



FDSA

FRESNO DEPUTY SHERIFF'S ASSOCIATION

Hoping this January is off to a wonderful start and the first few weeks of the 2015 are going well! I am grateful as the curtain closed on 2014 (New Year's Eve), it was rather uneventful- and after all the illegal blasts and bangs of gunfire and fireworks ended, each deputy went home safely to their loved ones.

2015 Goals

We have a lot to look forward to in 2015. The FDSA board is conducting its second retreat in the spring, revisiting our 5 year goals, and seeing what we have accomplished and the work we still need to complete.

I look forward to an exciting 2015, as we are not in a contract year, and have a little time to get back to basics.

Health Insurance is on the top of my list this year, taking a deep dive into our current plan and how to get back to a more affordable out- of- pocket for our membership. What the answer is at this point is unknown, but the situation will be thoroughly analyzed in an attempt to find a solution.

Internal Affairs Interviews

I have included an article dealing with internal affairs interviews that each of you should review and be aware of when you are questioned during this type of scenario. It has been authored by our attorneys from Carroll, Burdick, and McDonough.

Broad Directives Not to Contact Other Employees During an Investigation May Be Unlawful

This article was published by one of our attorneys, Jennifer Stoughton, from our law firm Carrol, Burdick, and McDonough. This issue has always been one of contention when employees walk away from an IA investigation. Can they talk about this case with their spouse? Co-worker? Association leadership? The recent PERB ruling brings some grey area into this "blanket confidentiality," clause that is given during each internal affairs interview.

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Below is Jennifer's article that gives us all an idea of what PERB is basing a lot of this on.

Anyone involved with internal investigations has heard the familiar refrain that the investigation is confidential and that they are forbidden to discuss it with anyone. Often, employers go so far as to forbid employees under investigation from contacting *anyone* connected to the investigation while it is ongoing. Recent case law from the Public Employment Relations Board ("PERB") and the National Labor Relations Board ("NLRB") may change whether employers can give such broad, boilerplate directives.

In *Perez v. Los Angeles Community College District*, PERB Decision No. 2404 (December 24, 2014), PERB determined that an instruction to an employee "not to contact any members of the faculty, staff or students" while on administrative leave pending a fitness-for-duty evaluation violated the Educational Employment Relations Act ("EERA") because it interfered with the employee's exercise of protected rights. In so holding, PERB noted that it is a fundamental principle that employees have the right to discuss their working conditions amongst themselves. The District's actions infringed on that right by forbidding all contact between Perez and District employees in connection with the actions taken against Perez. PERB found that, as drafted, the scope of the directive to Perez was overbroad and failed to specify the conduct that it sought to prohibit. PERB noted, however, that in other circumstances, an employer may be able to demand confidentiality of an investigation but that the burden is on the employer to demonstrate a legitimate justification that outweighs employees' protected rights.

This decision follows, and is consistent with, a similar decision issued by the NLRB last year in *Banner Health System dba Banner Estrella Medical Center and James A. Navarro* (2012) NLRB Case 28-CA-023438. In that case, the witnesses to an internal workplace investigation were given an instruction to maintain

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confidentiality. The NLRB held that such a blanket instruction violates the rights of employees to engage in “concerted activity” regarding their working conditions. A more detailed discussion of that case can be found in the January 2013 *Labor Beat* available [here](#) (see page 6).

Comment: The practical impact of these decisions remains to be seen. Under PERB’s ruling, employers can still require confidentiality during an investigation, but must demonstrate that it is necessary for some reason (i.e., avoiding fabricated or collusive testimony, destroying evidence, etc.). At the very least, this decision precludes the employer from issuing blanket confidentiality orders in every case and requires them to tailor all confidentiality orders to the specific case.

If you encounter a blanket confidentiality instruction, we recommend asking for the basis of the instruction. Remember, however, the mantra “obey and grieve”—comply with the order to avoid insubordination charges and grieve the issue later.

Annual Leave Donation Issue Revisited

We have been dealing with the Annual Leave Donation matter since 2012. It has been a reopener in our Memorandum of Understanding (MOU) since 2011. I am optimistic we will be closing the chapter soon.

The annual leave donation program was started by the County of Fresno in the mid 1980’s, with its sole purpose being two fold; one, helping county employees who are in desperate need of hours and facing a hardship, and two, allowing county employees to donate these hours to their fellow Fresno County co-workers while helping the County of Fresno reduce its unfunded liability of hours held in annual leave banks by employees.

The program was written vaguely in its inception. There were no concrete rules to follow and no boundaries. Over the years, the hours and cost of the program to the County of Fresno became a bit out of balance and the abuses began. Those abuses give a bad public perception of government employees who are essentially being paid by other government employees to be off work. We know, in general,

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and most of the time, these absences and subsequent donations stem from serious injuries and illnesses that take us out of work. However, trying to get that message to the public is a real tough sell.

Once the economy started to decline in late 2007, and public pensions became exposed, the County of Fresno started to take a hard look at the Annual Leave Donation program. The County felt pressure to not expose such a program that had unlimited donations to and from it.

We started talks at the bargaining table by asking for financial numbers. The program was costing the County roughly \$1.3 million per fiscal year to fund and administer. At that time, the cost of the FDSA's portion of that program was roughly \$60,000 per year. Even though most years we were a small draw to that, on occasion, we did have years when our members who were off work without hours, were benefitting. This program was keeping them afloat as full time employees by the generosity of other County employees. Again, although nothing prohibited this, the County felt it was too costly of an expense.

During different bargaining sessions, this was put on the table, and then taken off. Mostly because it was more of a distraction and we felt it should be handled separately. We wanted to still keep it as a reopener, but deal with it when we had more time to fully discuss the matter and dig into the issues associated with this item.

Here we are in 2015, three years later, and we are still continuing to discuss the Annual Leave Donation program. As it stands now, FDSA, FSSA, and FSMA are the only three groups who are without the unilaterally implemented annual leave donation program- which has been imposed on the rest of the County of Fresno workforce.

Annual Leave Donation discussions were held in the spring of 2014, during the salary reopener in the MOU. However, again, since this issue is so complex, we decided to postpone these talks and instead revisit the issue in the first part of 2015.

The way the program that was implemented for the rest of the County stands now, each county employee can donate a maximum of 40 hours per calendar to any county employee. Each county employee can receive 120 hours maximum for a serious health condition. Each county employee can receive a maximum of 240 hours of what is called "catastrophic" illness/injury. As it's not hard to see, this is a

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drastic and dramatic change from the "unlimited" program that we still currently are reaping the benefits from.

I want to assure all of you, the numbers the County has unilaterally implemented are non-starters for us. As members of this organization, the commitment we have to our job and our co-workers means it takes a lot to get us down. Sometimes we show up for work sick, other times, injured.

The County of Fresno has acknowledged this during our discussions. I have explained many situations where countless members have worked while ill, or with stress at home because of an illness to a family member. Many of you have also worked while you were hurt or injured because you are too loyal to go down easy.

Currently, we have a proposal that would not only help FDSA, but could have ripple effects for the remainder of the county workforce. Our proposal would help people who are out of hours and need to rehabilitate themselves or care for dependent family members.

As you know, I cannot really get into the details of these negotiations, but I wanted to share with you that we are again blazing the trail as leaders of the County of Fresno workforce when negotiating these types of programs.

I believe the County of Fresno's leadership will figure out a way to 'fine tune' this program. The County would like to help reduce the abuses, yet allow the time employees need when they are in a desperate situation. We have great workers who seem to take care of one another in this county.

I will keep you informed of the outcome of these negotiations.

I really enjoy representing all of you each and every day. We are such a diverse group, working in a very diverse county. Some of the issues we face are a lot like those in the rest of the state, but there are times when our situation in Fresno County is very different. I always give you the best effort I have. It is definitely a balancing act and there are constantly numerous issues to tackle and troubleshoot. But - I am always looking out for the best interest of each of you.

Truly,

Eric

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