

SNYDER AND HOAG, LLC CLIENT NEWSLETTER

2011 – FOURTH EDITION

COMMENTS ON A LAW ENFORCEMENT CAREER

Somehow retired Eugene Police Sergeant, Bill Childers, saw fit to put me on the retired Lane County officers' email list. Recently, he forwarded to me the retirement statement of Eugene Officer Greg Reeves who I had the pleasure of knowing when I represented EPEA. With Greg's permission Snyder & Hoag is reprinting his retirement statement because we believe that is a testimonial to what a law enforcement career means. Greg congratulations on your retirement!

John Hoag

From EPD's Newest Retiree

To my EPD family -

As I end my career, please allow me to fulfill a personal need thanking all of you for your support over these past 30+ years. To acknowledge individuals would be foolish as I couldn't possibly name them all or adequately describe what they did for me and how much it meant. If you were a cop who had my back, a communications specialist who got me help when I needed it, a records specialist or admin aide who assisted me in wading through a paper maze, I thank you from the bottom of my heart. To the lab and property personnel who assisted me on investigations, I couldn't have made numerous cases without you. In the past few weeks many of you have taken the time to wish me well through both words and gestures. My family and I have been truly touched and I can't find the words to describe what it has meant to us. "Thank you" seems so inadequate.

To those who came before me, thank you for taking the time teaching me and kicking my backside when I needed it. Many of you were Vietnam veterans, and while you never spoke much about your experiences, you didn't have to. You carried it in the way you did your jobs and treated those around you. It was you who taught me heroes don't verbalize how special they are, they live it day to day.

To those who started around the same time I did, thank you for letting me learn with you as we experienced similar victories and defeats. It would have been impossible to imagine what the ends of our careers would look like as we were having too much fun. Police work was a drug and we were the addicts.

To those who followed after, thank you for allowing me to be a small part of your careers and selfishly feeding off your enthusiasm. I hope there was a time or two when I made a positive impression on you. You are the next generation of this EPD family, a responsibility I know you will accept and carry forward.

I thank my family, from my mother, who sacrificed more than she ever let on, to my wife and children who never questioned my personal need to work a particular assignment or shift. Your support, understanding and patience has meant everything to me.

I'm lucky and blessed to have finished a career I loved and do not take that lightly. Over the course of this journey I've had the pleasure, and honor, of working with many of our family who were tragically taken from us too early. These special people include Mary Carol Nohrenberg, Carol Fagen, Carol Van Gordon, Richard Hansen, Gary Elliott, Lorraine McGuire, Roland "Slim" Carter, Sheri Maser, Jeff Barrong, Jerry Webber and Chris Kilcullen. On my last day, I hope you join me in taking a moment to remember not only them, but their families as well. I'm fortunate in being able to leave EPD on my own terms. They deserved that too.

Goodbye, good luck, and stay safe.

Greg Reeves #282

OREGON

EMPLOYMENT RELATIONS BOARD DECISIONS

ERB AWARDS MARION COUNTY DEPUTY ADDITIONAL BACK WAGES

Marion County Deputy Kris Phillips was fired in 2007 for alleged misconduct. In 2008, an arbitrator found that her discharge was not supported by just cause for termination as required by the Marion County Law Enforcement Association's (MCLEA's) contract, reduced the discipline to a 30 day suspension, and ordered the County to reinstate her with back pay and benefits. The County refused to reinstate Phillips.

The MCLEA filed an unfair labor practices charge with the Employment Relations Board (ERB) within a month of the County's defiance of the arbitrator's award. In March 2010, the ERB

concluded that Marion County committed a ULP by refusing to reinstate Phillips as ordered by the arbitrator. The Board ordered the County reinstated Phillips with full back pay and benefits. The County reinstated her, but disputed the Association's contention regarding the full amount of back pay and benefits she was due. Although the MCLEA and the County were able to agree on much of the back pay and benefits due Phillips, two issues were unresolved. The ERB accepted the Association's position on one of the issues.

The Association argued that Phillips was due damages for the period July 2009 through April 2010. The County refused to pay for this period, arguing that since Phillips refused to return to work in July, she was not entitled to damages. The ERB rejected the County's arguments, concluding that Phillips acted reasonably given that the County was pursuing its objections to the arbitrator's award in the litigation pending before the ERB at the time. If it prevailed, she would have been out of a job, again. She was not required to quit the interim employment she had obtained in order to resume employment with the County, where that job could end abruptly. In addition, the ERB noted that after the arbitrator's award in 2008, the County had offered to return her to work, and then rescinded its offer. She was not required to quit her interim job and risk the possibility of the County again changing its mind.

The ERB rejected the Association's argument that Phillips was due overtime compensation in addition to the amount paid voluntarily by the County. The County's calculations based on the 12 months prior to her termination were reasonable.

Editor's Comment: This decision finally brings to a close the MCLEA's lengthy campaign to force Marion County to comply with the just cause requirements of its contract. In the end, Phillips received more than two and one-half years of back pay and benefits, plus interest.

EMPLOYMENT RELATIONS BOARD REAFFIRMS THAT THE PARTY'S FINAL OFFER MUST ONLY CONTAIN ITEMS THAT WERE SUBJECT TO THE NEGOTIATION PROCESS

The case of *ATU v. Trimet* (UP 16-11 2011) is a classic example of how negotiations can go wrong. In this case, the Union and the *Trimet* clashed over who was the appropriate negotiator, who had authority to negotiate, and whether informal sessions and meetings between the parties constituted negotiations. When negotiations failed *Trimet* published its final offer, which it could unilaterally implement giving the ATU membership the option of going on strike. *ATU* responded by filing an Unfair Labor Practice Complaint and the ERB ruled that numerous parts of *Trimet's* final offer had never been subject to negotiations and therefore could not be part of the final offer.

This case does not break new ground and it cited some of the previous cases that this firm has been involved litigated. It reemphasizes the importance that during the negotiation process any subject that would be included in a final offer and in our cases in Interest Arbitration, the Last

Best Offer, has to be either made at the bargaining table or be a logical compromise to proposals that were made at the bargaining table.

EMPLOYMENT RELATIONS BOARD ORDERS JOSEPHINE COUNTY TO APPROPRIATELY CALCULATE BACK WAGE REMEDIES THAT ARE DUE

The continuing saga of *AFSCME v. Josephine County* has been going on since 2007 over the County's transfer of a number mental health positions from the County to other organizations. The County failed to bargain about the transfer and the Board had ordered the County to do so and ordered it to reinstatement a number of employees and to make them whole for lost wages and benefits. The County appealed and the Court of Appeals affirmed the ERB's order. In the latest round *AFSCME* again had to appeal over the County's calculation of its back pay obligations. The ERB sided with *AFSCME* on almost every issue requiring the County to appropriately calculate both the back pay and the benefits that these employees lost by the actions of the County.

Editorial Comment: This case is nice to see that the ERB will give "teeth" to back pay remedy awards.

COURT

OREGON COURT OF APPEALS RULES THAT DPSST HAS STATUTORY AUTHORITY TO ADOPT AN OREGON ADMINISTRATIVE RULE ALLOWING IT TO AUTOMATICALLY REVOKE A CERTIFICATION IF AN OFFICER IS DISCHARGED FOR CAUSE

In the case of *Marolla v. DPSST* (August 31, 2011), the petitioner, a former police officer, challenged the validity of a DPSST administrative rule which mandated that if an officer is discharged for cause, that it will revoke the officer's certification. He argued that he should be able to administratively litigate the validity of the termination.

The Oregon Court of Appeal's reviewed the enabling statutes and concluded that DPSST did have the discretion to adopt such a standard.

Editorial Comment: This makes it all the more important to support those OCPAs monitoring of DPSST in both the actual cases it handles,, or when it adopts administrative rules stating when and how it will revoke a certification.

WASHINGTON

PERC

PERC DECLARES 6 RULES OF E-MAIL USAGE IN WASHINGTON

Earlier this year Washington's Public Employee Relations Commission (PERC) laid out the following six rules of public employee use of their employer's e-mail system. The decision is clear. Each of the following rules is a direct quotations from *State Corrections*, Decision 10998-A (PSRA, 2011).

1. "Washington's labor laws do not give public employees an independent right to use an employer's equipment or facilities for union business, including for union organizing."
2. "... if an employer consistently enforces policies that preclude employees from sending messages to groups of employees that are not related to the employer's mission, then an employee may be disciplined for sending e-mail to groups of employees, even if the subject matter of the e-mail is protected."
3. "*De minimis* [occasional] use of an e-mail system to send individual personal messages does not demonstrate that an employer permits or sanctions the sending of mass solicitations through an e-mail system.'
4. "An employer who consistently applies published rules prohibiting employees from sending non-work related e-mails through its system will not be found to have committed an unfair labor practice if it disciplines an employee for sending out a non-work related e-mail, even if that e-mail concerns activity or information that is protected by Chapter 41.80 RCW [or RCW 41.56] because no discrimination occurred."
5. "However, an employer may not prohibit union related e-mails or discriminate against employees who send them when it allows other non-work related materials, such as personal items for sale, non-work related services that are being offered or requested, or announcements about outside clubs or events, to be sent through employer-owned e-mail. [citation omitted]."
6. "An employer who disparately applies its rules to prohibit union related materials while allowing its systems and equipment to be used to distribute other non-work related materials commits an unfair labor practice. [citation omitted]. "

Editorial Comment: If your collective bargaining agreement modifies these rules, the contract will control. We recommend that all Guild and Association e-mail messages be sent through personal e-mail accounts (1) to avoid possible discipline, (2) to prevent employer review of the messages, and (3) because public employer accounts are public records.