



The Fourword

Volume 38, Number 9

September 2010

The Courts Have Spoken and the Smith Administration Refuses to Listen!

The following case summaries briefly described here can be found in much greater detail in copies of the Fourword or by reading the court decisions themselves. If you would like additional information on any of these cases please contact the Lodge office for assistance.

During the FY-09 contractual negotiations, FOP Lodge 4 and the Baltimore County Administration did not reach an agreement and went to arbitration according to the requirements specified under the Employee Relations Act. On 03/31/08, the Arbitrator ruled in favor of the FOP's last best final offer. Despite the language of the Employee Relations Act, which states that the County Executive was to submit only the items that require "an appropriation of funds or the enactment of legislation," he submitted each item of the award for legislative consideration. **The FOP filed suit against the administration and on July 7, 2010 the Circuit Court for Baltimore County ruled in favor of the FOP, stating that County Executive Jim Smith violated the Employee Relations Act.** County Executive Jim Smith has filed an appeal to the Maryland Court of Special Appeals.

In September of 2006, after testifying on behalf of a fellow officer about a medical episode that occurred ten years earlier, Detective Bill Blake was ordered to undergo a series of medical tests at the direction of former Chief Terrence Sheridan. The FOP assisted in obtaining a restraining order from the Circuit Court which was subsequently supported by the U.S. Federal District Court. **After multiple depositions, several motions hearings, and a six day jury trial, the jury concluded that Bill Blake's rights were violated under the Americans with Disabilities Act. On July 14, 2010 Judge Legg of the U.S. Federal District Court upheld the jury's decision in favor Bill Blake.** County Executive Jim Smith has filed an appeal to the United States Fourth Circuit Court in Virginia.

In March of 2005, Stan Siedlecki was re-employed after an unsuccessful hearing at the County board of appeals to continue on an accidental disability. For police officers, the County Code provides that if you are recalled from disability retirement, you will return to the same position. Due to his length of absence, he was required to successfully complete a police training academy. The same doctors for the County that said he could return as a police officer would not sign a medical waiver for him to participate in a police training academy because of the physical requirements. **On July 30, 2010 the Maryland Court of Special Appeals ruled for Stan Siedlecki, supporting his disability retirement.** County Executive Jim Smith has filed an appeal the Maryland Court of Appeals.

In September of 2007, the Administration changed the health care subsidy of retirees who left the Department after 2/1/92 and before 6/30/07, despite the contract containing the following language: "The health insurance subsidy in place at the time of retirement shall remain in effect until the retiree becomes eligible for Medicare." A class action grievance was filed by the FOP and a Step IV hearing by an arbitrator was held on 5/9/08. The arbitrator ruled that the negotiated language was a binding promise and should remain at whatever level existed at their retirement. The County filed a petition to vacate the arbitrator's award to the Circuit Court. **After the hearing, a decision was rendered on August 10, 2010 by the Circuit Court in favor of the FOP.** County Executive Jim Smith has filed an appeal to the Maryland court of Special Appeals.



Representing the Professional Police Officers of Baltimore County





MEETING MINUTES

**August 2010
recorded by
Ken Schubert**

The August 2010 General Business Meeting was held on August 23, 2010 at FOP Lodge 4. President Weston called the meeting to order at 7:30 p.m. Chaplain Merkle led the invocation. President Weston led the Pledge of Allegiance.

ROLL CALL OF OFFICERS

All elected officers and board members were present. Legal advisor Mike Marshall was also in attendance.

APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

A motion was made by Brother Grumbach to accept the minutes of the July 2010 General Membership Meeting. A second was made by Brother King. There was no discussion. The motion passed.

REPORTS OF OFFICERS

~ PRESIDENT WESTON ~

- July 27 Met with County Administrative Officer Fred Homan in reference to the Circuit Court decision on the Employee Relations Act case.
- July 29 Attended a fundraiser for Senator Jim Brochin of the forty-second legislative district.
- August 2 Met with the parents of deceased brother Bill Anderson to assist with pension and insurance documentation.
- August 3 Met with Mr. David

Marks, who is a candidate for the Baltimore County Council in the fifth district.

- August 4 – 10 Vacation.
- August 11 Attended a fundraiser for Senator Norman Stone of the sixth legislative district, met with representatives from the O'Malley/Brown campaign, and attended a fundraiser for County Executive candidate Joe Barntfelder.
- August 12, 13 & 16 Conducted interviews for the candidates running for Baltimore County Executive and Council.
- August 20 Visited the funeral home with the family of retired brother Pat Boone.
- August 23 Attended the Executive Board of Directors and General Membership meetings.

~ 1st V. P. COMEGNA ~

- August 6 Worked at the Lodge office and completed our Pre-Primary I campaign finance report.
- August 12, 13, 16 Candidate interviews at the Lodge
- August 17 & 18 Worked on our Pre-Primary II campaign finance report.
- August 23 Worked at the Lodge office, attended a meeting of the Political Action Committee, attended the Executive Board of Directors Meeting and attended the General Membership Meeting.

~ 2nd V. P. ROSE ~

- July 27 Met with County Administrative Officer Fred Homan in reference to the Circuit Court decision on the Employee Relations Act case.

LODGE 4 OFFICE

9304 Harford Road
Baltimore, Maryland 21234
Phone (410) 668-0004
FAX (410) 668-8126
Toll Free (888) 313-3501
www.foplodge4.org

ELECTED OFFICERS

Cole B. Weston
President
(443) 956-2679

Steven G. Comegna 1st Vice President <i>PC3 - Traffic</i> (410) 409-0293	David M. Rose 2nd Vice President <i>F.O.P Lodge 4</i> (443) 956-2643
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David J. Folderauer, Sr. Lodge Secretary <i>PC 4 - IST</i> (410) 382-2075	Robert W. Caskey Treasurer <i>CID-Robbery</i> (443) 956-2615
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W. Donald Patterson State Trustee <i>Materials & Facilities</i>	Richard J. Bergin Sergeant at Arms <i>VNS - CDVIT</i>
--	--

Paul A. Merkle Chaplain <i>Retired</i>	L. Timothy Caslin Past President <i>Retired</i>
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EXECUTIVE BOARD of DIRECTORS

Kenneth F. Schubert Chairman <i>Employment</i> (410) 416-2800	Mike DiCara Vice Chairman <i>PC 6</i>
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Thomas G. Scally <i>CID - Arson</i>	Louis J. Lagna <i>Retired</i>
Donna Patterson <i>Planning & Research</i>	Patrick Zito <i>PC 7 - Traffic</i>
James P. Rommel, Jr. <i>K9</i>	Ryan Massey <i>Homicide</i>
Joe Caskey <i>Homicide</i>	Tony DiCara <i>PC 12</i>

LODGE STAFF

Larry Sibley—Office Manager
Juanita Bouthner—Administrative Assistant
Regina Ecker—Administrative Assistant

LEGAL ADVISORS

Schlachman, Belsky & Weiner, P.A.
Phone (410) 685-2022
IAS Cases Michael Marshall

The Fourword is the official monthly publication of Baltimore County Fraternal Order of Police Lodge 4.

Kathryn Greenbeck
Fourword Editor

THANK YOU to the Sponsors
of the FOP Lodge 4 Golf Tournament!

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Friends of Joseph C. Boteler
Tech Outfitters, Inc. (Wireless Zone)
John Cluster 8th District
Friends of Al Redmer, Jr.
Ryan Massey
Ken Schubert

- July 29 Attended a fundraiser for Senator Jim Brochin.
- August 11 Met with Peter O'Malley to discuss the State Lodge endorsement process for Governor; attended a fundraiser for Joe Bartenfelder.
- August 12 & 13 Participated in candidate interviews.
- August 15-22 Vacation.
- August 23 Attended a PAC meeting, the Executive Board of Directors meeting and the General Business meeting.

~SECRETARY FOLDERAUER~

- August 12, 13, 16 Candidate interviews at the Lodge.
- August 23 Attended the Executive Board of Directors Meeting the General Membership Meeting.

~TREASURER CASKEY~

- August 16 Worked at the Lodge.
- August 23 Attended a meeting with management from M&T

Bank, attended the Executive Board of Directors meeting and the General Membership meeting.

STATE TRUSTEE

~Don Patterson~

August 4 Participated in a Trooper's Association Golf Tournament.

August 23 Attended Lodge 4 Executive Board of Directors and General Business meetings.

The Maryland State FOP Conference will be held September 19-22 in Ocean City.

**EXECUTIVE BOARD
OF DIRECTORS REPORT**

~ Kenny Schubert~

- An Executive Board of Directors meeting was held on August 23, 2010. The meeting was called to order at 5:00 p.m. All elected officers and board

members were present.

- Motions that were made, after receiving a proper second, were discussed, voted upon, and appear in this issue under the appropriate committee reports.

REPORTS OF COMMITTEES

ATHLETIC COMMITTEE

~ Don Patterson ~

- The Lodge 4 Golf Tournament was held on Friday August 27, 2010 at Rocky Point Golf Course in Essex. The tournament was sold out and very successful.

BULLROAST COMMITTEE

~Ken Schubert~

- The Annual FOP Lodge 4 Bull & Oyster Roast will take place on March 27, 2011 at Tall Cedars hall in Parkville.

Bereavements

**Retired Brother
Wayne F. Murphy**

**Retired Brother Charles
"Pat" Boone, Jr.**

**Retired Brother
Ronald E. Estes**

**Robert J. Moyer III
Brother-In-Law of Brother
Daniel P. White**

**Frank M. Mancini
Father of Retired Brother
Mario F. Mancini**

**William G. Morrison
Father of Brother James L.
Morrison**

**Daniel R. Duff, Jr.
Father of Retired Sister
Debbie Brooks-Ireland**

GRIEVANCE COMMITTEE

~Dave Rose~

- There were no new grievances filed this month. There is a pending grievance over educational assistance scheduled for August 30, 2010. This grievance involves the question of which fiscal year a reimbursement is credited in if the class begins in one fiscal year and ends in another. The policy is unclear.

**LEGAL ADVISORY
COMMITTEE**

~Dave Rose~

- Since the last general business meeting we have received two more court opinions in favor of the FOP's position. Those opinions are summarized below.

- The retiree subsidy case was argued in Circuit Court on May 24, 2010 in front of Judge Finifter. On August 10, 2010, he rendered his decision **in favor of FOP Lodge #4**. The standard of review is very limited. In determining whether to vacate an arbitration award, Courts are generally prohibited from conducting a review on the merits of the arbitrator's award. Because arbitration is a favored method of dispute resolution, courts generally defer to the arbitrator's findings of facts and applications of law. Mere errors of law or fact do not ordinarily establish grounds for a court to vacate or to refuse enforcement of an arbitration award.
- This standard of review has a few exceptions. A court may vacate an arbitration award for fraud or for misconduct, bias, prejudice, corruption or lack of good faith on part of the arbitrator. Additionally, an arbitration award is reviewable to determine whether the award was within the scope of the issues submitted to the arbitration or if the arbitrator failed to consider all matters that were submitted.
- Finally, the court is allowed to vacate an arbitration award if the award involves a mistake "so gross as to work to manifest injustice." Unless the Court finds one or more of these exceptions to apply, the arbitration award must stand. The County made numerous arguments attempting to convince the court that one or more of these exceptions applied.
- In the end, the Court agreed with the FOP's position. The County and the FOP agreed to

submit "any dispute concerning the application or interpretation of the terms of the FY07 Memorandum of Understanding to binding arbitration." The court did not find any of the exceptions which the County argued to apply.

- On August 30, 2010, the Court of Special Appeals issued a **favorable decision in the Stanley Siedlecki case**. In the opinion, the court stated Siedlecki had been receiving disability retirement benefits because the ERS determined he was physically incapacitated from performing the job as police officer. Twelve years later, the ERS re-evaluated him and determined he was physically fit for the position of police officer but never reinstated him because their own doctors would not sign a physician's waiver for him to enter the Police Training Academy. In addition, the ERS Medical Board actually found he could not work as a police officer. Because the position of Employment Investigator was temporary and Siedlecki never accepted it as a permanent position, he was disabled from the last position he held as a "member in service," namely a police sergeant. Therefore, the decision of the Board of Appeals to return Siedlecki his disability retirement benefits is affirmed.
- On July 14, 2010 Federal District Court Judge Legg entered a ruling in the Blake case to resolve the issue of the monetary damages awarded by the jury. The County was contesting the jury's \$225,000 award, saying they "abandoned analysis for sympathy." The County feels



The new memorial dedicated to the 8 officers who were killed in the line of duty in the 136 year history of the Baltimore County Police Department. The memorial is located in the lobby of the Public Safety Building in Towson. See the Memorial Committee Report for details.



The Baltimore County Police Memorial, located at the Courthouse Square in Towson.

shock the conscience. Accordingly, it denies Baltimore County’s motion.”

- On July 22, 2010, Baltimore County filed a motion to appeal the Fourth Circuit Court’s decision on the Blake case. They must file the written appeal by August 26, 2010. They are appealing as to whether the District Court erred as a matter of law in failing to reduce the award for emotional damages.
- The Employee Relations Act case was argued in Circuit Court on May 10, 2010 in front of Judge Martin. On July 7, 2010 he rendered a written opinion **in favor of FOP Lodge #4**. The County has filed an appeal to the Court of Special Appeals.
- The Michele Starks retirement appeal case that was scheduled for a hearing at the Board of Appeals on July 29, 2010 was postponed.

MEMBERSHIP COMMITTEE
~Tom Scally~

- A motion was made to accept Diane Garrison as an Associate member. She was sponsored by Brother Don Osmus. The motion passed.

MEMORIAL COMMITTEE
~Don Patterson~

- Lt. Wickless, Sgt. Stan Siedlecki, and Major Kalista had a vision for the lobby of the Public Safety Building. They wanted to do something that would honor the officers who were killed in the line of duty. The three worked hard on the design and with the help of a few people from building services, the project came together.

the award is “excessive” and was asking Judge Legg to reduce the award to \$25,000 or schedule a trial on the damages.

- Judge Legg reviewed the legal

motions from both sides and issued a ruling stating **“The Court concludes the jury’s award of \$225,000 is not grossly excessive and does not**

**Association of
Baltimore County
Retired Police
Meeting**

November 2

**Held at Parkville Heritage
Gardens at 7:30 p.m.**

In the lobby of the Public Safety Building, there is now a beautiful memorial dedicated to the 8 officers who were killed in the line of duty in the 136 year history of the department. I want to thank Major Kalista, Lt. Wickless and Sgt. Siedlecki for their vision and hard work. It should also be known that Colonel (ret) Dennis Robinson, who is the Chairman of the Baltimore County Police Memorial Fund, offered monies from the fund to pay for the project.

PENSION COMMITTEE

~ Cole Weston ~

- The Pension Board of Trustees met on August 10, 2010 and approved 19 service, drop, and vested retirements. One ordinary disability was also approved.

**POLICY REVIEW
COMMITTEE**

~Dave Rose~

- The committee had no new policies to review this month.
- A meeting was scheduled for September 13, 2010 in reference to the way speed camera violations for on duty personnel are being handled. I have a draft policy on the issue and I am looking forward to meeting on this issue again.

**POLITICAL ACTION
COMMITTEE**

~Steve Comegna~

- Our Pre-Primary I campaign finance report was completed and submitted on Friday August 06, 2010 (the report's due date was August 17, 2010).
- The Political Action Committee met on Thursday August 12, 2010, Friday August 13, 2010, Monday August 16, 2010 and Monday August 23, 2010. The following motions were presented to the Executive Board of Directors:
 - To endorse Greg Morgan in his election campaign for Baltimore County Council in District # 1.
 - To endorse Vicki Almond in her election campaign for Baltimore County Council in District # 2.
 - To endorse Julian Jones, Jr. in his election campaign for Baltimore County Council in District # 4.
 - To endorse David Marks in his election campaign for Baltimore County Council in District # 5.
 - To endorse State Delegates Mike Weir and Sonny Minnick (District # 6) in their re-election campaigns.
 - To donate \$2000.00 to Greg Morgan's election campaign
 - To donate \$2000.00 to Vicki Almond's election campaign.
 - To donate \$2000.00 to Julian Jones Jr.'s election campaign.
 - To donate \$2000.00 to David Marks' election campaign.
 - To donate \$1000.00 to Al Redmer Jr.'s election campaign.
 - To purchase one (1) ticket to a fundraiser for State Senator Edward Kasemeyer (District # 12) on September 16, 2010. The event is being held at the Overhills Mansion 916 South Rolling Road 21228 from 8:00 am



until 10:00 am. The ticket cost is \$250.00 for a total PAC expenditure of \$250.00.

- These motions were presented to the Executive Board on Monday August 23, 2010. Each motion received a proper second. They were discussed and voted upon. The Executive Board of Directors approved these motions.
- These motions were presented to the General Membership on Monday August 23, 2010. Each motion was made, received a proper second and was voted upon. The General Membership approved these motions.
- The committee also interviewed three of the four candidates for Baltimore County Executive. After the interviews and lengthy deliberations, the committee was unable to come to consensus on an endorsement in this race.
- At the August 2010 Executive Board of Directors a motion was made to endorse Joseph Bartenfelder in the 2010 primary election. The motion received a proper second. The motion was discussed at great length. After a "call for the vote," the motion passed by a majority of the Executive Board of Directors.
- This endorsement motion was presented to the General Membership at the August 2010 General Membership Meeting. The motion received a proper second and was discussed. The motion was then voted upon and passed with the approval of the General Membership.

**The Association of
Baltimore County Retired Police, Inc.
P.O. Box 411
Perry Hall, MD 21128**

The Association of Baltimore County Retired Police was organized and incorporated in 1968. Members of the association foster cooperative efforts with active members of the Baltimore County Police Department. Association membership goals include:

- The promotion of law enforcement efforts.
- The suppression of criminal activity.
- Cooperative efforts with active duty police officers in citizen safety enhancements.

Collaborative endeavors are undertaken with civic, charitable and educational organizations on behalf of the membership.

Members of the association meet on a bi-monthly basis. Frequently, guest speakers are invited to disseminate information that is relevant to retiree related issues. Every effort is made to work cooperatively with active law enforcement officers through the Fraternal Order of Police in promoting the well being of all members.

When a person retires from the Baltimore County Police Department an application for membership in the association is included in your retirement package. If you become a member, the first year's dues is free of charge. All retirees are welcome to join.

**REPORT OF
LEGAL COUNSEL
~Mike Marshall~**

- The Court issued a favorable decision on Brother Siedlecki's case. A full report can be seen in the Legal Advisory Report in this newsletter.

GOOD OF THE ORDER

- Baltimore County State's Attorney Scott Shellenberger spoke prior to starting the meeting to thank our Lodge for our endorsement in his campaign for re-election and for our contin-

ued support.

- Brother Bergin presented Brother Jimmy Andrews a plaque to thank him for his continued support of the causes of FOP Lodge 4 and its members.
- During the month of August, the Lodge sent four (4) flower arrangements and six (6) sympathy cards to bereaving members. Four (4) "Thank You" cards were received.
- The meeting was adjourned at 8:47 pm.

The October

**FOP Lodge 4
GENERAL
BUSINESS
MEETING**

will be held on

**Monday,
October 25, 2010
7:30 p.m.**

at
FOP Lodge 4
9304 Harford Road

The November

**FOP Lodge 4
GENERAL
BUSINESS
MEETING**

will be held on

**Monday,
November 22, 2010
7:30 p.m.**

at
FOP Lodge 4
9304 Harford Road