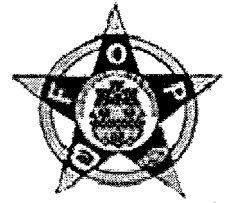


JOHN D. FRY  
General Counsel

# Fraternal Order of Police

## FLORIDA STATE LODGE

### Office of General Counsel



October 8, 2009

Esteemed Brothers and Sisters:

The last several months have continued to be intense and challenging in both the volume and scope of my office's representation of Labor Council and State Members. As I alluded to in my last report, the economy continues to affect all membership in a multitude of ways.

Contractual disputes and negotiations have increased in both complexity and animosity between the employing body and our members. Over the last several months we have succeeded in avoiding Fiscal Urgency through creative bargaining and unique benefits that we can carve out of the current "we're all in this together" attitude cities are developing. The "we're all in this together" attitude is best summed up by the analogy, "If the Parks and Recreation worker didn't get X why should the Police Officer?". The General Counsel's office has vigorously pursued the use of "use it or lose it benefits" to members such as Comp time for no accidents, law enforcement equivalents of Kelly Days, and a litany of non "fiscal" benefits for our members.

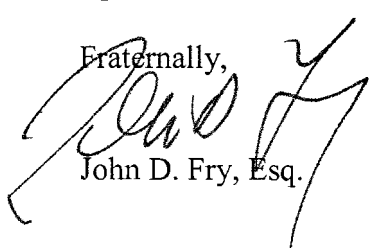
The economy is also affecting discipline. We are seeing an increase in the severity of discipline that is disproportionate to the actual offense. Suspensions without pay result in additional revenue for the Agency, and are being used whenever possible. The General Counsel's Office is vigorously fighting this trend and grievances by Staff Representatives are on the rise.

Officer related 'Use of Force' is increasing as well with shootings occurring more often than my office has previously seen. In that vein, our office continues to increase the amount of regional attorneys and is providing training to all attorneys, as well as on scene support 24/7/365 on all shootings (3 in the first 10 days of October). Our offices continue to provide services not just to the LEO who discharged his/her weapon, but the supporting/witness officers as well.

Since the Summer Report, we have conducted multiple termination and unjust discipline arbitrations and each and every case has been won by the FOP. We take great pride in that statistic because each of these cases is tantamount to giving a member his professional life back.

Once again, I thank you for the service that you allow me to provide to your membership and stand ready to assist any State Member whenever possible.

Fraternally,

  
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South West- Two Officers were falsely accused of unlawful compensation by their employing agency. The Officers were terminated from their employment for allegedly defrauding the Agency of approximately \$2,000.00 in tuition from attendance at a university that was not accredited by the Florida Department of Law Enforcement. The F.O.P. grieved the terminations to the City Manager and the terminations were reduced to a 10 day suspension. The General Counsel's office held a multi-day arbitration against the City consisting of multiple witnesses and exhibits. The Arbitrator found No Intent, No Unlawful Conduct and acknowledged that discipline was inappropriate in this Case. The initial termination was reduced to an Oral Counseling for both Officers with reimbursement for all funds due.

Central- A Police Officer was denied compensation for call-out because of the fact that she did not physically return to her duty station, but instead telephonically answered multiple questions over multiple occasions. The F.O.P. is actively addressing this as it is a recurring problem within the Officer's Agency. Arbitration is pending and will affect approximately 120 members.

A West Coast Police Officer was terminated from his employment for allegedly having knowledge of an illicit substance consumed by his spouse. The City terminated the Officer based primarily upon news reports and public perception as because a Police Officer who allegedly had knowledge of his spouse's actions was inappropriate. Multi-day arbitration was held, briefs are currently being written.

South East- Regional Police Department is at an impasse on their on-going Contract. A special master was selected. All parties are prepared to move forward in the City in lieu of the Special Master's appointment and have chosen to re-enter negotiations. Contract is up for ratification. As a result of agreeing to forgo this Special Master, the Office of the General Counsel of the City Commission was able to re-implement the Step Plan for approximately 60 members, generating approximately \$220,000.00 additional dollars in revenue for the membership. Actual ratification of the Contract is pending.

South East- Major Police Department in the Southeast Coast of Florida is currently at impasse. A Special Master has been selected, dates were set at which point the Agency agreed to go back to the table to resolve all contractual issues. This on-going contractual dispute appears close to resolution with a vote pending for the membership.

South Florida- The Office of the General Counsel in conjunction with local labor union management was approached by the Commission of a substantial city in South Florida asking the Officers take a pay cut, or layoffs would occur. The Union Membership opted not to take the pay cut, meetings were held with City Management. No layoffs appear as though they will occur due to financial restructuring in other areas.

North Central Florida- Area Police Department of several hundred members contract is entering final year. The City was looking at the possibility of furloughs and layoffs without a restructuring of the Agreement. Members of the local and the General Counsel's office coordinated and presented to the City Commission a number of financial options that would amend the revenue stream and allow the Officers to avoid furloughs and layoffs. All parties agreed to an MOU and is in the process of ratifying a two year extension to the current three year collective bargaining agreement.

South Florida- The 200 person agency was notified by the City Commission that they would not honor the current Contract and was preparing to declare a fiscal emergency. Intense negotiations occurred between the local and multiple consultations were held with the General Counsel's office. An agreement was reach and the Contract was ratified resulting in no layoffs, no reduction in workforce and no moneys taken from the membership.

South Florida- A Police Officer responded to a burglary. Upon arrival he sees the subject leaving, subject pointing a vehicle at him and drives towards the Officer, Officer in fear of his safety, discharges his weapon.

South Florida- Officers observed what appears to be an transaction in a long barreled weapon. In an attempt to detain the subject, the subject pointed the weapon at the Police, one of the subjects puts the weapon down and flees. As the subject is fleeing the Officer commands the subject to surrender, the subject places his hand in his mid-section and the Officer discharges his weapon with a non-fatal wound. General Counsel's office responded to represent the officer. The case is still pending.

Northwest Florida- Officers responded to an armed robbery. Upon arrival, one of the subjects was exiting the business with a weapon. The subject pointed the weapon at the Officer, the Officer discharges his weapon. The Regional Attorney on behalf of the Office of the General Counsel responds, investigation pending.

North West- Ongoing incident review reference to the accidental death of a subject.

West Central- Officers are advised of Probable Cause for a Potentially Armed suspect. The officers respond see the subject a chase ensues and the defendant begins to draw what the officers believe to be a weapon. One non member discharges his weapon shooting the subject. Office of the General Counsel speaks with both "witness members" reviews statements and assists private counsel for the non-member.

Monroe County- Perdomo ruling was handed down on September 3, 2009. As you may recall, Perdomo was a Monroe County Detention Deputy who was criminally charged with two counts of battery for pepper spraying two unruly inmates and one count of Official Misconduct for allegedly falsifying a Use of Force Report. The criminal trial ended with a not guilty verdict and the Sheriff refused to hire the deputy back. The case went to a two day arbitration. The Arbitrator, Martin Soll, Esq., wrote a 43 page decision, wherein he outlined everything the Sheriff did wrong in the investigation and awarded Perdomo all of his back pay, reinstated him, required the Sheriff to reimburse him for all out of pocket expenses for health issues and ordered that Perdomo's file be deleted of the negative findings and returned him to the status he occupied before his arrest. At Christmas, we expect to give Perdomo the only thing he was not awarded, that being the kitchen sink.

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South East- A South Florida Officer was discharged for allegedly creating a hostile work environment, using profanity and a racial remark. A three day arbitration was conducted wherein the only negative testimony against the officer was from the members of his own unit. There was little or no corroborating evidence. After the arbitration, the officer wrote a letter to the FOP President thanking the FOP for his representation. The letter was published in the FOP newsletter. The letter made reference to the Deputy Chief who has very thin skin, claimed he was insulted and demanded an apology from the FOP. The DC also contacted the officer's new employer and complained using his position as Deputy Chief. The new agency wanted to fire the officer because the letter was sent from his work computer, but instead gave the officer ten days suspension without pay. Thereafter, the City filed a motion with the Arbitrator requesting to reopen the hearing because of newly discovered evidence. That issue is still pending, as is the arbitration. It is rumored that the new theme song for the agency is "sticks and stones."

A municipal dispatcher was given a suspension for allegedly making personal calls while on duty and putting down the wrong room number from a 911 call. A one day arbitration was held during which it was learned that the personal calls were not unusual for all employees to make while on duty. The Arbitrator's decision is pending.

A municipal sergeant was working an off duty detail and obtained permission to leave to attend an FOP meeting and run a police related errand. While on the road, a civilian vehicle drifted into his lane and made "slight" contact with his marked unit. The sergeant and the civilian female pulled over and upon inspection, did not notice any damage to either vehicle. They both decided to leave the scene. Approximately one hour later, and after running another errand, the civilian driver returned home where her husband notice "damage" to her vehicle. An investigation was conducted and the sergeant was located and his vehicle inspected. After an IA investigation, the sergeant was reduced in rank to patrolmen and given a suspension without pay. Arbitration was conducted and evidence revealed that the damage on the civilian vehicle did not match the "rub" mark on the marked unit. The arbitration was continued for another day due to time restraints.

A civilian unit contract was in dispute wherein the Town had several groups of employees working 32.5 and 37.5 hours. A dispute arose as to when overtime would start because the language of the contract said that the hours worked would be considered 40 hours for overtime purposes. The issue was settled when the Town issued a memo to the department heads to make the proper adjustments, however, a new City Manager and Human Resources Director decided that the memo only applied to the 32.5 hour employees and NOT the 37.5 hour employees. This position was taken despite the fact that everyone in the chain had agreed that it would be applicable to the 37.5 and signed off accordingly. The matter went to a one day arbitration and the decision is pending.

An impasse was declared regarding a CBA and the matter was referred to a Special Master. The Town Manager and the Town's labor attorney took a position that was unreasonable despite the previous CBAs that spoke to past practices. After a day hearing, the Special Magistrate issued his report supporting the FOP's position. Over the objections of the Town Manager, the Town Council accepted the Special Magistrate's recommendations and imposed a CBA favorable to the FOP.

The Sheriff Of Monroe County, despite the sought after FOP endorsement which he received, has refused to come to an agreement with the FOP on a new CBA. This FOP unit has not had a raise in 3 years nor have they had a CBA in the same period of time. The Sheriff gave the FOP a take it or leave it CBA which was rejected by a vote of 116-0. The FOP appeared at a County Commission Budget Meeting and advised the Commission why the contract was rejected. An impasse has been declared and a two day Special Magistrate Hearing is set for October 26, 2009.

Despite good faith negotiations by the FOP, the City of Pensacola has refused to provide a CBA that is acceptable to the members. An impasse has been declared and a hearing is forthcoming.

A Central Florida city has decided to furlough 27 officers for two days, thereby affecting numerous rights under the pending CBA. The City has failed to declare a fiscal emergency as required by statute and unilaterally furloughed the officers. The FOP has filed the first suit of this kind in Florida. The case is pending a hearing as the City has filed a Motion to Dismiss. Arbitration has been set as well for January 28 and 29, 2010.

An impasse was declared with a South Florida Town over several issues. A Special Magistrate hearing was conducted on August 10<sup>th</sup>. The Special Magistrate made numerous recommendations, all but three were agreed upon by the Town and the FOP. There were three issues that the Town refused to accept involving COLA, Longevity Pay and annual evaluations. At an impasse hearing before the Town Council, the FOP was successful on all three issues. South Florida agency failed to pay two officers for taking a sick day. The City took the position that the Officers needed to provide a doctor's note in order to be paid for the sick day. There is nothing in their CBA that requires a doctor's note. These cases are set for arbitration on October 21<sup>st</sup> and 22<sup>nd</sup>.

A municipal dispatcher was terminated for alleged theft based upon her finding approximately \$4.00 in change in a locker. This locker had previously been used as a collective locker for the storage of magazines and other common items. After returning from sick leave, the unlocked locker was empty except for the change. A new employee claimed that the locker was her's and the change was immediately returned. After an IA investigation, such as it was, the dispatcher was terminated. Arbitration is scheduled for October 29<sup>th</sup>.

A South Florida agency arrested a member of their department for domestic violence even though his spouse did not file a complaint. An injunction was served on the department for the violation of the Officer's constitutional rights, which was granted resulting in the department having to redo the internal affairs investigation. Additionally, the criminal charges were dropped. However, the agency didn't have enough, and decided to discipline the officer and gave him a 30 day suspension. The arbitration is set for November 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup>.

A South Florida agency has denied a number of Officers promotions and failed to follow the procedures as set out in the CBA. Class action arbitration has been scheduled for December 9<sup>th</sup>.

A North Central Florida Officer was terminated for allegedly violating the City's pursuit policy. No IA was conducted. The Officer, a current member of the armed forces, was given his job back only to be immediately notified that he was now the subject of an IA investigation. The Officer is currently deployed and is scheduled to go to Afghanistan for a year. During his deployment he will not know whether he returns to the country he is defending with a job waiting. The FOP is waiting for an arbitration date.

An Officer was investigated for an incident that he admits to. However, the North Central Florida agency (same as above) never conducted an IA investigation. When the Officer was notified that he may receive discipline, his representative objected to the agency not following the Police Officer Bill Of Rights. The recommended discipline was originally a 40 hour suspension but because of the objection raised by his representative, the Deputy Chief changed the suspension to 60 hours. This case is awaiting the selection of an arbitrator and a date for arbitration.