

# AZCPOA MEET & CONFER MEETING

## November 3, 2016

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Director Ryan greeted the group and addressed the agenda items.

Attendees: CO II Len Sustaita, ASPC-Perryville and COII Matt Ball, ASPC-Florence represented AZCPOA; CO II Darren Sikes, 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 AZCPOA, the following questions were submitted in advance:

**Question 1** – P.L.E.A. Case Reversal/QEO Policies: Now that the Supreme Court ruled in the P.L.E.A case that release time does not violate the “gift clause” of the AZ constitution, will you please reinstate QEO policies that ADC deleted? You indicated earlier that ADC’s decision to eliminate release time and a lot of the QEO policies came after the court of appeal decision in the P.L.E.A. case, which has now been reversed.

**Answer 1** – Brad Keogh responded: 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 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.

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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** – Letona Ruling / Probation Status: The Superior Court recently ruled in Letona that ADC didn’t correctly place him on “original probation.” As a result, Letona is not a probationary employee and is entitled to a personnel board appeal on his termination. This decision impacts all other ADC employees who took a similar voluntary demotion and were put on “original probation.” We ask that ADC contact each of these employees and advise them that they are regular status and not on “original probation.”

**Answer 2** – Colleen McManus and Brad Keogh responded: The Department follows the guidance of the Personnel Rules in the Arizona Administrative Code and the directives of the Arizona Department of Administration in carrying out human resources actions. The Department will continue to advise employees according to these guidelines. If an employee feels he/she has the right to appeal an action to the Personnel Board, he/she may do so. As we have seen in other instances when this occurs, the Board will determine whether it has jurisdiction in the matter and will address the employee accordingly.

On October 28, 2016, the trial court issued a Minute Entry reversing an Order of the Arizona State Personnel Board which had dismissed Officer Letona’s appeal from his termination of employment from ADC. This Minute Entry is subject to appeal, as the trial court acknowledged therein. Until the Department has an adequate opportunity to confer with the Attorney General’s Office about this just-issued Minute Entry, it would be premature to take any action, let alone respond precipitously to this question.

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In the interim, if any employee believes that they have a right to appeal to the Personnel Board, they certainly may do so, and the Personnel Board will consider any such appeal as it determines is necessary and appropriate.

Discussion ensued regarding the Letona case. AZCPOA raised the question as to why an employee who has been with the Department for a considerable amount of time would need to serve original probation if the employee had previously fulfilled his/her original probationary period. Colleen McManus explained the Voluntary Demotion process and explained that under the guidance of the Arizona Department of Administration, voluntary or involuntary demotions from uncovered to covered classifications will require a probationary period. Additionally Colleen noted that since the Personnel Reform in September 2012, she is aware of only one dismissal from original probation following a demotion.

**Question 3** – Shaving Waiver Policy Modification: AZCPOA wants to discuss potential modifications to the shaving waiver policy, DO 503, particularly those relating to the “medical review.” For example, we don’t understand how a Central Office medical review can reject a medical diagnosis based solely on medical records. Also, some Officers received disciplinary sanctions, even after complying with the original policy change on 9/1/16, because the OHN & Warden’s Offices were dragging their feet with the approval or denial of their Doctor’s medical diagnosis.

**Answer 3** – Colleen McManus & Brad Keogh responded: With respect to a review of medical records, these records demonstrate several things that help to verify the validity of an employee’s request to have a beard, such as the nature of the skin condition that has been diagnosed; whether the condition was actually observed by the doctor, or simply relayed verbally by the patient; whether the patient has a history of or has been previously treated for the condition; and whether or not the patient is experiencing any current symptoms. The medical review board makes a recommendation to the Warden to approve or deny a request based on the medical findings. The board does not reject any diagnosis or request. It is unfair to blame the OHNs and the Wardens’ Offices for “dragging their feet.” When we initially received over 400 requests for beard waivers, we needed to establish procedures that would ensure all requests received fair medical review. The Occupational Health Unit is now in very close contact with the Wardens’ Offices to advise them of when requests are submitted to physicians and when physician responses are received. If you have specific names of those you believe to have been disciplined inappropriately over this policy, please provide their names. The medical review of beard requests is working well now, and DO 503 will not be modified.

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An employee seeking a medical waiver for a beard is not required or otherwise “mandated” to execute a HIPAA Release. The Release clearly provides that it is voluntary and may be revoked at any time. In addition, the Release is strictly limited to the specific skin condition upon which the employee is predicating his request for a medical waiver for a beard. It is not unreasonably intrusive and does not require the release of any healthcare information other than the specific skin condition at issue. The Department is entitled to conduct a basic evaluation of an employee’s medical waiver request. The medical information provided by the employee’s healthcare provider is reviewed by ADC medical professionals—an Arizona licensed medical doctor and a registered nurse—who make a recommendation to management regarding the request. The employee’s management is not involved in, and does not see medical information on, the skin condition itself, thereby further maintaining the employee’s medical privacy.

The Department has no knowledge or record of any employee who has “received disciplinary sanctions” arising out of the revisions to DO 503. If AZCPOA will identify the employees to whom it refers, the Department will investigate any such situations accordingly.

The current grooming standards and process for seeking a medical waiver for a beard will not be rescinded.

**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. In response to AZCPOA’s assertion that a multitude of Officers are being disciplined for non-compliance of DO 503, 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

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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.

AZCPOA raised the following questions and/or points of concern:

1. Who does the medical review board consist of?
2. How can a Warden make the determination whether an Employee's medical condition is legitimate to warrant the approval of a waiver?
3. HIPPA release form is misleading which is resulting in Doctor's offices releasing full medical records which goes beyond what is needed for beard waivers.

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]

After hearing AZCPOA's concerns regarding the denied shaving waiver requests, Director Ryan asked if they were requesting a second level of review. AZCPOA stated they would, in fact, like a second level of review.

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.

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

**Question 4** – Yuma Captain FMLA Issue: In Yuma a Captain is threatening officers who take pre-approved FMLA leave. We're just giving you a courtesy notification that the affected individuals are filing complaints with the US Department of Labor and we think they are also going to the newspaper on this issue. What can ADC do [sic] to better prepare its supervisors to deal with FMLA issues.

**Answer 4** – Carson McWilliams: For us to address this issue, you would have to provide details and names. I have checked with the Yuma Warden and she could not find any complaint of this nature. No staff from the employee organizations have expressed this during meetings, nor has anyone done so individually.

Discussion ensued regarding the allegations brought forth by AZCPOA. After receiving clarification from AZCPOA, Carson McWilliams advised that the employee with whom this allegation was allegedly aligned has been addressed.

**Question 5** – Administrative Inquiry Issue: Why is the "administrative inquiry" the immediate answer to everything? It keeps people from promotion and other extra things like TSU and Chase teams. It keeps our Dept. at a constant stall and seems to be the main reason that we cannot keep our staff.

**Answer 5** – Interim Deputy Director Greg Lauchner responded: The Administrative Inquiry is not the "immediate answer to everything". Per A.R.S. § 38-1104, an administrative inquiry is served when allegations of potential misconduct against an employee or employees have been asserted, and functions primarily as preliminary questioning to determine the scope of the allegations or whether an administrative investigation/interview is necessary. Furthermore, DO 601 authorizes management to proceed with 3 options following the administrative inquiry response from the employee: (1) If the allegations are deemed unfounded, then the inquiry may be closed without further action; (2) If the alleged conduct is defined and admitted to by the employee, then corrective action may be taken without a formal investigation/interview; and, (3) If the scope of the allegation is complex in nature and requires formal investigation, the approving authority may request an investigation be conducted by the Administrative Investigations Unit. An administrative inquiry is usually limited to those instances where an allegation of misconduct is presented to or observed by supervisors.

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The administrative inquiry process allows an employee 5 working days to seek guidance or consult with anyone of their choosing prior to the response due date.

Ms. McManus added that the Administrative Inquiry process ensures consistency at all complexes, and further stated that ADC exit interviews do not indicate Administrative Inquiries as the primary reason for employee turnover as suggested by AZCPOA.

**Question 6** – Raise Request at Legislative Session: Are we looking at a raise anytime soon? Is ADC going to try to get a raise for staff during this legislative session?

**Answer 6** – 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 in bonus form 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.

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**Question 7** – CO II/CO III Retention Efforts: What efforts is ADC making to retain COIIs and COIIIs?

**Answer 7** – Colleen McManus responded: There are many things the agency is doing to retain staff. First, as noted in responses to other questions, the Director has requested a pay package for staff in the security series in the agency's FY2018 budget request. We have enhanced the onboarding process for new employees, and we are piloting a Field Training Officer (FTO) program in a few of our institutions which has garnered very positive comments. We are doing "stay" interviews with employees to find out what motivates them and keeps them coming back every day. We have enhanced our training programs and leadership academies to include courses for leaders and aspiring leaders at all levels. The Department is implementing the Arizona Management System, which affords employees the opportunities to become more involved and engaged in the work they do. We are hearing more from, and listening more to, the staff through surveys, the open door policy, interviews, etc. Leaders from the HR & Development Group will be visiting each facility to talk about employee engagement and the Employee Retention Plan. We are doing a much better job telling the corrections story through media, presentations to legislators, work on the Governor's goal councils, and this helps build pride in being a member of the corrections team. We recently hosted a Strategic Leadership Conference which focused on our employees and what we can do to improve retention. It takes all of us, working together, to help employees see their career potential in ADC.

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.

Director Ryan advised some of those pay strategies may occur this fiscal year.

AZCPOA stated they can help retention efforts by being cooperative and building good relationships with the Executive Management team to better represent the members of their Employee Organization.

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 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.



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**Question 8** – CO III Security Postings: Understanding that COIIIs are being used to help with security postings due to shortages; would it be possible for each complex to be looked at individually, due to the staffing differences? (Lewis and Douglas staffing is very different)? As it is already we understand a few complexes need the COIIIs to help and with the lean program, having the twelve-hour shift implemented for a complex like Lewis is understandable. Perhaps “offering” the twelve-hour shift to individuals in places like Douglas, Safford etc. would be conducive for the minimal shortage that is there. Dependent upon the need each Complex should be looked at closely as to figure how making security staff available to fill in slots. However, a complex like Douglas for instance has enough staff and this why this is being asked. COIIIs are being put into place to cover security that have been cross leveled to another units, or the COIIIs are being told they have to check with security to request annual leave because the COII may be off on the COIIIs posting day. COIIIs have a lot on their plate as it is and timelines are very important for RMS, Legal Calls, Programming for inmates, fundraising and all else they find themselves doing on top of Posting days, searches and roll ups to name a few. While being in the Correctional Staff series, COIIIs are only looked as security when convenient. However, becoming a COIII has been a cut in pay and it seems they are being treated poorer than COIIs in regard that they are thought of by many security and Old schooled staff of security, as having a hug a thug lazy job. COIIIs do not get clothing allowance like security staff to afford crawling around on the floor looking for contraband, yet they do it without complaint at the time when duty calls.

**Answer 8** – Carson McWilliams responded: As explained several times prior, last year when we were over extended financially, it was decided to assign CO IIIs to security posts to assist in the use of OT monies. Wardens were directed to use them as needed but not more than once per week. This practice has been used in our Department for many years. Recently I checked to see how often CO IIIs are used and in what units. I found that this varies around the state. At the Douglas complex half of the staff are posted weekly or are only posted for part of the shift. I have instructed the Douglas Warden to not post any CO IIIs for the next month to a shift, but may use them as needed for part of the day. We are all part of the same team and need to work together to complete our mission. The rest of this question seems like personal opinion.

Mr. McWilliams further advised that each institution’s posting needs are reviewed differently based upon vacancy rates, at which point a determination is made on a case by case basis.

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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