

## **OPEGA Recommendation for Project Direction**

### **Maine State Prison Management Issues**

#### **Background**

In February 2009, OPEGA received a request for a review of a variety of issues at the Maine State Prison. Allegations regarding potential misappropriation of State resources and violations of a criminal nature were referred to the State Controller's Internal Audit Division and the Attorney General's Office, respectively, for investigation. Other serious issues raised in the request related to the culture and working environment at the Maine State Prison and the resulting experiences of staff there.

On March 27, 2009, OPEGA received approval from the Government Oversight Committee (GOC) to pursue preliminary work to assess whether the concerns expressed were potentially representative of systemic issues at MSP that warranted a more detailed review. Our approach focused on trying to assess how likely it is that the culture/environment described in the concerns actually exists and whether there appear to be potential weaknesses in the avenues that employees have available for raising concerns.

Our work has included:

- conducting interviews with representatives of management, the State's Equal Employment Opportunity Office and Office of Employee Relations, the human resources function within the DAFS Service Center that supports the Department of Corrections (DOC), unions representing MSP employees, consultants engaged by DOC to address issues at the MSP and limited other external parties including former employees;
- reviewing documents and performing other research related to DOC and MSP personnel policies and procedures, union agreements, MSP's current operations, MSP's Accreditation from the American Correctional Association, DOC's cultural change initiatives and interventions at MSP, and work done by other state and national entities on various reviews of corrections and correctional institutions;
- analyzing limited data on employee terminations and re-hires at MSP, grievances filed under the union agreements, employee complaints filed with the Maine Human Rights Commission and the courts and settlement payments; and
- touring the MSP facility.

Our work to date has not included reviewing specific cases of grievances, complaints or reports filed by individual employees. We also chose not to place employees, or former employees, in uncomfortable situations during our preliminary work by requesting their input directly. Thus, we have spoken only with those employees or former employees who have offered their perspectives voluntarily.

## Summary of Preliminary Research and Analysis

- Significant changes affecting the culture and working environment at MSP in recent years include the move to a new, larger, and differently designed, prison facility in 2002. In conjunction with the move, DOC introduced new models for managing inmates. The new “direct supervision” model results in increased staff interaction with inmates. The new “unit management” model pushes decision-making down to the lowest level possible and is supposed to result in a more collaborative and less hierarchical environment. The move to the new prison was also closely followed by an unexpected near doubling of the prisoner population from about 400 inmates to over 800.
- Since the move, MSP has experienced chronic problems in recruiting and retaining personnel and attaining a fully staffed status. Management notes that these shortages, coupled with scheduled employees calling in sick and unpredictable situations with inmates that require correctional officers to assume special posts (i.e. suicide watches) have resulted in significant overtime for correctional officers including the imposition of mandatory, unscheduled overtime. The shortage of officers and the required overtime have been continuing complaints of the union.
- Management acknowledges that implementation of the “unit management” and “direct supervision” models, which have been successfully implemented in other DOC institutions, have posed challenges at MSP – the only maximum security facility. Since mid-2005, DOC management has attempted to address these challenges and others through efforts aimed at producing cultural change, improving leadership and communication, and introducing new techniques for officers to de-escalate situations with inmates. Several of these efforts have involved bringing in outside expertise and consultants.
- In May 2005 and March 2006, MSP worked with an organizational consultant engaged through the National Institute of Corrections to assess the culture at MSP and identify aspects that needed to be addressed. About 130 employees, representing a cross-section of the work force, participated in this effort to varying degrees. Management acknowledges that although some of the other interventions conducted have successful, i.e. dramatic reductions in the use of the restraint chair for inmates, the cultural change desired from this particular effort has not yet been achieved. Management believes this is because there has been a lack of sustained focus on follow-up to the initial effort and lack of knowledge of how best to build on it. The consultant involved confirmed that the original effort made strides in assessing the culture and identifying what needed to be addressed but stopped short of developing a strategy and action plan for creating change. Currently, DOC is receiving assistance with diversity issues at the MSP – including employee trainings – from Noel Bonam of DHHS’ Office of Multicultural Affairs.

- Information gathered by OPEGA suggests that the following elements are likely present to some degree within the culture at MSP although work to date has been insufficient to assess the pervasiveness or severity. These elements include:
  - Intimidation of, and retaliation against, individuals attempting to raise concerns – or behaviors that staff perceive as intimidation or retaliation – with these interactions occurring both between supervisors and staff, staff to staff, and supervisors or staff to inmates. Descriptions of the forms and severity of these behaviors vary from subtle to overt.
  - Behaviors that staff or inmates experience or perceive as harassment and discrimination of various forms with such interactions being between various classifications of individuals. These behaviors may not all fit the criteria for illegal harassment and discrimination but, nonetheless, could be contributing to an uncomfortable work environment for some employees.
  - A distrust and/or lack of respect for management as a whole, or of certain individuals within the chain of command, that appears to be fed, at least in part, by staff perceptions that a strong “good old boy” network exists and that managers receive personal benefits that appear unfair to staff.
  - Reluctance or actual failure to report situations that are personally concerning to staff, appear unethical, or that otherwise expose the State to unnecessary risks and liabilities. This reluctance appears to stem from a fear of retaliation and/or a lack of confidence that management will take appropriate action.
- The Maine State Prison received accreditation from the American Correctional Institution in 2006 and is scheduled to undergo re-accreditation this fall. OPEGA’s review of the Accreditation Standards and the report from the last accreditation audit show that the achieving accreditation requires an extensive effort - but that the upcoming audit would not likely include work that would indicate the extent to which these cultural elements may exist at MSP.
- Our research confirms that cultural concerns such as those described are not uncommon in correctional institutions and other work environments. However, the level of risks and exposures inherent in a maximum security facility make it especially critical that effective avenues for reporting and resolving concerns exist and that any cultural barriers affecting those avenues are addressed.
- OPEGA noted that employees do have a number of formal avenues available for reporting various types of concerns including an incident reporting process and grievance filings and related written policies and procedures do exist. Management also described more informal avenues, such as “open door policies” for the Warden and the Commissioner, that are purported to be available. We did also note, however, potential weaknesses in the formal and informal reporting avenues that may affect staff’s willingness to use them – especially given some of the cultural elements described above – or that may interfere with concerns getting proper attention and action at the appropriate supervisory level.

- Information gathered by OPEGA suggests that management does take action when serious misconduct has been reported but our work to date has been insufficient to assess the timeliness, appropriateness or consistency of those actions.

### **OPEGA Recommendation**

In our opinion, assuring that effective avenues for reporting and resolution of concerns exist and are truly supported by the culture is critical to reducing the State's exposure to liabilities and risks inherent in the operation of a maximum security correctional facility. Based on the results of our preliminary work, we recommend that the following questions be further explored to assure that unacceptable situations experienced or observed by MSP staff will be promptly reported and appropriate and timely action taken.

1. What changes should be made in the environment/culture at MSP to fully support the following as regards violations of significant policies and procedures, inappropriate treatment of staff and inmates and other misconduct regardless of who may be the subject of the charges:
  - prompt reporting;
  - timely, appropriate and consistent response;
  - appropriate, consistent and effective action and resolution of the concern?
2. What improvements should be made to the avenues available for staff to raise concerns to assure that: staff can utilize them without intimidation or fear of retribution; there is timely, appropriate and consistent response and resolution; and there is sufficient record of the concern and actions taken to resolve it? Should additional avenues be established?
3. Have staff experienced or observed situations that have not previously been reported or properly addressed, or that staff perceive have not been fully and properly addressed, which management should take action on or communicate about?

We also present, for the GOC's consideration, two possible options for addressing these questions. The first option is for OPEGA to continue its independent work to answer these questions, preferably with the assistance of a consultant that has background in organizational culture and development as well as experience with a correctional or other paramilitary environment.

The second option is to allow the Department of Corrections to present the GOC and/or the Criminal Justice and Public Safety Committee (CJPS), at a set date, with a strategic action plan for continuing the cultural change work it has initiated in a more deliberate, coordinated and accelerated fashion. This would be with the understanding that the Department's planned efforts will clearly address the questions that OPEGA has posed. In conversations with OPEGA, the DOC Commissioner and Deputy Commissioner for Policy discussed several approaches they would take to improving the culture. These included requesting additional technical assistance from the National Institute of Corrections to build on the initial training and cultural change effort initiated in 2005;

the use of a employee assessment of climate survey currently being used in other DOC divisions; and introducing a performance based standards measurement process currently being used in other facilities that would track some key performance indicators related to the culture. There are also some specific areas that they are considering for more focused intervention.

If the second option is selected, OPEGA, the GOC and/or the CJPS Committee should then receive periodic updates from the Department on the status of the action plan and the results achieved. At a set future date, the GOC would determine whether OPEGA should conduct any work to assess whether potential concerns we have observed with the reporting avenues and the supporting culture have been effectively addressed. In this way, the Department would be held accountable to pursue necessary change. This option would necessitate clarifying the roles of the CJPS Committee and the GOC in this process, as well as clarifying the role OPEGA would assume in assisting either committee in its oversight of the Department's action plan.