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AZCOPS Member Only Juvenile Correctional Officer to Survive Sunrise PV Center Firings

Ask Juvenile Correctional Officer Kim Bennett what his membership in AZCOPS means to him and he will quickly tell you “my job and career.” That is what he said at the union’s annual convention on Oct. 16 in thanking AZCOPS and its members for their successful efforts to win back his job.

Bennett, the only union member among his four-member teaching unit at the facility, was the only one to survive a purge by the Arizona Department of Juvenile Corrections using unsubstantiated inmate accusations. “I was told they would go after my teaching certificate if I didn’t quit.” Bennett said.

On Sept. 1, Maricopa County Superior Court Judge Michael J. O’Melia reversed the ADJC firing, saying: “There is not sufficient evidence to support the dismissal. Mr. Bennett was terminated without the Agency following its own procedures (and)... in addition to the lack of evidence, the decision was contrary to law.”

Bennett’s case arose when he was attacked by one of the inmates at the Sunrise Parole Violation Center. Initially, the department sought to bring criminal charges against the inmate. However, in a cruel twist of fate, the department’s investigation began to focus on Bennett. When the first investigative report exonerated Bennett, management ordered a second probe.

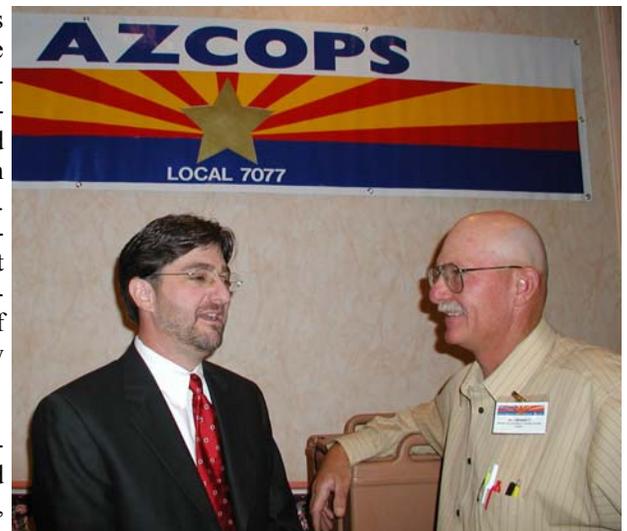
In order to find cause for discipline, the investigator failed to interview wit-

nesses and made findings based upon nothing more than hearsay. After completing its sham investigation, the department tried to dismiss Bennett on three different occasions. Two times AZCOPS’ action forced the department to rescind its own termination letters because of material failures to follow its own policy.

Fired a third time, AZCOPS legal represented Bennett at his Nov. 4, 2003, hearing. Unfortunately, Bennett drew a very poor hearing officer at the Arizona State Personnel Board. The hearing officer failed to make findings, misunderstood witnesses and, finally, misapplied the law. AZCOPS then honored Bennett’s request to appeal the matter to the Superior Court, where AZCOPS legal demanded an evidentiary hearing before briefing the appeal.

At that hearing, AZCOPS legal subpoenaed the department’s own investigators. The person who completed the first investigation strongly supported Bennett and testified that his investigation reflected that Bennett was the victim of a crime and had engaged in no misconduct.

The second investigator admitted that he really had not interviewed the in-



Juvenile Correctional Officer Kim Bennett (right) thanks General Counsel Martin Bihn for fighting for his job after the ADJC’s Sunrise Parole Violation Center fired his entire unit based on unsubstantiated charges by juvenile inmates.

mates, but rather had made his findings based on rank hearsay: on what another person thought he overheard when the inmates were interviewed. AZCOPS legal then filed its brief and waited for oral arguments.

Instead of setting oral arguments, the judge ruled in favor of Bennett, finding insufficient evidence to support the termination, errors in evidence and an error of law. Bennett returned to work Nov. 1, and AZCOPS legal will now file for attorneys fees against the state and will seek a back pay award of nearly a year’s salary for Bennett. ■

President's Message *by Jim Parks*

Brotherhood, Not Backbiting, Should Be The Golden Rule For Concerned and Dedicated Union Members

There has been a disturbing trend taking place in today's law enforcement community. This trend is literally an attempt by some members and non-members in various unionized departments to undermine the hard work and dedication of those unions and their officials who are working to make their City's, Towns and Counties a better place in which to live and work.

These few individuals have no concept of the word "brotherhood." Instead, they put themselves ahead of the good and welfare of their unions in an attempt to further their own careers at any cost. These are the individuals who will turn their co-workers and union brothers and sisters in to the administration over the minutest "perceived" infraction.

Please do not misinterpret this message. I, like all of you, will not tolerate misconduct, criminal activity, or any other activity that would be detrimental to any organization or the values that we, as law enforcement officers, hold dear.

However, when there are members running to their administrations over trivial, non-important issues just to cover up their own inadequacies, bolster their position in the pecking order, or just out of plain spite, that is unacceptable and should not be tolerated.

As an example of this pettiness, we have a Deputy who went to the head Administrator's home on a Sunday to complain that a detention officer was not doing her job to his own personal satisfaction. Was that because the infraction was so egregious that it warranted this action, or was this motivation of a personal nature? After the AZCOPS legal team defended her actions



AZCOPS President Jim Parks

we can assure you that it was for this Deputy's personal gain.

The most recent incident involved an association Vice President who turned his President in to the administration for talking union business while on duty. This, to me, is unbelievable. We will provide further details on this incident as they develop.

As we all know, Arizona is a right-to-work state. Simply stated, one is not required to join an organization in order to be employed. (We cannot have a closed union shop.) On the other side of this, we are not required — and cannot be forced — to admit individuals into our organizations who we feel do not have the unions' best interest in mind. Nor are we obligated to allow these selfish people to remain as members.

Maybe it's time for associations across the country to only recruit those individuals who are willing to stand up for the associations and their membership. Or perhaps it is time that we begin to expose those individuals who have their own agenda.

Until now, we have refrained from identifying any law enforcement per-

sonnel, other than top management, who make accusations against our members, thereby causing AZCOPS to spend considerable time, personal effort and money in the defense of these accused officers..

Maybe it's time we discard the "Mr. Nice Guy" persona and start reporting the raw facts in this newsletter. We have been entertaining the idea of naming those individuals who accuse our members of wrongdoing when there is public testimony (at a disciplinary or termination hearing, or in court) or when those individuals are identified in public documents used against our members.

We don't want to make unwarranted accusations against anyone, so we would rely on public records for this information. Any officer making a defamatory complaint against an AZCOPS member shouldn't be allowed to hide behind anonymity. They and their accusations should be fully exposed to public scrutiny.

Unions were formed by men and women hoping to bring fairness and equality to the work place. We fight hard to represent employees who have been persecuted by unjustifiable discipline and termination by the few vindictive administrators still in power today, and to get away from the "good ole boy" system.

It is that "good ole boy" system that is once again coming to the forefront. We need to monitor those individuals who are willing to "sell out" for their own personal agenda. And when they do, they need to be held accountable.

As always, be safe and watch out for one another. ■

Know Your Legal Rights



AZCOPS Legal is Involved in a Variety of Cases

**By Martin Bihn
General Counsel**

Lake Havasu Police Officers Assoc.:

Three Lake Havasu City officers were recently involved in a “suicide by cop” shooting. The officers were dispatched to a deal with a “missing person” who had been spotted walking along a main road. Officers were also advised that the person was armed and had a history of mental illness.

Officers blocked traffic approximately 100 yards from the suspect and used their P.A. system to ask the suspect to put down his weapon. Instead of complying, the suspect began advancing on officers. The suspect quickly closed in on the officers, all the while ignoring their commands to stop, put his hands in the air, etc. When the suspect came within 90 feet of the officers, he raised his pistol, pointing it directly at the officers. In doing so, the suspect not only threatened the lives of the officers, but also the crowd which had gathered directly behind the officers. The suspect left the officers with absolutely no choice — they fired first before the suspect could harm them.

After the scene was secured, the officers contacted the POA, which then took a lead role in the incident. The POA ensured that the officers were quickly removed from the scene, notified the spouses of the involved officers, and dealt with the department and media on aspects of the investigation before AZCOPS legal arrived.

We understand the investigation is complete and that all three officers have been completely cleared.

Mohave County Deputies Association:

Within one week of the Lake Havasu shooting, the Mohave County Sheriff's Office had an in-custody death. Sheriff's deputies were dispatched to re-



General Counsel Martin Bihn

move a disruptive person from a liquor store parking lot. Deputies made contact with the suspect, who appeared to be under the influence of meth. The suspect immediately became hostile and aggressive with the deputies, screaming, “I am God, you are Satan” and quickly raising his hand and arm within inches of a deputy's face while flicking a lighter.

Deputies attempted to gain control of the suspect and ultimately brought him to the ground. The suspect screamed, kicked and fought with superhuman strength. At one point the suspect was able to push himself up off the ground with two deputies on his back. Deputies used OC spray, which had no effect on the suspect. The deputies ultimately cuffed the suspect and kept him from kicking by applying leg irons. Even after being fully restrained, the suspect continued to struggle and scream that the deputies were the devil.

Suddenly, the suspect simply went limp. Deputies immediately performed CPR, but the suspect succumbed to what appeared to be a heart attack. The deputies immediately contacted the POA and AZCOPS Legal. The deputies were interviewed a few days later and

have been completely cleared in the incident.

Yavapai County Deputies Association:

The Yavapai County Sheriff's Office attempted to discipline one of our members for purportedly releasing “confidential information.” The SO placed our member on leave for over a month. During that time, the member was ordered to remain at home from 8:00 a.m. to 5:00 p.m. Once the investigation was completed, the matter was reviewed and it was determined that no discipline was warranted.

Thereafter, AZCOPS legal pursued Yavapai County for one hour of overtime for each day our member spent on administrative leave. We demanded that Yavapai compensate our member in her next paycheck or we would file suit for triple damages under the wage statute. Our member's last paycheck included an additional 60 hours of comp time.

AZCPOA Corrections:

AZCOPS legal is presently handling four member disciplinary appeals and is defending a criminal charge in Pinal County arising out of an alleged assault on an inmate.

In another AZCPOA note, AZCPOA President Joe Masella was able to intervene on behalf of a member dismissed from original probation. The department initially took the position that the member was dismissed for “no reason.” Joe was able to show the ADC Director that the dismissal was retaliatory. Apparently, the supervisor who dismissed our member for “no reason” had, several months earlier been disciplined for sexual harassment. Of course, it was our member who had been harassed and had filed the complaint. After Joe brought the facts to the attention of the administration, the firing was reversed.

Convention Emphasizes Officer Support,

General Counsel Martin Bihn and AZCOPS Attorney Mike Storie outlined the union's aggressive legal protection policy, urging the more than 100 delegates to take a pro-active stand when dealing with critical incidents and disciplinary actions involving our members.

"We control the scene," the delegates were told about critical incidents. They were advised to get to the scene as quickly as possible, tell the officer(s) involved that a union attorney is on the way, then stay with the officer(s) until the attorney arrives. Also, "get the lay of the land, determine the circumstances and who witnessed the event. If they (administration) want an investigation they have got to respect our officers' rights," Storie said, noting that an officer cannot be forced to make a statement at the scene and a "walk through" is voluntary. "An officer is entitled to an attorney if he wants one, and we strongly advise that he ask for one" before making any statement, especially if a union leader has not yet arrived on the scene, Storie added.

Bihn urged that association leaders try to get the union's critical incident protocol accepted by their respective agencies. That, he said, would prevent many of the problems the union now faces in having to protect officers' rights before a commission hearing or in court.



NETWORKING between associations is a valuable tool for AZCOPS leaders at union conventions. Shown above are (L. to R.): Ann Kathy-Spenser and Jim Pratt of the Pima County Deputy Sheriffs Association; and Maggie Sammons, Tracy Hubbard and Brian Hoffsmith of the Arizona Correctional Peace Officers Association.

The General Counsel called "outrageous" the actions by some probation chiefs who are frustrating the right of probation officers to be armed. That right was secured three years ago with AZCOPS' action through the State Legislature and Supreme Court, he said, suggesting that the union may take further action.

A Grievance Training session conducted by TPOA Grievance Chairman Larry Lopez and Mike Gurr, also of the TPOA, outlined officers' rights when facing disciplinary action:

Garrity Rights: Used when an officer being interviewed is told he or she must answer questions being asked by a su-

pervisor or employer representative. The officer should then ask if he or she is being ordered to answer the questions. If told yes, Garrity Rights kick in automatically. The questions then must be specific, direct and related to the officer's duty or fitness for duty. Using Garrity prevents your statements from being used against you in a criminal proceeding.

Weingarten Rights: Last year the legislature enacted A.R.S. 38-1101 granting some law enforcement officers a form of Weingarten rights. When the employer believes that an interview could result in discipline to an officer, the officer is entitled to be accompanied. *(Continued on the next page.....)*



OPENING SESSION of AZCOPS' 3rd Annual Convention convened on Oct. 16 at the River Palms Resort and Casino in Laughlin, Nevada. AZCOPS President Jim Parks, Communications Workers of America District 7 Vice President John Thompson and National Coalition of Public Safety Officers Director John Burpo welcomed the delegates to the day-long conference.

Legal Protection, Strong Representation

(.....continued from previous page)
nied by a representative when interviewed. The representative must be another employee and cannot be an attorney. Typically, the representative can only observe and is not allowed to actively participate in the interview. Notably, the law does not cover probation officers, a shortcoming we are working to rectify.

Miranda Rights: A warning against self-incrimination, Miranda allows an officer to have an attorney present during any questioning. If given a Miranda warning, the officer should invoke his or her rights, refuse to answer any further questions, and end the interview.

Officers also have a right to due process and a just cause for discipline, Lopez and Gurr said.

Due process ensures that the employer conducted a thorough investigation and that any charges against the officer have been factually proven. A just cause for discipline involves showing that, among other things (1) the officer received discipline similar to others charged with the same offense, (2) the offense was not the product of an action or inaction by the employer, (3) that the employer was not motivated by anti-union bias, (4) that the employer's rules and policies are clear and understandable, and (5) that the employer took into consideration the officer's good or exemplary work record.

Finally, Lopez and Gurr said, the officer has a right to tape record any interview that could lead to discipline.

A seminar on How to Run a Successful Union was conducted by TPOA President Rich Anemone and AZCOPS Vice President Chuck Foy, of the PPOA.

Anemone urged that each association "be a player in political action, create power — or the illusion of power — for your association, and foster a relationship with administration." He noted



AZCOPS ORGANIZING AWARD is presented to Preston Glodo (left), President of the Yavapai Public Safety Association, by President Jim Parks.

that "you can agree to disagree" with your employer.

Anemone spoke on the union's campaign to enact an Officer's Bill of Rights in Arizona, and of the coalition being built with many other organizations to promote this legislation.

Foy outlined the history from 1983 of the development of the Peoria Police Officers Association. "From 1983 to 1986 Peoria had the lowest paid officers in the Phoenix metropolitan area," he said. In 1987, the PPOA worked with the city's firefighters and the American Federation of State, County and Municipal Employees to create a city charter. A year later the City Coun-

cil formally recognized the PPOA and signed a union contract, and in the early 1990s adopted an Officers Bill of Rights. In 1996 the PPOA helped form AZCOPS, Foy said.

Attorney Tom Stillwell outlined the benefits under the state's Workmen's Compensation, noting that it pays two-thirds of an injured person's wages, up to \$1,600 per month. He emphasized that persons on Workmen's Compensation should not be billed for any charges; that, while an employer can require you to see their choice of doctors on the initial visit, there is no "approved" list of doctors limiting you. He warned that "if you go back for a second visit you have accepted that doctor as your attending physician (for the injury or disability). Don't do it! Chose your own doctor."

An Awards Buffet Luncheon recognized AZCOPS leaders who have excelled in the past year. Preston Glodo, president of the Yavapai Public Safety Association, received one of the year's Recruiting Awards, with the other going to Joel Lewon, President of the Maricopa Juvenile Corrections Association, who was unable to attend the convention; and Jeff Dartt, president of the Camp Verde Public Safety Association, received the Perseverance Award. Staff Rep. Tim Clark received the CWA Organizing Award. ■



AWARDS LUNCHEON recognized several AZCOPS leaders, including Preston Glodo, Yavapai Public Safety Association, Organizing Award; and Jeff Dartt, Camp Verde Public Safety Association, Perseverance Award.



Our Associations at work for you

Prescott Valley Officers Survive Planned Ambush Using Their Training, Caution and Intuition on a “Shots Fired” Response

Many officers will never have to face a suspect who has planned their ambush, but if they do, the actions on July 31 by two Prescott Valley Master Officers are a textbook case on surviving the experience.

The first officer was dispatched at about 6 p.m. to a “shots fired” call at a family residence. Arriving at the scene the officers contacted the neighbor who reported the incident, learning that a man was heard shouting loudly from the same house.

Approaching the residence from a blind spot, the officer noticed the garage door open, the blinds open on two large front windows, and the front door open. He determined that there was a “death funnel” in the front door area — a completely exposed area with no avenue of escape. About that time the second officer arrived on the scene and the two chose to approach the house with weapons drawn from the garage, where nothing seemed amiss.

Before they could knock on the garage access door and enter the house, the

door swung open and they were facing a man with a Ruger Mini-14 with a high capacity magazine. He ignored their order to drop the weapon and aimed it at the officers. Recognizing the imminent lethal threat, the officers opened fire milliseconds before the suspect fired upon them. The officers dove for cover as the suspect fired between 20 and 30 rounds at them from inside the house through the door and walls. The whole incident took only a few seconds to occur.

Recognizing they were outgunned, the officers called for backup, but before it could arrive a woman emerged from the house through the front door. She sat down crying, and the officers got her attention and pulled her to safety.

The SWAT team arrived and began evacuating the neighborhood residents. The officers observed the suspect moving near the front door, then directed the SWAT which entered the house, where they took the suspect into custody. Severely injured in the initial exchange of fire, the suspect died while being transported to the hospital.

In the aftermath, the woman told police that the suspect had spent the whole day planning to ambush and “kill cops.” He had deliberately fired shots to attract officers to the ambush and when that failed, he decided to leave through the garage door to go into the neighborhood to “kill people,” she said.

AZCOPS legal met with the officers at the station, prepared them for the DPS investigative process, then participated with them on a walk through at the scene. AZCOPS legal arranged to hold officer interviews on Aug. 2, and each officer was provided with Victim’s Rights statement.

AZCOPS commends the entire Prescott Valley Police Department, management and city officials on the way they handled this incident. Many other agencies could learn from Prescott Valley. The officers were removed from the scene and made comfortable by Chief Dan Schatz. The entire department supported the officers, and the city attorney and city manager came to the police department to show their support and concern. ■

Association Activities, Briefly Speaking

●On Oct. 6, the Oro Valley Town Council approved by a 5-2 vote a Meet and Confer Ordinance. The Oro Valley POA had been working for almost two years to get this milestone approved. It wasn’t easy! The association first approached the Town Council, but quickly found there was little interest then in providing their officers with bargaining power. When the POA attempted to take the issue to the citizens for a vote, the Town Council illegally blocked the move. Having no other choice, the POA, with the help of firefighters from the Golder Ranch Fire Department sought out then strongly supported Town Council candidates

who would support Meet and Confer. It is one more example of what can be achieved when AZCOPS associations empower themselves by becoming active in the political arena.

●On Sept. 8, the Mayor and Douglas City Council unanimously voted to implement Meet and Confer, recognizing the Douglas Police Officers Association as the sole bargaining agent for the officers in its police department. Organized by AZCOPS earlier this year, the DPOA successfully obtained Meet and Confer within their first three months. We congratulate the DPOA leaders and members. ■

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Organizing, Legislative Reports

Yuma/Mohave Counties Latest to Have All City and County Law Enforcement Organized By AZCOPS

**By Staff Rep. Tim Clark
Organizing Director**

With the successful organizing of the Yuma County Detention Officers Association and the Mohave County Deputy Sheriffs Association, AZCOPS now has associations for every county and municipal law enforcement agency in six of Arizona's 15 counties. Also included are Pima, Cochise, Yavapai and La Paz Counties.

In addition, newly-formed associations include the Chandler Unified Police Department Association, Parker Police Officers Association, Peoria Police Sergeants Association and Quartzsite Police Officers Association

We have thus far concentrated our organizing efforts in these areas as well as in the Department of Corrections in order to focus on specific groups of law enforcement personnel. The only ex-

ception is the forming of the Pascua Yaqui Officers Association on that reservation in southern Arizona.

We now have 75 associations throughout Arizona with a combined membership of well over 5,000 deputy sheriffs and police, probation, corrections and detention officers. And, instead of having to continually "beat the bushes" for new associations and members, officers from departments throughout the state are beginning to come to us with invitations to organize them.

AZCOPS has come a long ways in just the few years we have been in existence. With your continued support we will keep growing. ■



TRACY HUBBARTT (center), Tucson Chapter President of the Arizona Correctional Peace Officers Association, recruits new members for AZCPOA at the Correctional Officers Training Academy in Tucson, where newly-hired officers from throughout the state receive their initial training. Hubbartt will be there every Friday (Graduation Day) to talk to new correctional officers about the benefits of joining us.

Greenlee County LEA President Elected Sheriff, Vows Better Times

Steve Tucker is used to challenges, having worked in law enforcement 14 years. The last four were as an investigator under a sheriff that became so combative that Tucker helped form, then became President of the Greenlee County Law Enforcement Association, an AZCOPS affiliate.

"Under the present sheriff our merit system has been demolished, discipline has become ragged and the entire department has been demoralized," said Tucker, who defeated current Sheriff Richard McCluskey in the Democratic primary election in September, then was elected as Greenlee County's new sheriff in November by an overwhelming majority. He takes office in January.

Tucker brings a wealth of experience to his new job. He joined the Greenlee Sheriff's Department in March, 1990, after serving as a reserve officer in the Town of Gilbert for a year and a half. He has worked as a patrol officer, as a canine handler for six years, then as a Technical Operations supervisor for three years before becoming an investigator for the department.



Steve Tucker, GCLEA President and Greenlee Co. Sheriff-Elect

After four years of fighting grievances and other battles for GCLEA members, the last straw for Tucker was when the sheriff was placed on the *Brady* list after admitting that he had "intentionally misled" the county attorney regarding the handling of a drug case. Tucker then decided to challenge McCluskey in the primary election.

"My first steps will be to bring organization to the department and reinforce positive behavior. I will use very positive tool at my disposal to make those working here the best possible employees," Tucker said.

AZCOPS wishes Steve well and we look forward to working with him as the new Greenlee County sheriff. ■

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