



PHOENIX LAW ENFORCEMENT ASSOCIATION
 1102 WEST ADAMS STREET
 PHOENIX, ARIZONA 85007
 602.246.7869 • fax 602.246.0226
 www.aupkra.com

Non-Profit Organization
 United States Postage
 PAID
 Phoenix, Arizona
 PERMIT NO. 787



PHOENIX LAW ENFORCEMENT ASSOCIATION
RECAP
The Official News-Magazine of the Phoenix Law Enforcement Association

azplea.com
 July 2006



Representation Committee

Chairperson
 Mark Spencer



Vice Chairperson
 Danny Boyd

Representatives

Levi Bolton • John Buckover • Will Buzvidas
 David Dager • Mark Engren • Bob Furreroux • Jerry Gannon
 Greg Gibbs • Cheryl Goshko • Bryan Hanania
 Gary Hatchkiss • Barry Jacobs • Dave Kothe
 Karen Lewsader • Franklin Marino • John McTernan
 Brian Miller • Anthony Navas • Darren Nielsen
 Bob Palma • Steve Porrotta • Jerry Peterson
 Dave Sampson • Frank Smith
 Stu Sterling • Vanessa Warren • Terry Yahweh

If You Have A Grievance

FIRST: Attempt to resolve the matter informally with your supervisor.

SECOND: If you cannot resolve this with your supervisor, contact one of the representatives above.

REMEMBER: There are time limits to initiate a written grievance.

If You Are Being Investigated

RECORD: All interviews once you have been given an NOI.

COPY: All memos or paperwork related to the investigation.

TRUTHFULLY: Answer all questions related to the investigation.

If you are called by Professional Standards Bureau or any police supervisor regarding an investigatory interview or interrogation, you may have PLEA representation during that interview.

Call for representation as soon as possible.

The Board Of Trustees

Jake Jacobsen President
 Michelle Monaco Vice President
 Joe Clure Treasurer/Negotiator
 Mark Spencer Secretary/Membership
 Steven Rackley Chairman of the Board
 Levi Bohon Trustee/Representation
 Danny Boyd Trustee/Representation
 David Dager Trustee/Representation
 Brian Miller Trustee/Representation
 Joe Petrosino Trustee
 Bruce Stallman Trustee/Representation

PLEA Legal Resources

Michael Napier Legal Counsel
 Janet Feltz Legal Counsel
 Anthony Coury Legal Counsel
 (602) 248-9107
 www.napierlawfirm.com

The PLEA Office Staff

Arlene Venturini Office Manager
 Leigh Ann Bennett Accounts Manager
 JoAnn Gothard Membership Services
 Debbie Webster Membership Services
 Melissa Solimeno Membership Services

The RECAP Staff

Jake Jacobsen Managing Editor
 Michelle Monaco Editor
 Bill Steele Publisher

By the time you read this our State Legislators will have adjourned one of the longest sessions in State history. That would be the good news. The bad news will be – how much long-term damage have they done to our city and other cities and towns around the state?

Two of the most closely followed and hotly contested items at the Capitol this session dealt with the "immigration issues" and the "income tax reform issues". A close third was a tie between the never ending debates on "property tax relief" and "business property tax relief".

I have spent many hours at the Capitol, or in meetings with the Mayor – our lobbyist – political strategists – AFA Exec Director, Dale Norris, or e-mailing legislators for their support on issues critical to law enforcement or public safety.

**The bad news will be –
 how much long-term damage
 have they done to our city and other cities
 and towns around the state?**

I've written about why we opposed the illegal immigration bill (the original and the revision). I've explained why we took the position we did to many of you that called, and I haven't had one of you disagree with me since the conversation. We (PLEA) are very concerned about the illegal immigration problem, but this was not "the fix", it was just politics.

The second biggest concern has to do with proposed legislation to reduce our state income tax burden by 10%. That doesn't sound like a big deal – 10% – how much could that be? Well for you and me it's not much. It could be around \$1.50 a year – or less than three bucks a week.

The real damage comes from the massive cuts to state shared revenue. State shared revenue is generated simply from state income tax collections. By reducing the tax rate the amount of tax revenue is reduced. The obvious result is the severe reduction in the amount of revenue available to share. The state shares 15% of all "revenue" with the cities and towns. This was passed by voters

**The real damage comes from
 the massive cuts to
 state shared revenue.**

in the 1970s. This enormous figure is divided among cities and towns using a formula based on population. Phoenix gets about 32% of the total. Reducing the "tax burden" by 10% equates to a loss of nearly \$50 million a year to our city's general fund (the fund that pays for Cops and Firefighters, etc.) All this so you and



R.C. Jake Jacobsen
 PLEA President

I can pocket less than three bucks a week.

Ironically, our state income tax rate is already in the bottom third of all states that have a state income tax. I'm sure we have some very pressing needs in our state where my two dollars and change could go each week. Somewhere like teacher salaries, to attract and retain the best for our children, educational supplies and equipment, fireways, transportation, wild land fire protection, and business expansion credits that would stimulate growth. There are a number of important things that can be done for our state with the price of my three "big gulps" a week. It's disturbing to think our legislators are grumbling about a multi-million dollar tax cut that won't buy you and me a gallon of gas a week.

But it's not your job to e-mail supporters of law enforcement, or conference call with representatives of other cities and towns. I'm not asking you to be at the State Capitol. I'm not asking you to read any of these bills in their entirety. It's not your job to visit with legislators or Mayors or the Governor, and you shouldn't receive calls or e-mails from upset legislators that take exception to your editorial in the paper. That's my job.

**There are a number of important things
 that can be done for our state with the price
 of my three "big gulps" a week.**

We stood with Mayor Phil Gordon and Mayors and Council members from around our State to strongly oppose the "tax relief" bill. We pleaded with law makers to find a way to "hold harmless" the cities and towns from the revenue loss created by reducing the tax rate. We were not successful. The Governor signed the budget the week of June 19th. She managed to split the income tax reduction. Instead of a 10% reduction all at once it will be 5% in each of two years. The bad news is the State Shared Revenue will no longer be the simple matter of downloading the total amount of money into the population numbers and then sending the monies to the cities and towns. From now on the money will be divided by the Appropriations Committee however they see fit.

Continued: Page 6

Another Point of View

Subject: April 2006 RECAP

John,

I have been a member of the Phoenix Police Department for just under 18 years and a supervisor for about 11 years. I try my best to ensure that the people I supervise enjoy their work place and are afforded the resources they need to do their jobs well and safely. I go out of my way to grant our employees the benefit of the doubt when faced with difficult issues but also hold "all" of my employees accountable for their actions. Occasionally, this task is much harder than it would appear, as conflicts are not always black and white. I have also found myself at odds with many of my peers and even executive management and do my best to hold my ground for the greater good. I am a firm believer that FLEA has a worthy mission and that your organization's accomplishments should be respected. I also do my best to work with your membership and board of directors. I feel that I have a good understanding of the issues and challenges that face you as the president of an organization that represents a membership that is not always united in its goals and is thus very hard to keep happy. Because of this I work to ensure that I take nothing personally and have developed a thick skin. Yet, after this most recent RECAP, I find it disheartening to think that the organization charged with representing this city's law enforcement

officers would allow itself to be represented by childish and unprofessional articles such as "Down the Rabbit Hole".

John, I take no issues with anyone disagreeing with me and can even live with the derogatory ramblings of a poorly informed author but, I find it disturbing that both employee sides are not represented. This issue was not black and white but it was one that needed to be dealt with swiftly and in such a fashion as to leave no doubt that unprofessional behavior on any level was not acceptable. I am not above making mistakes and welcome input from all levels and I do this in an effort to be fair. If Mark, you or any other member of your board, want to know what went into my decision and truly want to present the membership with what Management is "doing" to them, please call me and we can sit and talk about it. I think it would be irresponsible for management to try and control what FLEA publishes but it would be equally irresponsible not to speak up when all sides of an employee conflict are not fairly represented. I truly hope to hear from you or even Mark in order to clear this issue. I am including my cell which I answer 24/7.

Sincerely, Glen Gardner

Member Discounts:



Disneyland:
3 Day Park Hopper
\$180 Adult; \$100 Child (ages 3-11)



San Diego Zoo:
\$25 Adult; \$10 Child (ages 3-11)

Sea World San Diego:
1 Day Adult \$41; Child \$30 (ages 3-11)
2 Day Adult \$82; Child \$60
(Child day can be used thru 6/30/7)



WPA Animal Park:
\$21 Adult; \$10 Child (ages 3-11)



Universal Studios Hollywood:
3 Day Adult or Child \$71
Child & 3rd days expire
74 days from first visit



Knott's Berry Farm:
\$24 Adult; \$10 Child (ages 3-11)

Six Flags Magic Mountain:
\$27 Adult; \$10 Child (under 40 inches)



Cooler-a-Creators:
\$10 Adult or Child
Through Labor Day



Legoland: \$33 Adult or Child
(2nd Day Free must be within
7 days of first visit)



Local Water Parks:
\$10 Adult or Child

Fallen HEROES



Phoenix Police Officer
Ignacio G. Concha #2853
July 1st, 1982



Phoenix Police Officer
John E. Davis #1841
August 2, 1982



Phoenix Police Sergeant
John Wayne Drumbisky #2647
July 26th, 1990



Phoenix Police Sergeant
Danny L. Tunney #1437
July 26th, 1990

NEW MEMBERS

WELCOME

- Matthew Andrews
- Shane Figueroa
- Ashley Gagnon
- Raul Hernandez
- Lourdes Lopez
- Daniel Moreno
- Sean Muriz
- Michael Neals
- Adam O'Connor
- Jason Redding
- Courtney Riojas
- Lynne Rivera
- Robert Sauceda
- Toby Speas

Mark your day planner
and attend
the membership
meetings on the
last Tuesday
of every month
at 7:30,
12:30, and 5:30.
The Next Board meeting
is on
July 19, 2006
and members
can attend at
8:30 am.

Continued: Page One

Because of this, our raises and benefits will no longer be controlled by our City Council. Our raises and benefits will be conditional on the amount of State Shared revenue the Appropriations Committee decides Phoenix should get. From now on we will be treated like DPS officers are treated by the legislature. Are you a contributor to our Political Action Committee? You might want to start. Some of these people have got to go. This is the first legislative session I can remember where we spent more time on the defensive against harmful bills than the offensive for positive bills. One example was SB 1153. This bill, introduced by sheriffs through the Arizona Chiefs of Police Association (ACOP), would have taken away the authority of our Civil Service Board or County Merit Boards to overturn a termination or to reduce your discipline. If you could not prove that the discipline imposed was arbitrary or capricious (discipline that would "shock the conscience"), you would not even get a hearing. We killed it. But it will be back next year. There are many other examples. The value of the relationships we have built in the Governor's office and in both houses has been hugely beneficial in fending off legislation harmful to us or our careers and retirement. It reinforces the need for a well funded PAC fund.

On a positive note, the Governor signed SB 1145, the "Castle

Doctrine". This was offered as a bill that would provide that: 'any person defending his/her home or occupied vehicle from an intruder is presumed to be acting reasonably'. This would not include the citizen using force against a law enforcement officer acting in performance of his/her duties.

But the original bill left out law enforcement officers using force during the performance of our duties. The burden of proof was still left to the officer. The APA and PLEA lobbied to add protections for officers as well. Officers have always had the burden of proof to demonstrate they acted reasonably after a use of force or deadly force encounter. We were successful in adding protections to police officers. Now ARS 13-205 is amended to change from proving an 'affirmative defense' to that of 'non-criminal conduct'. Under this change, once evidence of justification is presented, the State would be required to prove 'beyond a reasonable doubt' that the officer did not have justification.

Because of our involvement, this new law adds significant protections to officers 'doing their job', and we are hearing from associations around the nation who want assistance in achieving the same thing.

By now the session is over. The budget has passed and life will return to normal - for about a week. Then the fun begins - because this is an election year. More on that later.

LAW OFFICES OF MICHAEL NAPIER, P.C.

MICHAEL NAPIER has been representing Phoenix officers for over 30 years. Mr. Napier is one of the most experienced labor and personal injury attorneys in Arizona. Mr. Napier has represented hundreds of officers before administrative bodies throughout Arizona, and has assisted critically injured officers and the survivors of officers in obtaining compensation for their injuries and losses.

JANET FELTZ has been an attorney for over 21 years. Most recently, Ms. Feltz has been administrative hearing officer in discipline hearings and other employment matters before boards and commissions.

ANTHONY COURY has focused his practice primarily on personal injury and wrongful death lawsuits in which he has served as plaintiff's counsel. He has experience in cases dealing with product liability, negligence, governmental claims and dram shop liability, to name a few.

In addition to the full services provided to PLEA members to protect their careers, the law Offices of Michael Napier, P.C. provide the following:

Personal injury recovery (on or off duty) experienced representation at a reduced fee;

Reduced fees for matters not covered by the PLEA legal plan;

Free probate of officer's estate for line-of-duty death;

Free consultations to members on any matter, and

Referrals to attorneys or specialists for matters not handled by our firm.

2525 E. Arizona Biltmore Circle • Suite 130
Phoenix, AZ 85016
(602) 248-9107 • www.napierlawfirm.com

Job Opportunity

ANNOUNCEMENT #0606A

POSITION TITLE: Special Agent, Investigations and Inspections - Urban Tribes

LOCATION: 202 E. Earll Dr., Suite 200
Phoenix, Arizona 85012

RECRUITMENT TYPE: Uncovered; not part of the State Merit System - Full-time

SALARY RANGE: \$45,650

RESPONSIBILITIES: *Will be responsible for monitoring Tribal Gaming Operations in compliance with the provisions of the Tribal-State Compacts and applicable state and federal laws. Responsible for investigations of suspected violations of the Tribal-State Gaming Compacts. Conducts investigations of persons or entities associated with the Gaming Industry in Arizona. Write investigative reports. Testify in various venues, depending on the nature of charges or litigation involved.*

MINIMUM QUALIFICATIONS: Unrestricted AZPost certification is required.

WORK SCHEDULE: Full-time
Monday - Friday may also include holiday and weekends with variable work hours. Instate travel is required.

APPLICATION DEADLINE: Friday, July 14, 2006

APPLY TO: Arizona Department of Gaming
Attn: Levada Coker, Human Resources
285-9980, ext. 310

POSTING DATE: Thursday, June 15, 2006

No Confidence

By Joe Clure

On June 7, 2006 PLEA submitted a complaint to the Management Audit Committee/Integrity Hotline Committee (MAC/IHC) over concerns about the testimony of Commander William Louis at a Phoenix Employment Relations Board (PERB) hearing. The hearing was the result of an unfair labor practice (ULP) charge filed by PLEA against the department over their conduct in an internal investigation.

It started when a PLEA member came to PLEA with concerns over the testimony of Commander Glen Gardner at a DUI hearing. PLEA Secretary Mark Spencer advised the member that he would look into the matter, which he did. Spencer obtained the court recorded testimony and listened to it. Based upon what he heard he did not feel that there were problems with his testimony. PLEA did however have concerns over the declaration by the commander of an "unwritten policy" not to sit on bars to enforce DUI. You may recall the concern over the "unwritten policy" was addressed on the PLEA website. Meanwhile, the department had been made aware of the concerns regarding Commander Gardner's testimony and initiated an investigation into the matter which resulted in a request to interview Spencer. Over the following couple of weeks, PSB requested to interview Spencer because of a belief by PSB Commander Louis that Spencer "had something and it was serious." PLEA and Spencer objected to this interview on the grounds that 1) Spencer is an elected Board member of the Association and has a right to conduct union business with the membership without undue interference by the department per the Meet and Confer Ordinance. 2) Calling a Board member down and ordering them to divulge the name of members who bring issues to the Association or make complaints of misconduct on the part of management would create a "chilling effect" on members coming forward, thereby reducing our ability to represent the membership. PLEA and Spencer resisted the request for the interrogation until Spencer was given a direct order to appear with which he complied with under threat of discipline. Spencer was then subjected to a 45 (approx.) minute interrogation about internal PLEA operations, having nothing to do with the Gardner testimony. Finally, the investigator asked the question and Spencer advised her that based on what he knew and had heard on the recordings, he did not feel there were any problems with Gardner's testimony. On May 11, 2005 the department was served with the ULP charge and after attempts to informally resolve the charges failed, the hearing was conducted on October 26-27, 2005.

It was at the ULP hearing that our concern over the testimony of Commander Louis occurred. I will not go into detail about the testimony at this time so as not to prejudice or interfere with any potential investigation of the matter by the MAC/IHC. However, you deserve an explanation as to how this issue was referred to the MAC/IHC. Most have probably never heard of the MAC/IHC before so I will give a brief explanation of what it is. The MAC/IHC was instituted on November 3, 1977 via City Manager's Letter 608 issued by then City Manager Marvin A. Andrews in order to insure the integrity of governmental operation of the City of Phoenix. Not a bad idea. So, why did PLEA feel the need to go to the MAC/IHC instead of the department reference this alleged misconduct? First, PLEA did go to the department on several occasions and was told it was a non-issue and they had no intention of doing anything with it. Not long after the hearing, the concerns over Louis' testimony were discussed internally. On 12-5-05, I, along with PLEA President

Jacobsen, had lunch with Assistant Chief Anderson at the Hardrock Café. Originally, I was not scheduled for this lunch but was invited by Jake. I accepted because I wanted to know what the PSB Chief was going to do reference the testimony of Louis. He informed me that they had no intent of doing anything with it because they did not see an issue with it.

A few months later I personally called PSB and asked PSB Commander Steve Campbell what he was going to do about the testimony because given the hearing officer's report I felt there was enough information to warrant an investigation. I received a phone message about a week later informing me that again, the department had no intention of investigating the matter. PLEA then sent a letter to Chief Harris requesting that this matter, along with several other issues, be investigated. On March 3, 2006 PLEA President Jacobsen and PLEA Secretary Spencer met with the Chief Harris, and according to Spencer the Chief again refused to investigate the matter.

You may recall approximately April 2004 PLEA had similar concerns regarding disparity in the investigative/disciplinary treatment between members and supervisors. It's ironic that assurance was given to PLEA during a meeting between then Assistant Chief Jack Harris and deputy City Manager Juan Martin that things would improve. PLEA's most recent membership survey reveals that 75% of the members believe that lower level supervisors (Sergeants/Lieutenants) are treated differently in the investigation/discipline process and 81% believe that upper level supervisors (Commanders/Chiefs) are treated differently than officers.

I have lost confidence in the Phoenix Police Command staff to do the right thing in the area of management misconduct. Granted, there are those supervisor/managers that have been investigated and disciplined. However, it's not about the head count, it's about doing it right consistently, not picking and choosing. Let's assume that there is no misconduct. We'll never know because they won't ask the questions. Our own policy Operations Order 3.19.1. a states, "To ensure the integrity of the Police department, all alleged or suspected personnel misconduct observed or suspected by supervisors, department employees, or citizens will be thoroughly investigated." I will concede that if a complaint comes in, one that lacks any credence at all, then the department should not waste its time on frivolous complaints. However, if there appears to be any indication of possible misconduct as alleged, then it should be investigated! Isn't that what the policy means? If not, how do we maintain the integrity of the department or does it just apply at the street level? If that's the case, then revise the policy so we all understand that. How do you enforce the policy on those who make and interpret the policy but choose not to adhere to it? I think that is the intent behind the MAC/IHC. I think we have policy that speaks about the consequences of those who fail to report/investigate misconduct, don't we?

So, as you can see, the department had their opportunity to do the right thing and declined. Go away PLEA, we are not interested was their response to us. PLEA feels that possible misconduct on the part of a commander should not be swept under the carpet and understands that the foundation of a police department's institutional integrity is predicated upon the integrity set by its leadership. There are those who feel that leaders should be held to a higher standard than those they lead. PLEA feels they should be held to at least the same standard.

The Golden Ticket

By Mark Spencer



Of course I was rooting for Charlie when he opened that Wonka Bar. "Give the poor kid a break" I was hoping under my breath, "Please let there be a golden ticket for the unlucky lad." A sigh of relief erupted when my wishes came true and Charlie won a trip to the chocolate factory. Not that many of us need to, but if we do go to the candy store and buy a chocolate bar, don't expect to open it up and find a prize, a present, or a pass. Stories like this are fun, but they're just stories. But some fiction contains a little truth. For police officers and policy, there is no Golden Ticket, but for supervisors who break the law there's a bounty of bullion.

The magical words, the silver lining, the Golden Ticket for managers is the phrase, "He acted in good faith." To leapfrog the consequences of violating federal and state labor law as well as department policy and the contract, all one needs is a Golden Ticket. Supervisory misconduct followed by "He acted in good faith" wins managers a trip out of trouble. And we thought a trip to the chocolate factory was a good deal.

The DRB manual instructs DRB members to fairly and objectively evaluate the employee's actions based on 1.) existing law, 2.) City of Phoenix Personnel Rules and Administrative Regulations, 3.) Police Department policies, rules, and orders, 4.) the standards and values of the community. With no intent to bore anyone, let me quickly inform you of the law of the land as it pertains to paying employees for work.

- In interpreting the FLSA, the Department of Labor (29 CFR 553.102) "does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency."
- In interpreting the FLSA, the Department of Labor (29 CFR 785.13) reminds the Police Department that, "[I]t cannot sit back and accept the benefits [of work performed] without compensating for them."
- Arizona State law (23-392.A) mandates that "any person engaged in law enforcement activities shall be compensated for each hour worked in excess of forty hours" at time and a half oah or comp time.



- The contract the City signed (Section 3-2 paragraph A) makes it clear that "Overtime is defined as time assigned and worked beyond the regularly scheduled" work shift.
- Department policy (Ops Order 3.4) defines overtime as "time assigned and worked beyond" the work shift and that this "overtime work will be compensated" if the authorized overtime "is a result of a departmental directive or required task."

There's the law, the contract, and policy. None mention a Golden Ticket so where does this management pass come into play? Here's how...

A sergeant ordered an officer, 5 minutes before the end of his off-duty job at 3 in the morning, to take disposition of a stolen vehicle the officer had just found. The on-duty sergeant told him the Department was not going to pay him overtime for the work. The on-duty sergeant refused to utilize on-duty officers for disposition on a double-squad night in that area. The on-duty lieutenant concurred. The officer refused to obey the order. The Department sent the officer to the Disciplinary Review Board (DRB). The DRB manual states that the employee shall be given an opportunity to respond in any

manner they feel appropriate. The PLEA rep shared the law, the contract, and policy with the DRB. The board was made aware that the sergeant's order was illegal, out of policy, and unfair; thus the officer was not obligated to obey it per policy. The officer explained his actions and took responsibility for them. Like Willy Wonka's goose, honorable responses from the DRB were laid.

- Some members of the board communicated that they were angry with the presentation of the facts – the illegal order argument didn't hold water with them. They seemed to be in need of the officer's fear and sorrow instead of facts and statutes.
- Assistant Chief Kevin Robinson shared his philosophy by saying: "Work first, grieve later." Unlike the officer, he was paid (more than a penny) for his thoughts. This statement was reminiscent of a Hollywood action film script, "Kill em all and let God sort em out." Perhaps a more enlightened philosophy would be, "Think first, order later."
- Commander Glenn Gardner asked the officer a probing question; "Does your right to compensation supersede your responsibility to the community and your oath?" The PLEA rep's response was, "Does the Department's right for budget concerns supersede their responsibility to adhere to labor law, policy, and the contract?" No reply was given.

- Lastly, the Department took the position that the sergeant "acted in good faith" and because of that, the order for free work was lawful. The Golden Ticket was held high in the air and its radiance blinded all in the room.

When officers violate a policy, expect trouble. When managers violate a law, expect a ticket, one of pure gold. The DRB recommended a 220 "carat" suspension for the officer. But for the manager who breaks the law, policy, and the contract, a 24 carat Golden Ticket provided a free pass and a pat on the back.

At the end of the film, when Charlie returned his "Everlasting Gobstoppers" to the candy maker, Willy said, "So shines a good deed in a weary world." At the end of this year-long ride for the officer, the Chief did two good deeds for the member. He reduced the suspension to 140 hours (no appeal) and communicated some advice: sharing facts and statutes with the DRB makes them read.

Some in police management prefer poor excuses instead of personal accountability. PLEA is hopeful that a virus outside of the Department will mandate supervisory liability in lieu of strained logic. In addition to a pay raise in July, I've attached a Golden Ticket to this article. It's for officers to use who acted in good faith but yet have violated the law and/or policy. Hopefully it will be accepted for full value by the Department. If not, try to enjoy any chocolate that crosses your way because, after management cashes in their Golden Ticket at your expense, there'll only be a bitter taste left in your mouth.