

THE GRIEVANCE

UNITED STATES CAPITOL POLICE LABOR COMMITTEE

March 26, 2019

State of Our Union

Brothers and Sisters,

Greetings and Happy New Year to all of you and your families. I hope all of you enjoyed the Holiday season and had some down time to spend with your loved ones. The 2019 year has started off with a bang for our Union as we have recently prevailed in several Federal Circuit Court of Appeal cases vs. The Department. I have attached my recent Press Releases in this Newsletter for all of you to read. I'd also encourage all of you to go on the Federal Circuit Court of Appeals Web site to hear the oral arguments from the three (3) cases we were involved in against the Department. Go to this Web Site:

<http://www.cafc.uscourts.gov/oral-argument-recordings>

Type in OOC in the case name and hit search. From there you will see four oral arguments from September 6th 2018; one (1) from October 2, 2018 and one (1) from November 5, 2018. Click on the mp3. Recording is on the right if you wish to listen to these oral arguments. It is these cases that unify and strengthen our Union. We will continue to fight these issues and we will not give up.

Our Union is stronger today more than it has ever been. United we will always prevail. Stay safe and God Bless you all!!!!

Gus Papa Papathanasiou
USCP/FOP
Chairman

****The Press Releases are attached to the back of this News Letter.****

Leader or Manager

I began my law enforcement career in 1987. Throughout my career I've worked with some exemplary supervisors and leaders. Unfortunately that was then and this is now.

Leaders like former President John F. Kennedy and General Colin Powell are admired for their leadership ability. These men instilled confidence in the system, and displayed a strong sense of dedication and unwavering bravery. They felt fear but stayed strong and motivated along the way. Leaders realize that in order to be successful, they need their people to support them.

But leadership is far more than mere words. Leadership is a total life philosophy. While it's easy to talk about leadership, it is far more challenging to carry out those words.

LEADERS LEARN FROM FAILURE,

MANAGERS MUDDLE THROUGH IT...

All leaders have faults; I am not naive enough to think that those leaders I mentioned are without reproach, but that true leaders learn from and pursue personal growth when faced with failure, primarily to make sure that failure doesn't happen again.

MANAGERS, by definition, manage. It's that simple. They direct personnel by scheduling, recommending and handing out discipline and giving directions. A manager is evaluated by productivity. If an agency fails to produce results, the manager will have to answer for it, and we all know that when this occurs it's the subordinates that pay the price.

But ask yourself this question, do you think that a manager will take the heat for a failure of productivity? Historically, most managers in such a situation will blame everyone but themselves. Sound familiar? We all know this has been the philosophy of this agency for years. They look out for themselves and themselves only.

A manager's motivations are to make themselves look good in the eyes of their bosses, and accomplish this by placing increased pressure on their personnel to produce results. If those results aren't met then chances are discipline is handed out. Discipline is a TEACHING mechanism and should never be weaponized into punishment. Good leaders with leadership abilities will use discipline to teach those that are underachieving and will motivate them, not make personnel disgruntled and bitter.

A leader motivates personnel to "want" to produce, rather than pressuring them to feel that they must.

MANAGERS ARE COMMON,

LEADERS ARE RARE

Leaders are rewarded internally (self-satisfaction), while the manager is rewarded externally (promotion).

Why do some begin as leaders, but upon promotion and increased responsibilities, they become managers.... I believe the agency is to blame for this; it gives a skewed customer service mentality in which the "customer" ALWAYS comes first. Have you ever heard guilty, so prove your innocence?

We as officers go above and beyond when we serve the public because we don't want the citizens/staff to be upset with us. Dealing with citizens/staff is part of the job, but the problem here is that our resources are not being used

effectively. This mentality unfortunately breeds managers, putting more stress on personnel instead of working on a solution. Overtime, emergency drafts, lack of contingency plans for demonstrations and protests, all of those add pressure onto subordinate personnel and their families.

Managers do not want to create friction with their bosses or to the public. They try and give a perception that everything's fine and that the mission will be fulfilled, but this claim becomes hollow, and eventually the officers are blamed. Thereby moral and motivation are lessened.

Leaders think differently. Leaders understand that while we provide a service, some issues are not to be handled by the officer, there other services and resources to address those concerns.

Leaders understand that to be truly effective, they need to instill a change in the mindset of the agency. Leaders believe in what they are doing, and convey that to their subordinates. They lead by example on and off duty. Leaders continually assess the Department for deficient areas and ways in which to improve.

Leaders know that their personnel are a reflection of their leadership and understand that personnel development is vital for success.

I don't believe people are born leaders. We all evolve into the people we are, based on factors and influences in our lives. The transition towards being a leader or a manager is a choice. Leaders are much more respected and have a much higher degree of career satisfaction than most managers. We have plenty of managers and far few leaders within our Agency.

Keith McFaden
USCP/FOP
First Vice Chairman

Are you in Compliance?

Summer's Personal Thoughts,

Just recently, I went through the Utah-Virginia-Maryland Concealed Firearm Familiarity/Safety Training Course. It was such a great experience; I wanted to share everything I learned during the process. Just wanted to note that this course was paid for by me personally and is not a USCP sponsored course. Most officers own personal firearms. How many of us have ensured that we have made absolutely sure that we are in total compliance with our local and federal laws? Did you know that you have to be in complete and total compliance with these laws in order to be in compliance with USCP Directive 10703.002? USCP mandates that while off duty, personally owned weapons must be used, transported, and/or carried in compliance with local, state, and federal laws. Are you doing that? Does your state require a safety class? Does your state have certain rules for transporting your personal firearms in order to transport them to your local range? I think everyone should take the time to find that out. Like I mentioned in the beginning of the article, I just went through the Utah-Virginia-Maryland Concealed Firearm/Safety Course with certified instructor. In this class I learned about my state and local laws as well as what my state requires to be legally permitted in my local area.

As a result of this class, I am now permitted in the State of Maryland as well as Utah. Why Utah? Utah Permits are recognized in 33 states to include Virginia. I am also seeking a permit for the District of Columbia as well as my home state of Pennsylvania. I am doing this so that I may carry my PERSONAL firearm legally. As USCP sworn employees, we are authorized to carry our issued firearm in all 50 states on and off duty. USCP is in complete control on how you use the issued firearm no matter where or how you are carrying it. Did you know that you are not able to go to your local range to practice with your issued firearm? No, you can't. Now that I have been educated and properly permitted, I may take my personal firearm to my local gun range to perfect my marksmanship whenever I choose.

I am sharing this information to encourage everyone to check into what is required by your state as it relates to your personally owned firearms. USCP has COMPLETE control of how you use your Issued weapon. Officers have a tendency to think that any equipment issued to them by USCP is their personal property and that they can use it as they see fit. That is COMPLETELY and TOTALLY WRONG. Anything issued to you by USCP is USCP property and must be used in accordance to USCP Directives (not to get off topic, but this also includes department issued cell phones and the contents of the phone). Any deviation from Department policy could cost you your career.

If you are interested and would like more information, I took my course with Gun Safety Professionals Located in Arlington, Virginia. Their phone number is 703-473-8838.

Respectfully,

Vinnie Summers
USCP/FOP
Second Vice Chairman

Thirty-Two Years

I have written several news-letter articles, some more memorable than others. This may be my last as I begin to transition from officer to retirement. I am currently the oldest officer on the Department and on my third extension. I will say this; "It has been a great career". I have a wonderful family that this job has allowed me to provide for and raise, and to be honest I have very few regrets.

Having said that I would like to address a few things and maybe indirectly speak to a few people.

First and foremost to many of the younger officers just starting out their career.

- Most people who come to the Nation's Capital are tourist and have no idea of the rules or regulations of the Congress, the buildings or grounds. They have no idea that they will have to throw away their lunch before they come into the Visitor Center. They didn't know that peanut-butter and jelly would be viewed as a possible binary-explosive and that the over-priced CVC cafeteria would meet their dining needs. Yeah I know when they went on line and got their tickets they were supposed to read all of those details, but who really does and remembers all that? Be nice.
- Secondly, weapons and ammunition retention/accountability does not only apply to a hands on struggle. Know where your firearm is at ALL times. Practice with it and raise your scores. There is no excuse for failure other than your laziness. In real life there will be no requalification opportunities, practice improves accuracy and memory skills. If you have trouble qualifying in the first round then you should be going to every open range date.
- Do your job, it's that simple. Pay attention and do your job.

Secondly I know that many supervisors will read this and so I will say something about being a good supervisor. Or at least my perspective, since I was found unworthy to be a US Capitol Police supervisor (It was the best thing that ever happened to me).

- Walter Mitty said at the end of the movie, "And I get it, you have your marching orders and you have to do what you have to do, but you don't have to be such a dick." Not that I am calling anyone a dick but as an example; After the State of the Union I was told to lock up all of the CVC's exterior doors, I went up to the exit doors and found that one exterior exit door was still open and in use by the press because there were still several press shots going on and they needed the door open to exit. I called my Sergeant, it went up the chain and my judgment was questioned so my Sergeant and Lieutenant responded up to the doors to ensure

that as a 32 year veteran I actually lock the doors. The person in charge of the press threatened to call the Inspector at home so my supervisors "decided" (They called the Captain) to allow the press to keep using the door until they were done. Then my Lieutenant went so far as to actually push on all the doors to ensure that I had locked them. They told me that the Captain had ordered them to do all of this. I thought, now here is a way to save overtime; the untrusting Captain could have come up dealt with the press themselves and locked up the doors themselves and thus saved the Department time and effort by not sending an Officer, Sergeant and Lieutenant do job it should only have taken one person to do. But then again who am I to tell an official how to do their job. Trusting your officers will go a long way and not trusting them goes even farther.

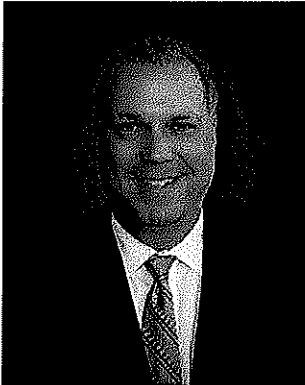
- A piece of advice; As a supervisor, if you are new to USB or your Division, you may want to take time to learn your officer's jobs, the buildings and grounds. For example if you are new to the Capitol or CVC go exploring, find all of the different ways to get onto the roof, or where Stairwell # 5 is. Would it hurt or enhance your supervisor skills or your relationship with the officers to attend a roll call or two? It's very obvious to the officers when you avoid roll calls by always taking on other assignments (Unit 8) or being too busy in your office. When you fail to develop a relationship with your officers, don't wonder why they won't come to you with a situation or want to by-pass you in the Chain of Command. They have no faith in you! You walk past them and you don't say a word to them but you will call down to their Detail and tell their Sergeant to go and tell the officer to put on the correct hat. You will do that instead of walking over, introducing yourself, shaking a hand and maybe asking why something is the way it is. Try it, I dare you to try it, maybe just maybe you will gain a little respect, some loyalty and officers will want to listen to your advice rather than just call in when they have a situation. Respect in leadership is earned not ordered. When you have to tell people you are in charge, you are usually not.
- Discipline is a tool to correct behavior, but so is teaching. Usually when officers need correcting, a little persuasion is much more effective and longer lasting than discipline. Good supervisors know the posts, your responsibility, the overall mission and their relationship to those things. They should be able to teach officers instead of discipline. When discipline is require it means that the teaching/teacher has failed. Yes there are some officers who refuse to learn even after being taught but I believe it is far less than the number we have been seeing when it comes to discipline.
- The individual officer is the greatest asset this Department has. When they fail the Department fails. It is sad that the Division officers receive the last of everything. Training will go to supervisors (who then fail the training). There is a reason why officers don't want to go on CODEL's anymore, they are treated like crap. No one, and I mean NO ONE is allowed to be sick or have an emergency during a Shutdown, Holiday or Special Event (During those events life just completely stops)! Leave will not be granted at a 15% rate for officers but it is amazing how officials will only need 15% them working. Generic CP-550's cut and pasted from the upper echelon for sick leave, really says that you care even less than no CP-550 at all.
- And just for the record. As an officer, I don't want to be your friend and come over to your house to smoke a cigar and get drunk (I personal don't drink or smoke). When you offer that to some officers and not all officers it will be construed as something else called favoritism. Being friendly is different than being friends. I do want you to be fair in the scheduling and treatment of all of those who come under your supervision.

Anyways enough said; I am sure my post assignments will now rapidly deteriorate to the least favorable on the list, been there done that. It has been my privilege to work and serve in this capacity (as a Union official) for the last twenty (20) plus years. I wish you all well in your careers.

Thank you and be vigilant,

Greg Baird
USCP/FOP
Secretary

A New Benefit



Mark Rossbach, CPA, RICP

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Dear FOP Capitol Police Union members,

We are excited to announce our new partnership with your Union. This partnership allows us to provide new group life insurance and disability benefits exclusively to Union members and their immediate family. As an added benefit, we are available to Union members and their families to provide financial education and planning for retirement, investments and unexpected events; such as premature death and disability, and long-term care needs. A few highlights of the group insurance benefits include the following:

Group Universal Life Insurance

- Up to \$125,000 Guaranteed Universal life insurance coverage with no required medical exam or blood work. This means those of you who have diabetes and heart disease and other significant medical conditions, you are automatically approved during the initial open enrollment period for life insurance coverage.
- Guaranteed coverage for family (spouse coverage of \$15,000; Child UL \$25,000; and Child Term of \$20,000).
- Accelerated death benefit for living benefit rider. This acts like your own long-term care benefit for chronic illness or cognitive impairment as it allows you to take 4% per month of the face amount of coverage for 25 months. That means you get \$4,000/MTh on a \$100,000 face policy for 25 months. If you exhaust the original \$100,000 life coverage for living care and still have a chronic illness or cognitive impairment starting on month 26 the insurance company doubles your living benefit coverage by providing another \$100,000. Once again, you can draw 4% or \$4,000/MTh until the second \$100,000 is exhausted. At this point the policy has provided a \$200,000 living benefit. What happens when all the money is exhausted under the living benefit rider, the policy provides you with a \$25,000 final death benefit.
- Life insurance that is 100% portable. You leave, retire, get promoted to officer ranks later and are no longer in the Union; you take your insurance with you.
- Premiums are conveniently deducted from your bank account.
- Accumulated cash value with a guaranteed 3% interest rate.
- Loan and withdraw options.
- Coverage that is with you through age 100.
- Waiver of monthly deductions for layoff or strike for up to six months per year.
- Accelerated death benefit for terminal conditions.
- Child term rider.

Group Disability Insurance

When most people are asked what their biggest asset is they usually respond, "It's my house." However, we fail to recognize that our capability to work and earn a living is our biggest asset (your income). What if you become injured and are not capable of paying your bills? How will you provide for you and your family? Do you also know that disability in the Federal Government is limited to 60% of your pay in year 1 and 40% in years 2+? That 60% and 40% are also tax at your normal income tax rate. This means your net income will be far less than 60% and 40%

The new group short term disability plan only available to union members can provide added benefits to help supplement your income in the event you are injured. Some of the highlights included are as follows:

- Up to \$3,000/month additional coverage for a two-year period up to a maximum coverage of 60% of **gross** pay. This coverage is guaranteed issue which means no required medical exams or blood work. Additional higher coverage amounts may be available with underwriting.
- Accident and sick waiting coverage period are 14 days before benefits begin.
- Portable coverage to take with you.
- Waiver of premiums if the union member is totally disabled for 90 days or has met the elimination period, whichever is later.
- Partially disability benefit which pays 50% of the Monthly Disability Benefit for up to 6 months when an insured employee returns to work on a limited basis following a total disability, assuming the partial disability is due for the same reason as the total disability.
- Accelerated benefit for terminal illness diagnosed by a physician.
- Coordinates with your Federal Benefits

Summary

These new group life and disability insurance benefits are only available to union members. We are available to discuss the various options to help you make the right decision. We have also helped union members look at other financial matters and their existing FEGLI insurance to save them money and to provide higher coverage amounts. Please do not hesitate to reach out to me at 410-497-3651 or my partner Jeff Judge at 410-497-3642 to answer any questions and to provide help.



United States Capitol Police Labor Committee

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FEDERAL CIRCUIT RULES CAPITOL POLICE MUST ABIDE BY ARBITRATORS' DECISIONS ON TERMINATIONS

On November 6, 2018, the U.S. Court of Appeals for the Federal Circuit rejected the United States Capitol Police's attempt to avoid arbitrators' ability to review cases challenging improper terminations of Capitol Police officers. In *United States Capitol Police v. Office of Compliance*, The Court ruled that the United States Capitol Police was required to bargain with the FOP/U.S. Capitol Police Labor Committee over whether the Labor Committee could challenge bargaining unit employees' terminations through the negotiated grievance procedure, and arbitration.

In 2010, the parties entered into a collective bargaining agreement that permitted the Labor Committee to challenge bargaining unit employees' terminations through arbitration. However, when the parties were negotiating a successor agreement in 2016, the Department suddenly took the position that terminations were no longer arbitrable and the Department's decisions on officers' terminations were unreviewable. The Police Labor Committee challenged this position, ultimately resulting in the appeal decided yesterday.

"The Court carefully considered and rejected each of the Department's arguments," said Megan K. Mechak, of Woodley & McGillivray LLP, who represented the Labor Committee. She added, "[t]he Court's decision that the Department should have negotiated with the Labor Committee over this issue was unanimous, which shows how meritless their position was."

"This decision is a big victory for our members," Labor Committee Chairman Gus Papanthasiou stated, "because termination is the worst possible discipline the Department can take against an employee. It is important that the Department be required to demonstrate to an outside party that its actions were fair and in compliance with the law, like every other federal agency." He added, "I am disappointed that the Department wasted countless hours and taxpayer dollars asserting these baseless claims for nearly three years, but I am hopeful that we will be able to move forward from here. I look forward to sitting down at the negotiation table with the Department soon."

If there are any questions please contact Labor Committee Chairman, Gus Papanthasiou.

The decision is *United States Capitol Police v. Office of Compliance*, Case No. 2017-2061, and can be found at: <http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/17-2061.Opinion.11-6-2018.pdf>.

FEDERAL CIRCUIT RULES CAPITOL POLICE MUST ABIDE BY ARBITRATORS' DECISIONS ON TERMINATIONS AND REINSTATE WRONGFULLY TERMINATED OFFICER

On January 25, 2019, the U.S. Court of Appeals for the Federal Circuit rejected the United States Capitol Police's attempt to avoid reinstating a wrongfully terminated U.S. Capitol Police officer. The Court of Appeals ordered the Department to comply with the arbitrator's decision, which includes reinstatement of the terminated officer, backpay, interest, attorneys' fees and costs as well as other damages. In *United States Capitol Police v. Office of Compliance*, the Court relied heavily on a previous decision against the Department from last November and ruled that arbitrators have the authority to review terminations of U.S. Capitol Police officers under the Collective Bargaining Agreement with the FOP/U.S. Capitol Police Labor Committee.

The FOP/U.S. Capitol Police Labor Committee filed a grievance regarding the officer's recommended termination on December 12, 2012, which the Department denied. The Department terminated the officer effective June 26, 2013. The parties jointly selected an arbitrator and a two-day hearing was conducted. On May 13, 2014, Arbitrator Daniel Gallagher issued his decision, concluding that termination was an inappropriately excessive penalty and mitigated the penalty to a thirty-day suspension. Arbitrator Gallagher ordered that the officer "be returned to service to his prior position as a U.S. Capitol Police Officer" and "be made whole for lost wages and benefits, less other payroll related earnings from the time of his termination to the present." The Department appealed this decision to the then-Office of Compliance (now, Office of Congressional Workplace Rights) Board of Directors, and on December 12, 2014 the Board upheld the Arbitrator's decision.

In an apparent fit of sour grapes, the Department abruptly announced that it would not reinstate the officer or otherwise comply with the Arbitrator's Award. On June 17, 2015, the Arbitrator issued a second award, ordering the United States Capitol Police to (1) immediately return the officer to service as a U.S. Capitol Police officer, (2) pay the officer backpay totaling \$340,487.70, including interest, and (3) pay the Labor Committee's attorneys' fees and expenses of \$273,906.68 within thirty (30) days.

The Department ignored this award as well, and refused to comply with the Arbitrator's ruling. The FOP/U.S. Capitol Police Labor Committee filed an Unfair Labor Practice (ULP) seeking to force the Department to comply with the Arbitrator's award. That ULP was upheld by a hearing officer and the Department filed yet another appeal with the Board, which was rejected on September 25, 2017. The Department then filed an appeal to the U.S. Court of Appeals for the Federal Circuit challenging the OOC Board's award ordering the Department to comply with Arbitrator Gallagher's decision. The Court of Appeal's decision rejects all of the Department's arguments and finds that arbitrators have the authority to review terminations of U.S. Capitol Police officers.

"The Court carefully considered and rejected each of the Department's arguments," said David Ricksecker, of Woodley & McGillivray LLP, who represented the Labor Committee. He added, "[t]he Court's decision that the Department was required to comply with the Arbitrator's

decision over this issue was unanimous, which shows how meritless their position was. It is well past time that this officer be put back on the job.”

“This decision is a big victory not only for our members, but especially the officer who was wrongly terminated,” Labor Committee Chairman Gus Papathanasiou stated, “this dedicated officer has been off the force for over five and a half years while the Department pursued these meritless appeals. It’s appalling that rather than follow the parties Collective Bargaining Agreement and abide by the Arbitrator’s decision to reinstate this officer, the Department threw a legal tantrum when it didn’t get its way.” He added, “I am disappointed that the Department wasted countless hours and taxpayer dollars asserting these baseless claims and appeals over the last five and half years, but I am particularly disgusted that this Officer has been off the force, forced to find other work while the Department simply ignored the Arbitrator’s 2014 award ordering him back on the job as a U.S. Capitol Police officer. I can tell you this much, I look forward to seeing this officer back in uniform and back on the job as soon as possible.”

The decision is *United States Capitol Police v. Office of Compliance*, Case No. 2018-1201 and 2018-1395 and can be found at: <http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/18-1201.Opinion.1-25-2019.pdf>

**FEDERAL CIRCUIT RULES CAPITOL POLICE MUST ABIDE BY
ARBITRATORS' DECISIONS ON TERMINATIONS AND REINSTATE
WRONGFULLY TERMINATED OFFICER**

On February 21, 2019, the U.S. Court of Appeals for the Federal Circuit rejected the United States Capitol Police's refusal to arbitrate a grievance relating to the termination of a sworn officer. In *United States Capitol Police v. Office of Compliance*, the Court relied heavily on two prior decisions against the Department – one from last November and one from January – and ruled that arbitrators have the authority to review terminations of U.S. Capitol Police officers under the Collective Bargaining Agreement with the FOP/U.S. Capitol Police Labor Committee. The Court of Appeal's decision rejects all of the Department's arguments and finds that arbitrators have the authority to review terminations of U.S. Capitol Police officers.

"For the third time, the Court has denied the Department's efforts to avoid third party review of their termination decisions," said Megan K. Mechak, of Woodley & McGillivray LLP, who represented the Labor Committee. "This is yet another unanimous decision on the same issue," she added.

"This decision is yet another victory for our members," Labor Committee Chairman Gus Papathanasiou stated. "Hopefully, the Department will stop wasting taxpayer money and countless hours asserting these baseless claims. The Department claims to be a law enforcement agency, but it continues to refuse to comply with clear mandates from the Office of Compliance and the courts."

The decision is *United States Capitol Police v. Office of Compliance*, Case Nos. 2018-1293 and 2018-1396 and can be found at: <http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/18-1293.Opinion.2-21-2019.pdf>.

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