

ACA MEET & CONFER MEETING

November 3, 2016

Director Ryan greeted the group and addressed the agenda items.

Attendees: CO II Clinton Roberts, ASPC-Lewis and COIII William Keener, ASPC-Perryville represented ACA; CO II Hector Villa, ASPC-Lewis was not in attendance. Also present from ADC were Director Charles L. Ryan, Interim Deputy Director Greg Lauchner, Carson McWilliams, Division Director of Offender Operations, Brad Keogh, General Counsel, Colleen McManus, Chief Human Resources Officer and Jacob Gable, Bureau Administrator of Administrative Services. Natalie Poff was present to take minutes.

SUBMITTED QUESTIONS AND ANSWERS

On behalf of ACA, the following questions were submitted in advance:

Question 1 – Prior Release Time Policy: As a result of the Goldwater Institute losing the lawsuit regarding release time. Is or will the Department of Corrections re-implement the prior policy of release time? I believe the prior policy was 24 hours per month for the QEO and 8 hours per month for the OEO.

Answer 1 – Colleen McManus and Brad Keogh responded: The policy will stand as is. There are many ADC employees who are involved in professional organizations, and they are not specifically authorized work time to complete or participate in the activities offered by these organizations. Under the State Personnel Rules and ADC policies, hourly employees, such as those in a QEO or OEO, have the opportunity to earn comp time and holiday leave in addition to their accrued annual leave. Employees in the QEO or OEO may use any one of these categories of paid leave for their activities. The policy change ensured that all ADC employees were treated consistently with respect to professional activities outside of their immediate job responsibilities.

In *Cheatham v. City of Phoenix*, CV 15-0287-PR (September 13, 2016), the Arizona Supreme Court held that the release time provisions in a formal collective bargaining agreement between the City of Phoenix and the Police Law Enforcement Association did not violate the Gift Clause of the Arizona Constitution. It is a limited holding predicated upon the specific facts of a unique case, and the Court so acknowledged the limits of its holding, stating that it “cannot find that the City Council abused its discretion” in determining that the collective bargaining agreement served a public purpose and that the City’s payments to the union were reasonable in light of the benefits received by the City. Furthermore, the Court stated, “We do not comment on the desirability of such provisions as a matter of labor relations or public policy. Nor do we address [whether]...the release time provisions violate either the ‘right to work’ provisions of

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Article 25 of the Arizona Constitution and A.R.S. §§ 23-1301 through 1307 or the First Amendment rights of non-PLEA members.”

ADC does not employ any unionized workers, and there is no formal or informal collective bargaining agreement between ADC and its employees. The Cheatham decision holds only that the specific collective bargaining agreement there did not violate the Gift Clause of the Arizona Constitution. It does not mandate that a public employer must provide release time to its employees.

The three employee organizations—ACA, FOP, and AZCPOA—have nearly unfettered access to Director Ryan and ADC senior management in the chain of command, and have abundant opportunities to communicate the questions and concerns of their members. They have successfully done so for years, all without release time, as these ongoing quarterly meet-and-confer conferences attest. The Department will not reinstate any prior or implement any new release time program.

Director Ryan stated the Department is not authorized to “Gift Time”. The policy regarding release time was rescinded to ensure all organizations are treated consistently and fairly. The Director advised DO 501 was updated to reflect the fact that Meet and Confer meetings are considered “State Time” for which the members are being compensated.

Note, the Director further advised a formal response will be sent to the employee organizations to reiterate that release time will not be reinstated.

Question 2 – Support Full-Time Release: In the last Meet and Confer Director Ryan asked A.C.A. to support his proposals to the legislators for raises. The association feels that to better serve the membership and the Arizona Department of Corrections as a whole by providing full time release. Whether paid by the membership, the department, or by a combination of the both. This has benefits for the association and the Arizona Department of Corrections. To paraphrase old policy, as being an employee organization our responsibility to the members and the department is to better and further corrections. To do this an oppositional relationship with executive staff is not beneficial to anyone. Director Ryan extended a branch asking for support. The question is how much support can be given with the time we have?

Answer 2 – Colleen McManus and Brad Keogh responded: There are many, many ways that members of the association can support these efforts without additional designated work time for this purpose. For example, talking positively and constructively about the Department in every setting, inside and outside of the

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organization, promotes a positive message to members and non-members alike. Like any citizen and any other employee, association members can write to their legislators about the need for higher salaries and approval of the agency's pay package. Members can assist their Wardens and other members of management with retention steps they are implementing at each complex. This will help association members to better understand the big picture with respect to employee compensation, rather than just speaking from the perspective of their own paychecks. Members could also propose specific compensation-related ideas or suggestions to any member of management for vetting and consideration. The Arizona Management System will also afford employees the opportunity to volunteer for teams that will be working to address issues identified as priorities for the agency. I encourage all of you to look for these kinds of opportunities to move the organization forward. This ultimately benefits everyone, including your members.

The quarterly meet-and-confer conferences do not constitute an "oppositional relationship with executive staff." They are cooperative and collaborative opportunities for all three employee organizations to share the questions and concerns of their members with Director Ryan and ADC senior management. All three employee organizations, as well as individual non-member employees, have had, and continue to have, the longstanding ability to communicate directly with the Director through an open door, e-mail, and phone process which was established almost 8 years ago, all without paid release time. The Department will not reinstate any prior or implement any new release time program.

Director Ryan discussed the lean transformation and how the Governor's vision is being cascaded throughout our organization. Director Ryan further discussed the critical roles all tiers of the Department of Corrections plays to have the ability to resolve problems at the lowest level possible. Director Ryan briefly discussed the 4 tiers in which our agency has been compartmentalized:

Tier 1: Director

Tier 2: Division Director

Tier 3: Complexes which accounts for 2/3 of our agency

Tier 4: Units

Director Ryan noted there is a 7-step process in which all employees will ultimately be trained to be able to resolve problems at the lowest level possible. This process is the called the Arizona Management System, a management approach adopted by Governor Ducey which will become part of the foundation of the lean transformation across State government.

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Director Ryan advised that our contract with Mass Ingenuity is due to expire on December 15; however, during the next Executive Team Meeting, he will discuss extending the contract.

Question 3 – 12-Hour Shift Rumor: Since the LEAN Committee regarding the optimization of staffing the rumors of 12 hour shifts is quite strong. Is there an update or details the department is willing to share at this time?

Answer 3 – Carson McWilliamns responded: We are currently evaluating the cost effectiveness of the 12 hours shift concept. Not all units would change to 12 hour shifts due to cost effectiveness and the availability for some 8 hours shifts for staff and the needs of the complex. All CO IIs, Sergeants and Lieutenants in units that change to the 12 hour shifts would be affected. It would not affect CO IIIs, COIVs or Captains. We plan to make a recommendation to the Director by end of November in order for a decision to be made in early December. If implemented, it would start mid-January, after a 30 day notice.

As in rotation of staff, consideration for the staffs personal needs will be attempted to be accommodated. With all things being equal if a preference was available, then the senior staff with continuous service would be given their choice of shift. We would have four shifts, 2 ams & 2 pms, each would work three days one week and four days the next, for a total of 7 days per 14 day PAR period. There would be no 15 minute briefing and all units would use a “read book” with a supervisor interacting with line staff to ensure information is passed.

Director Ryan added that there are 738 vacant positions, therefore, we need to maximize the resources we currently have. We may have to reconstitute the 12 hour shift out of necessity which is a cost effective strategy. Each complex will be reviewed individually.

ACA shared their concerns regarding shift changes by stating that the Department lost staff when 12-hour shifts were implemented. Then, a new wave of staff were hired and adapted to the 12-hour shifts but were then switched to 8 hour shifts which, again, resulted in employee turnover.

Mr. McWilliams reiterated that the 12-hour shifts would impact CO II’s, Sergeants, and Lieutenants. CO III’s and Captains would not be impacted. This will change the dynamics of operations as there will be more supervisors on shift which should reduce overtime issues and cross leveling. This will allow Officers to work in areas they are

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familiar with and increase team work and supervisor interaction which will ultimately help retention and employee satisfaction.

Question 4 – Increasing Number of Step Raises for Supervisors: Is there anymore consideration in regards to increasing the number or amount of step raises? Also implementation of step raises for supervisors?

Answer 4 – Jacob Gable responded: Employee recruitment and retention, including employee compensation, continues to be of critical importance to ADC. The importance of this issue is illustrated by the fact that ADCs #1 priority in the FY 2018 Budget Request is a request for a pay package for security staff. The requested pay package includes:

(1) Funding to increase all security staff salaries by \$1,000. This would increase each step of the CO Pay Plan by \$1,000 and corresponding increases for the entire correctional series.

(2) Annual merit pay for the security series. The merit pay plan ranges from 1-2% of salary and would be paid annually to eligible employees. The merit amount would not be added to base pay and would be dependent on employee job performance and eligibility.

The entire ADC Budget Request, including the requested pay package, is available on the ADC website and the following link (page 293 of 391):

<http://10.6.0.30/reports/FY%202018%20ADC%20Operating%20Budget%20Request.pdf>

Director Ryan stated he submitted a decision package for an increase in pay for security staff for the last three consecutive years. Last year, sixteen decision packages were submitted. This year, only eight packages were submitted and the pay package was number one. Director Ryan acknowledged that the Department of Corrections' pay is not competitive and further stated that ADC ranks at the bottom of the Western eleven states in relation to pay.

Director Ryan noted that 565 Correctional Officer positions were previously given up by Director Schiro in 2006 to help fund pay increases in the past by using vacancy savings. We cannot give additional Correctional Officer positions up to fund pay increases as those positions are critically needed; however, pay packages will continue to be a priority.

Ms. McManus further stated that ADC is looking into other pay strategies, spot incentives, merit incentives, etc. which do not add to the base pay and are allowed under the Compensation Plan.

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Director Ryan advised some of those pay strategies may occur this fiscal year. Additionally, Ms. McManus noted that the Arizona Department of Administration (ADOA) is working toward increase for performance versus time spent in the job.

Director Ryan noted that the performance incentive is structured as follows:

- 2% - High Performers
- 1.5% - Above Average Performers
- 1% - Average Performers
- 0% - Below Average Performers

ACA asserted that the MAP and merit systems are flawed. Based on personal observation, managers and supervisors are giving average ratings, no matter how great their efforts or achievements are which impacts the employee's ability to earn the maximum performance pay. Ms. McManus advised ADOA is looking at other performance evaluation systems.

Question 5 – Lewis, Florence/Eyman, Winslow Stipends: Stipends- 10%+\$100 for Lewis, Florence/Eyman and 15%+\$100 for Winslow.

Answer 5 – Jacob Gable responded: Expanding stipends beyond those currently available is not part of the budget request submission. However, ADC did request a pay package in the FY 2018 Budget Request. Please refer to the response to question #4.

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Additional Information:

A letter from the Bihn and McDaniel Attorney Office dated October 14, 2016, was handed out at the meeting as well as Director Ryan's response dated October 17, 2016. Click on the following links to see the aforementioned letters:

<J:\Meet and Confer\Bihn& McDaniel Letter Dated 10-14-16.pdf>

<J:\Meet and Confer\Director Ryan's Response dated 10-17-16.pdf>

Carson McWilliams advised that direction was given to the Wardens not to do anything with the HIPPA forms until the process to give fair and consistent review is in place. Mr. McWilliams advised that a recent statewide poll indicates that only one (1) NNTI and three (3) Administrative Inquiries have since stemmed from the Employee Grooming policy change for non-compliance and one case remains undecided. Mr. McWilliams gave direction to the Wardens to move forward with the disciplinary process for non-compliance, however, if employees who currently do not meet the shaving requirements are willing to comply, discipline would be waived.

Colleen McManus and Carson McWilliams explained that the medical review board consists of Derleen Spence, Occupational Health Administrator, Registered Nurse (RN) and Dr. Rowe, MD, both of whom review the medical documentation provided by the employees' personal doctors, upon which they make a recommendation to the impacted Warden to approve or deny beard waiver requests. The Warden does not have the knowledge or medical expertise to determine if an employee's request is legitimate, which is why the medical review board looks at each individual case. Ms. McManus advised if a Doctor releases full medical records to the Occupational Health Nurses, that is the fault of the Doctor's office, not ADC. She further advised that she is aware of one case in which a Doctor disclosed more medical history than required, at which point the OHN advised the Doctor's office and returned the documents. Ms. McManus will clarify the language within the HIPPA Waiver form and upon approval of the Director, the form will be published for ADC use. [Note: This has been completed]

Director Ryan stated that other public safety organizations are not permitted to wear beards and do not have an option to waive that requirement. Director Ryan stated the grooming/shaving policy was changed to ensure the safety of its officers when using Phantom Gas/OC spray. If the masks do not fit properly they are not effective. The grooming/shaving requirement also presents a professional image of the Department, which is important, just like safety is for fit testing.

A second level review may be considered however, the policy will not be rescinded.

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Close:

The Director encouraged the Employee Organization to utilize the opportunities they have to communicate the questions and concerns of their members more frequently, including taking advantage of his open door policy. Director Ryan thanked those who were in attendance.

cc: Executive Staff
Wardens
Paul O'Connell
File