloria Lee, Deputy Commissioner for Capital Planning Sharon Keilin, Assistant Commissioners for Compliance and Field Audits Janie Jeffers, and Counsel Devora Cohn.

Chairman Tufo asked Commissioner McMickens to produce any further information which should be considered on the space standard amendment. Commissioner McMickens said that Board and Department estimates of available square footage were not equal, placing her in a difficult position. She had assumed the role of Commissioner at a time when the Department staff was changing rapidly, and as a result of these transitions, she was not given adequate briefing of the space standard process. When she received a copy of the Chairman's letter to the Mayor reporting the Board's vote to publish for comment, she responded with a personal reaction in light of its implications to her as Commissioner. She had been unaware of the full extent of comments exchanged between Board and Department staff and so had written to the Chairman that she had not been given a chance to comment. She had intended to get a renewed opportunity to analyze the impact of the standard. Any additional release of inmates at C-76 must be avoided, and C-76 would lose beds should a cap be imposed. Some new buildings will not be in use until 1988. Impact of caps must be discussed between Board and Department staff, and better communication must exist in the future.

Chairman Tufo responded that the Board had carefully studied the impact of caps. He expressed concern that the Department had had ample opportunity to raise the negative impact of caps, but because they had not done so, they now preferred to say that opportunity had never existed. Chairman Tufo stated that he was prepared to outline in detail a number of occasions on which caps were discussed and Department evaluation was requested. He expressed concern that the Department seemed to be taking the position that it was insufficiently informed.

Commissioner McMickens stated that her concerns centered on lack of information shared within the Department. She stated that she had not intended to mislead the Board by accusing Board staff of wrongdoing. She stated that she had known that a history of discussion of caps existed between Board and Department staff, but that her concern focused on her in-house operations rather than on the Board's information or invitations for joint discussion.

Chairman Tufo stated that the Board was prepared to renew discussion of capacities; and that any new numerical data should be shared. Commissioner McMickens asked Commissioner Keilin to present numerical data on measurements. Commissioner Keilin distributed a multi-page document of measurement statistics (see attached). She stated that she had begun a new series of measurements using no previous estimates of space. When she compared these measurements to previous estimates she had made some changes in dorm populations accordingly. She disclosed that the population of all phase one modulars would be reduced by one inmate per side, making the population per side 49 instead of 50. A teletype ordering the reduction had been sent this morning. Keilin had completed the analysis on Department capacity under the Board's concept of discounting for corridor space and under the proposed cap standard, as well as a combined and cap constraint. She presented measurements on the

Brig, ARDC lower dorm extensions, and North Command dormitories, although these areas are not yet completed. All other housing areas were measured according to their current use, although future construction could possible change their use. Commissioner Keilin interpreted the various figures by examining sample housing areas. She then stated that according to Department estimates, if all Board constraints are jointly employed, including square footage standards, subtractions of space for corridors, and caps, a total of 366 beds would be lost throughout the system.

Chairman Tufo pointed out the inconsistency of the estimated loss of 366 beds with the estimated loss of 63 beds stated in a recent letter from Commissioner McMickens to Mr. Wolf. Commissioner McMickens stated that she had not felt that this figure was final. She stated that the Department had never been able to present these new measurements before today, so the Department's estimates of its bed losses had not been known before. She stated that had she been focused on the implications of these bed losses on the system, she would have been more attentive to the standards amendment process.

Chairman Tufo stated that he was not aware that the Board had insisted on the application of reductions for corridor space in all areas. The Board had advised that adequate corridor space should be allowed in the North Facility and the Bronx due to the special nature of these housing areas. The North Facility corridor areas had not been at issue under the Department's previous policy of housing no more than 50 inmates in a dorm; however, the Department has now begun housing more than 50 per dorm. Ms. Keilin stated her concern that since the Board had initiated discussion of corridors during the space planning process, Department staff be prepared to demonstrate what their possible effect would be. Chairman Tufo reiterated his understanding that corridors were not a factor intended to reduce square footage in any housing area.

Mr. Kirby expressed his belief that information had been exchanged between Board and Department staff that should have been shared with the Board as a whole. Chairman Tufo stated that the numerical analysis of space use had been presented by the Department only at today's meeting, and that no previous numerical analysis of caps had been exchanged.

Commissioner Keilin presented additional aspects of space analysis as included in the distributed figures. She noted that projected bed losses did not account for the CIFM infirmary and detoxification dorms. If these dorms were included, additional beds would be lost including beds in Four Main and Four Upper. She noted that modulars would be impacted should corridors be raised as an issue.

Mr. Schulte inquired how corridors had been initiated into space analysis. Commissioner Seitchik responded that since discussion had been initiated between Board and Department staffs on how space should be analyzed, the Department had been concerned with the measuring definitions that had been used, and that definitions might change in the future. The Department is concerned about how the Board chooses to employ its standard, so the Department has presupposed all definitions which might limit space, including corridors.

Mr. Schulte asked for a summary figure of the Department's immediate bed loss if the space standard amendment were in effect today. Commissioner Keilin stated that the loss would be as great as 366 beds to as little as 80 beds, depending upon which aspects of space amendment and its definitions were employed. Planned construction would be affected, including a dorm in the White Street jail in which 60 sentenced cadre were planned to be housed at 60 square feet per inmate.

Chairman Tufo remarked that Board and its staff had worked to analyze space as thoroughly as possible, but that the Department had never reciprocated with its own data until today. He said that a principal issue of the caps involves the North Command. The Board does not plan for caps arbitrarily; the Board has stated since 1975 that detainees are more appropriately housed in cells than in dormitories. Cell housing is not only more appropriate for inmates but it is safer for officers and staff. The Board is concerned by the dramatic trend in the Mayor's construction plans to build new dormitory areas instead of cells.

Commissioner McMickens stated her belief in the use of a proper mix of cell and dorms. She stated that dormitories are acceptable if properly managed and staffed. Chairman Tufo stressed the importance of proper management; that the purpose of introducing caps as a management tool is to ensure that dormitories are properly managed. The Board intends its standard to set long-term policy. Variances can be enacted to establish short-term policy, but in the long run the Board favors a 60 square foot space standard and caps as management techniques. Variances are appropriate safety valves but they should not subvert long-term policy. Chairman Tufo asked the Commissioner if she believed that dorms could be built to any size, regardless of how large, to house a potentially infinite number of inmates; and if not, what was a workable limit of inmates. Commissioner McMickens expressed her concern that 50 inmates was a purely arbitrary number. She added that all inmates should be housed in relatively equal conditions, and that men should not have a higher square footage than women. Chairman Tufo reiterated his question on theoretically reasonable cap levels and asked that if the Commissioner decided to construct huge housing areas, what measures could be taken to control such areas. He stated his belief that the size of housing areas and the populations housed therein should and must be limited at some point. Commissioner McMickens stated that she felt such areas might be controlled by privacy partitions, but that she felt confident she could run a large dormitory.

Mr. Kirby expressed his belief that caps might be infeasible for Department staff to implement.

Commissioner McMickens stated that she had always been opposed to the "social density" arguments raised during the labor hearings.

Mr. Schulte asked the Commissioner to clarify her position on caps by inquiring whether, if the Department filled an entire armoury room with inmates, the Commissioner would find it acceptable. The Commissioner replied that she would. Mr. Schulte asked if the Commissioner was in favor of corridors. The Commissioner responded that corridors were necessary to travel through housing areas but that establishing measurements for them is artificial as inmates frequently move furniture and displace corridors. Mr. Kirby suggested that regulations might exist which enforce the establishment of corridors but he could not name any specific regulation.

Commissioner McMickens proposed that the Board allow her to work closely with Mr. Wolf to discuss all aspects of the proposed standard. The Board agreed. Chairman Tufo asked that if Board staff could get questions on the space statistics to Department staff promptly, would the Department respond in writing before the next meeting? The Commissioner agreed.

Commissioner McMickens stated that she had conferred with the Chairman on possibly adding modulars. Commissioner Keilin added that the Department was considering adding modules to Rikers Island Hospital. Modular visit space will be constructed for CIFM and AMKC, as well as a modular program service area as an alternate area for the program functions in the CIFM basement, which will alleviate staff locker room overcrowding.

Mr. Kirby inquired whether the AMKC clinic was still operating long into the night. Chief Lee responded that a mini-clinic has been developed so that the main clinic is not used as heavily.

Department staff discussed new beds soon to come on the line, including 800 beds at the North Facility, a cell-block at CIFW, and the remainder of the Brig, which will be nearly completed on February 2nd and should be finished in March. 1460 total additional spaces will result.

Chairman Tufo asked Department staff to discuss the Brig. Commissioner Keilin said that while the Brig will be substantially completed by February 2, rooftop recreation, the laundry area, kitchen, and locker space will not be completed. In order to complete the Brig on schedule, DGS construction teams will have to work at high speed, so although the third floor has been completed, the Department has decided to maintain Brig population at its current amount, 210, for as long as possible. Keeping the third floor empty will facilitate the construction process. Until the ULURP process, involving Fort Greene Community participation is finished, the Department will not know which of 3 or 4 available recreation options will be selected.

The use of 6600 square feet of possible recreation space is constrained by the column structure of the building.

Board staff inquired whether Department information released to Judge Lasker contemplates use of dorms on the 2nd and 3rd floors. Commissioner Seitchik affirmed that these beds were counted citing their availability to the Department.

Chairman Tufo asked the Department to discuss its request for an extension of the law library variance. Commissioner Jeffers asked that the total time of the variance be amended from 90 to 150 days. The Board agreed to consider again a law library variance extension at its next meeting.

Board staff asked that the Department discuss access to toilets in the Brig. Commissioner McMickens stated that the only way to change the toilet arrangement in the Brig was to close a portion of it for reconstruction. Ms. Dunkel said that the toilets already existed, but that proper access to them should be ensured. Inmates presently must request an escort officer. As long as inmates can travel to the present toilet area unrestricted, Board staff sees no reason to construct new toilets. Commissioner Keilin reported that the construction budget will not sustain the cost of putting in new toilets. Chairman Tufo reiterated Board commitment to inmates having free access to toilet facilities but allowed that since the Brig was understood to be problematic, a variance for bathroom access in this facility might be appropriate. Members of the Department left the meeting at 4:00 p.m.

Chairman Tufo remarked that the space issue had been recently influenced by the Department's recent policy shift in the Management of the North Facility. The Department and outside agencies had understood that a general good-faith agreement existed to maintain the North Facility at 50 inmates per dorm. However, in the last couple of days there had been a significant influx of inmates into the North Facility.

Mr. Kirby expressed his opinion that Board staff must share information fully. He felt that he had not been fully briefed on issues. Chairman Tufo responded that all pertinent information had been distributed to Board members. Mr. Kirby asked to be given a copy of the letter from Mayor Koch on space standards. Chairman Tufo responded by asking staff to distribute it. Mr. Giordani expressed his opinion that he was given ample information. Mr. Schulte suggested that persons consult with Board staff such as Mr. Rakis whenever they needed more information. Mr. Horan suggested that it was difficult to know whether you lacked information unless you had knowledge that it had existed in the first place. Chairman Tufo assured Board members that all pertinent information would be distributed.

Mr. Horan discussed recent grievance decisions by the Department and responses by the Board. He stated that the grievance process was hampered when grievances were insufficiently investigated and addressed at the facility level. He had expressed this opinion by letter to the Commissioner, requesting to meet with her on the grievance process. She invited him to meet with her and the Wardens to raise any issues. Specific problems that had emerged over a grievance at the Anna M. Kross Center on Kosher meals indicated that problems uncovered by Board staff should have been revealed during the initial investigation at the institutional level. Mr. Horan noted that Mr. Kirby had helped the Board arrive at a response to the grievance. The integrity of the system must be preserved, Mr. Horan noted; or inmates may seek alternative, perhaps violent, means of making their complaints known.

Chairman Tufo announced that the Mental Health Minimum Standards were ready to be published in the City Record. When the Standards had been sent to the Mayor prior to publishing, the Mayor's Criminal Justice Coordinator Ken Conboy raised a number of concerns. Mr. Wolf met with Conboy this morning to address his concerns and Conboy agreed to let the Board publish them.

Chairman Tufo asked the Board for permission to respond to the Mayor's letter on behalf of the Board, by stating to the Mayor that the Department agreed that the Board had offered the Department sufficient information on its plans for a space standard, and sufficient opportunity to comment. The Board agreed.

He announced that Mrs. Rose M. Singer and Mrs. Barbara Margolis were to be awarded by President Reagan for their outstanding service to Corrections. Senator D'Amato will present the award on behalf of the President.

The next meeting was scheduled for November 27 at 2:00 p.m.

The meeting was adjourned at 4:25 p.m.