



**FRATERNAL ORDER OF POLICE  
FLORIDA STATE LABOR COUNCIL  
OFFICE OF GENERAL COUNSEL  
ALAN S. DIAMOND, Esq.**



The Office of the General Counsel continues to strive to provide the highest quality representation and legal advice for our members. The General Counsel's Office has been very active and below are some of the cases that the office is currently handling.

**February 2018**

**The General Counsel's Office is responsible for the below cases:**

**ARBITRATIONS**

Division of Agriculture Lodge 900 member was demoted from Sergeant to Officer. The member was demoted for poor performance as a supervisor. However, over the last few years the member has received above average yearly evaluations. The member was never notified by any of his supervisors that his supervision methods were unacceptable. The member's Lieutenant opened up an "investigation" claiming that the member has violated several departmental policies. The Lieutenant did not follow FS. 112 and did not interview the member before he was demoted. The FOP-LC had the arbitration hearing on January 31, 2018. We are waiting on the arbitrators award.

Clearwater Police Department Lodge 10 member was terminated for a violation of the use of force policy. The member was escorting a 13 YOA juvenile who was arrested and handcuffed. The juvenile had just committed an assault and was verbally attacking the member. The juvenile allegedly attempted to break free from the member's grip when the member used a takedown method which caused the juvenile to flip over on his face and cause injuries. The juvenile was then taken to the hospital for treatment and released. The case is pending for arbitration.

Hialeah Police Department Lodge 12 member was terminated for theft of time and 10 policy violations for leaving his foot patrol early without authorization. The member over a 10 day period was observed via CCTV leaving his foot patrol area and driving away in his personal vehicle. The member requested no vacation, sick or Comp. Time. This case is pending.

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Miami Springs Police Department Lodge 6 member was terminated for a positive drug test. The member was a backup officer for a traffic accident. He was sitting in his patrol vehicle with his emergency lights activated. A car struck his patrol vehicle causing damage. The member was given a post accident urine drug test. That test resulted in a positive result and the member was terminated. NOTE: The city policy states that you have to contribute to or be at fault in the accident in order to be tested. This case is pending.

### **OFFICER INVOLVED SHOOTINGS (OIS)**

Davie Police Department Lodge 100 K-9 member was dispatched to assist in the City of Plantation reference a robbery by a suspect who had a gun. Upon arrival the member was contacted by Plantation K-9 Officer who advised he and his K-9 had been tracking down a suspect reference a armed robbery and that his K-9 is exhausted and needs assistance. The Member and his K-9 began to track the suspect at which time the Plantation Officer followed them. The Member and his K-9 tracked a suspect to the rear of a residence. (which was now in the City of Lauderdale). The K-9 alerted towards a tarp that was covering a shed to the rear of a residence. At that time the Member and the Plantation Officer were shouting "come out with your hands up". As the Member's K-9 circled around the tarp the K-9 was released and the Member pulled away the tarp to be confronted by the suspect pointing a gun toward the Officer. The K-9 attacked the suspect. The Member and the Plantation Officer in fear of being shot, fired their weapons several times toward the suspect. The Suspect was pronounced dead on scene. Staff Representative John Puleo and Staff Attorney Steve Melnick responded to the scene. FDLE conducted the investigation and Broward Sheriff's Office crime scene collected evidence. The Member and his K-9 were not injured. **NOTE:** Detectives on the scene found video of the suspect running along the street with a gun in his hand. The Suspect was identified by the victim of the robbery via photo line-up.

Hialeah Police Department Lodge 12 members were involved in a shooting in Hialeah. The city of Hialeah had a rash of Farm Store robberies by a subject using a knife. The member who is assigned to the S.W.A.T. team was doing surveillance of various Farm Stores in the city. The member noticed a vehicle parked on the north side of a Farm Store and a subject exited wearing a ski mask. The member notified other officers and then went to the south side of the store the other officers went to the north side. The member looked into the store and saw the subject with a knife pointed at a female employee. The member entered the store. When the subject saw him, he ran towards the north exit where the other officers were approaching. Fearing for the safety of his fellow officers, the member fired his weapon two times striking the subject in the back. The Suspect was taken to the hospital and his condition is unknown at this time. No officers were injured. Staff Representative Joe Puleo and Staff Attorney Attorney Steve Melnick arrived on the scene.

Titusville Police Department Lodge 170 member received a report of a male with a gun. The member made contact with a male in a vehicle matching the description they had been provided. According to witnesses the subject male fired a handgun at them as he began to drive away. The members engaged the subject with their Rifles; neither the suspect nor the members were struck with the rounds fired. After a felony stop, the suspect was taken into custody without further incident. Staff Representative Ted Butler and General Counsel Alan Diamond responded to the City of Titusville and met with the Officers who discharged their firearms. Those officers have been

placed on Administrative Leave. Although the FDLE is investigating this matter, that Agency did not respond to the scene this date. No one was injured during this incident.

Pasco S.O. Lodge 29 members responded to gun shots. Upon arrival the suspect came out of a residence where he had shot and killed his mother's friend. There was a gun fight in the street. The members returned fire upon the suspect who was armed with a A.R. 15 style rifle. The Suspect returned to the residence and S.W.A.T. team was called out. S.W.A.T. made entry and found the suspect dead from self- inflicted injuries as well as possibly wounds by the members. Staff Rep. Paul Noeske contacted Staff Attorney Brian Mulligan who responded to represent our members. No members were injured in this incident. It was the belief that the suspect might have been heading toward an elementary school when the members arrived and stopped him. The School was near by and was put on "Lockdown". Investigation continues.

Hialeah Police Department Lodge 11 members were involved in a shooting. The subject refused to stop for a traffic violation, and rammed a police vehicle. Shots were fired at that location. The subject fled and was chased and continued to ram other police vehicles. Shots were fired at another location as he rammed some more cars. The subject vehicle finally crashed, and Officers observed him reach for a dark object on the dash board. More shots were fired at this location, and the subject was DOA at the scene. A total of 6 officers fired their weapons, 5 officers were FOP, and 1 PBA. Officers were processed and relieved from duty with pay for one week. No Officers were injured. Staff Attorney Connie Kaplan and Staff Rep. Joe Puleo responded to the scene.

Coral Springs Police Department Lodge 87 members of the S.W.A.T. Team were called out in reference to a man inside his residence with a shot gun in his mouth. Additionally, it was reported that there were several guns in the residence. After the S.W.A.T .team set up outside of the residence they attempted to contact the Subject via telephone with negative results. The negotiator used a bull horn to attempt to help the subject by telling him to drop his shotgun and to come outside. After several minutes the subject came outside his front door with the shotgun facing toward the ground. The members who were directly outside the residence yelled commands to the Subject to drop the shotgun several times. The Subject yelled "Shoot me! Shoot me!" several times. At this time the Subject raised the shotgun up toward the Members, fearing for their lives both Members fired their rifles toward the Subject hitting him at which time the Subject was killed. It should be noted there were calls to the residence the night before due to the Subject drinking and also prior to the shooting early in the morning to check on his well being.. Staff Attorney Steve Lopez responded to the Location along with Staff Rep. John Puleo. The investigation continues

**“Public Safety Sensitive Statement Policy”** – The General Counsel's Office has mandated a statewide policy to all Labor Council Staff Attorneys that our members don't give voluntary statements when they are involved in an officer involved shooting or any other critical incident. However, the safety of the public is of grave concern and therefore the member is required to give the minimum amount of information about the incident that is not protected against self incrimination under the 5<sup>th</sup> Amendment in order to allow the investigation to continue and protect the public. The General Counsel's Office has a model Public Safety Sensitive Statement for our members to follow and this language has been disseminated to all staff attorneys for inclusion in department shooting policies.

## **OTHER OFFICER INVOLVED MATTERS**

The Fraternal Order of Police Labor Council is in the process settling various grievances for our members that will be to their benefit.

## **COLLECTIVE BARGAINING AGREEMENTS**

### **PUBLIC EMPLOYEES RELATIONS COMMISSION (PERC)**

**Lauderhill Lodge 161 (Civilians)** - There is a pending election between the FOP & Teamsters. (FOP LOST)

**Pembroke Pines Lodge** - There is a pending election between the FOP & PBA (FOP LOST)

**Sanibel Lodge 33 (Supervisors)** - There is a pending election between the FOP & CITY (FOP WON)

**Sunrise Lodge 80 Associates** – They petitioned PERC to have the Certification Number transferred from the Florida State Lodge to Sunrise Lodge 80 Associate Lodge. The issue at hand is that an Associate Lodge can't represent themselves under the FOP name because the national Lodge does not recognize Associate Lodges. An Associate Lodge can only be represented by a Local Lodge or the Labor Council. A PERC hearing is pending.

**Osceola County Corrections** – This is a 200 person unit that's being represented by the Teamsters. The LC filed 92 cards to force an election between the FOP and Teamsters. The election is pending.

### **CRIMINAL JUSTICE STANDARDS & TRAINING COMMISSION (CJSTC)**

No cases pending at this time

**“Prospective Suspension Policy”** – There is no written agency policy nor any language in a collective bargaining agreement (that the General Counsel's Office is aware of) addressing the issue wherein a L.E.O. receives a prospective suspension from FDLE-CJSTC or how the agency will deal with the suspension. The Labor Council has taken the lead in attempting to establish and propose language that can be inserted into a collective bargaining agreement or used to establish agency policy. Chief of Staff George F. Hachigian will explain in detail if there are any questions or concerns or if you would like a copy of that language.

The General Counsel's Office would like to thank the following Staff Attorney's for their dedication in representing the members of the Labor Council; Robin Allweiss, Perer Barone, Joseph Corsmeier, Donald Day, Mike Dutko, Larry Hart, James Heath, Connie Kaplan, Matthew Kindel,

Roy Kinsey, Craig Laporte, Stephen Lopez, Steve Melnick, Stephen Miller, Brian Mulligan, Chris Polak, Jason Reid, Mike Savage, Shelly K. Thomas and Phil Vogelsang.

## **IN CLOSING**

The General Counsel's Office has had a great deal of success in settling issues that have resulted in avoiding arbitration hearings, CJSTC Hearings and PERC Hearings. These settlements and negotiations have been very beneficial to the Labor Council membership. Whenever we can resolve a matter short of a hearing not only is the member satisfied with the negotiation, but the Labor Council is able to mitigate the costs associated with full litigation. Currently, the average cost of a two (2) day arbitration, which includes the Arbitrator's fees, Court Reporter's fees (for both attendance and transcription), witness' fees, expert witness' fees, printing of exhibits, travel, lodging and food average approximately \$20,000 - \$25,000. Fortunately the Labor Council membership has the advantage of a strong legal defense plan that covers these costs and expenses. Equally important, is the ***ability of the FOP to handle a multiple defendant case*** wherein a number of officers might be involved in a single shooting necessitating several attorneys having to respond so each individual officer is properly represented. ***Without the Labor Council Legal Defense Plan and the Labor Council's assets, infrastructure and resources this scenario could be a financial death knell for an unrepresented lodge.***

The General Counsel's Office will continue to provide the most up to date training in the areas of Officer Involved Shootings, Officer Rights in the Workplace and Officer Decertification. All Labor Council Staff Attorneys MUST complete this training prior to them representing any member of the Labor Council. Rest assured that the Staff Representatives and Staff Attorneys that represent the members of the Labor Council are the best trained and best qualified lawyers available.

Sincerely,

***Alan S. Diamond Esq.***

Alan S. Diamond Esq.  
General Counsel