

THE CHRONICLE

BOARD MEMBER'S MESSAGE WHY YOU NEED THE FOP/OLC!

**BY: DEPUTY LISA BEAM,
OLC BOARD MEMBER**

There are numerous benefits of being a member of the Fraternal Order of Police/Ohio Labor Council, and I am about to tell you about a specific incident that took place in Mahoning County where the union was instrumental in protecting the rights of our Deputies.

I have been working full-time for the Mahoning County Sheriff's Office since 1997. During my career, I have worked in the County Jail and the Common Pleas Courthouse. I spent more than a decade as the Jail's Registrar, and I was a member of the United States Marshal's Fugitive Task Force. Currently, I am the Quartermaster for the Mahoning County Justice Center. I have been the Secretary of FOP Lodge 141 – Mahoning County Deputies for the past 14 years. I was the Ohio Labor Council's Blue Unit Associate from 2011 through 2015.

In August of 2012, a use of force incident took place in a holding cell area at our Common Pleas Courthouse. The administration, at that time, decided it would be a clever idea to immediately release the surveillance video of the incident to the media without completing any investigation. The Administrative Major, at that time, thought it to be a good idea to conduct both an internal investigation and a criminal investigation at the same time. Then FOP Lodge 141 President Sergeant T.J. Assion and I were called by some of the Deputies involved in the incident who reported



Deputy Lisa Beam, Mahoning County
Sheriff's Department

that this Major was currently at the Courthouse where he was attempting to serve them with an administrative order requiring all of them to relinquish possession of their personal cell phones as part of his dual investigation. T.J. and I immediately went to the Courthouse where we had to instruct the Major that it is unlawful to use an administrative order to seize an employee's personal property. He threatened to have us arrested for Obstruction. We then informed them that if he took their personal cell phones he would be arrested for Theft (he was asked who could get their cuffs out faster). After a lengthy argument, the Major realized that he was wrong. He then proceeded to have an assistant county prosecutor type up a quick affidavit filled with multiple inaccuracies, and he swore to this affidavit before a judge. He was granted search warrants which he served on all the involved Deputies and seized their personal phones as evidence. I then informed him that this was now a criminal investigation and that if he wanted to interview and obtain statements from any of the involved Deputies, he would first have

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BOARD MEMBERS MESSAGE (CONT'D)

to advise them individually of their Miranda Warnings.

Two (2) days later, T.J. and I were again contacted by the Deputies at the Courthouse who advised that FBI agents were attempting to question them regarding the use of force incident. We immediately proceeded to the location and told the FBI agents that this matter was currently under investigation, due to the actions of the Major, and that if they wanted to ask the Deputies any questions, they would have to Mirandize them and that they all would require their attorney to be present. The agents replied to us that they do not recognize union representatives as legitimate and that we were becoming "obstructive" to their investigation. It was at this time that I phoned OLC General Counsel Gwen Callender, and put her on the speakerphone, where she advised the agents that the Deputies were not to speak with them under any circumstances without the presence of their attorney. The agents packed up and left.

Per the Collective Bargaining Agreement, the administration has sixty (60) days to complete its internal investigation and issue discipline. On the

fifty-ninth (59th) day, T.J. and I received a phone call from the assistant county prosecutor assigned to the Sheriff's Office. She inquired as to what it would take to be able to get statements from the involved Deputies. We told her that it would take an act of God. We advised her that since the Major took it upon himself to combine the internal and criminal investigation into a single investigation, no statements would be made, and no interviews would be conducted. Two (2) days later the investigation was determined to be "unfounded" and closed.

I have been on the Ohio Labor Council's Executive Board for the past 11 years as the sitting representative for Deputy Sheriffs across Ohio. I have a passion for standing up for the Deputies I represent. I understand how important it is to protect the protectors and I am unyielding in my efforts to guard and secure the rights of those I defend. My advice to all members of the FOP/OLC is to get involved in the union, know your contract, and support your brothers and sisters, especially in these trying times. The union is more important now than ever!



Mahoning County Sheriff Deputy SUV Cruiser.

MEMBER FEATURE

OLC MEMBER HEADLINES FIRST OF ITS KIND OIS TRAINING

The Fraternal Order of Police/Ohio Labor Council (FOP/OLC) in conjunction with the Ohio Bureau of Criminal Identification and Investigation (BCI) has developed a training seminar to educate Ohio law enforcement personnel about what happens following an Officer Involved Shooting/Critical Incident.



BCI Unit responding to an officer –involved shooting at St. Ann’s Hospital in Westerville, Ohio.

This endeavor has been quite successful thus far, especially through our partnership with BCI Senior Special Agent Rick Ward, who serves as one of the primary instructors. Agent Ward is also an active member of the FOP/OLC where he serves as a committee member for bargaining unit 46.

Anytime a law enforcement Officer is involved in a critical incident where they are potentially forced to take another’s life, there is a lot of physical and emotional stress for the involved Officer as to what happens next. During a portion of this seminar, Agent Ward instructs Officers on the role of BCI Investigators immediately following an Officer Involved Shooting or other critical incident such as an in-custody death. Agent Ward takes the attendees through the various steps of the investigative process with the objective of educating our members on what they can expect and to demystify the process as much as possible.



Dan Ozbolt

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Agent Ward stated that when BCI conducts these investigations, their goal is to obtain as much factual information as possible as to what transpired relative to the incident, without any influence from political or external sources. Agent Ward said that “our investigations are straightforward and fact-based” adding “we aren’t out to trick anyone.” Ward also said that BCI understands that law enforcement professionals have constitutional protections like other citizens and have developed a good understanding with police union staff reps and attorneys who arrive to protect the rights of the involved officers. The best advice Ward has for Officers who have either personally been involved and/or witnessed one of these shootings or critical incidents is to be completely truthful when it comes time for them to be interviewed.



BCI Special Agent Rick Ward.

Agent Ward has an extensive and multi-faceted law enforcement background that makes him extremely qualified to be instructing this important and sensitive topic. Rick’s first law enforcement job was

as a Police Officer with the Washington, D.C. Metro Police Department, where he himself was involved in an Officer Involved Shooting not long after graduating from the academy. He then worked fifteen years as a Deputy with the Montgomery County Sheriff’s Office where he worked as a violent crimes Detective. Agent Ward joined the Ohio Bureau of Criminal Investigation in 2012 and has been responsible for conducting numerous complex investigations throughout Southern Ohio, as part of the Major Crimes

MEMBER FEATURE

BCI SPECIAL AGENT RICK WARD (CONT'D)

Unit. Agent Ward has investigated and coordinated major cases, which include complex financial crimes, officer-involved critical incidents, high-profile homicide investigations, public official corruption, serial murders, and crimes against children. Many of these investigations spanned several states. Agent Ward has coordinated large scale operations, which involved numerous state and federal law enforcement agencies. During his nearly 26 years of law enforcement experience, Agent Ward has developed and interviewed thousands of suspects during his career. Agent Ward is an adjunct instructor at the Ohio Peace Officers Training Academy where he instructs detectives in the Aspects of Death Investigations. Rick graduated with a Bachelor's degree in Behavioral Science from Capital University in Columbus. Along with the training provided by Agent Ward during this seminar, a Staff Representative from the FOP/OLC discusses their role in protecting and advising the involved Officer(s) immediately after the incident. A representative from the FOP's Critical Incident Response Service also provides instruction of the advantages of the peer support program and the



Joshua Gunter, cleveland.com

aspects that are privileged. The training then wraps up with a case study by one or more of our members previously involved in an OIS, thus giving this training a holistic approach for the attendees from start to finish. This training is open to all Ohio law enforcement and corrections professionals regardless of union membership. The attendee reviews of this training, including the block presented by Agent Ward, have been outstanding!

We encourage all our members as well as members of other law enforcement unions to attend these seminars to better understand the process. * Details of future sessions will be made available to all members and can be found at fopohio.org.

We are grateful for the work and contributions of Senior Special Agent Ward in making this a successful and beneficial training seminar along with his long and dedicated service to the public.

***This training will be offered on December 21st. See flyer on page 13 for details.**



BCI Unit responding to an officer-involved shooting at St. Ann's Hospital in Westerville, Ohio.

LEGAL UPDATE

NO CONSTITUTIONAL RIGHT TO RECORD INVESTIGATIVE INTERVIEWS



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Recording investigative interviews helps to ensure fair investigations and accountability of all parties involved. But who has the right to make and maintain control of recordings during a pending investigation? In November of 2022, the Sixth Circuit Court of Appeals held that police officers under investigation and their union representatives do not have a First Amendment right to record their



interviews.

This case arose out of the administrative investigation of police officers in the City of Cincinnati accused of misconduct. In Cincinnati, residents may submit complaints about police misconduct to the City's Citizen Complaint Authority ("the Authority"). The Authority then conducts an investigation, which includes interviews of relevant officers, complainants, and other witnesses. During the interviews of officers, they have the right to bring a representative from the union. The Authority video records the interviews.

The union representative for the officers claimed troubling behavior with respect to the Authority's investigations. The union representative alleged the investigator had selectively turned off the video recording when an officer made exculpatory statements during an interview. Another time, the union representative alleged the investigator threatened an officer before an interview. In response, the union representative decided to record officers' interviews, which he planned to keep the

recordings and share them with others if appropriate.

When the union representative sought to make his own recording of an officer's interview, he was asked to stop by the investigator. After refusing, the investigator ended the interview. A day later, the Authority issued a policy that prohibited officers or their representatives from recording interviews.

The union representative and the affected officers sued the City, the investigator, and the director of the Authority for violating their free-speech rights, citing that the First Amendment provides the officers and their representatives the right to record their interviews. The Sixth Circuit found the Authority's no-recording policy was permissible, reasoning that "a prohibition on recording speech is not a prohibition on speaking." The Court looked to the history of governmental investigations, finding no tradition where the subject of an investigation has a right to record interviews. The Court supported its finding on case law that recognized the power of the federal and state governments to restrict access to sensitive information within their control (citing *Houchins v. KQED*, 438 U.S. 1 (1978), upholding that a county sheriff could restrict press access to areas of the jail not open to public view; and *Branzburg v. Hayes*, 408 U.S. 665 (1972), reasoning that free-speech and free-press guarantees do not override access restriction to grand jury investigations or crime scenes).

The officers and their representative argued that the recordings would become public information once the investigation had concluded and that the City's true interest in the no-recording policy was to hide doctored recordings. The Court reasoned that though investigation files may become public in the future does not mean the City lacks a legitimate interest in maintaining control of (Cont'd)

LEGAL UPDATE

NO CONSTITUTIONAL RIGHT TO RECORD INVESTIGATIVE INTERVIEWS (CONT'D)

recordings pending investigation. The Court found that limiting officers' ability to record interviews helps protect against public criticism impacting the fairness of investigations and ensuring subjects of an investigation do not know what was said in other interviews. The Court stated that one mechanism to deal with the risk of doctored interviews after a report becomes public is the union representative can say as much and use his notes to show as much.

In the end, the Sixth Circuit's decision provides that public employees and their representatives do not have a constitutional right to record interviews during an investigation. However, public employees and union representatives can prevail over this ruling by bargaining the ability to record internal investigations in contract negotiations. Unions can

propose additional protections in how recordings are made and how they are to be maintained pending investigation.

Hils v. Davis, 52 F.4th 997 (6th Cir. 2022).



Negotiations Update



| <u>Employer</u> | <u>Wages</u> | <u>Other Details</u> |
|--|-------------------------------|--|
| City of Marion | 19.5 % over 3 years | A significant increase in longevity |
| City of Athens | 4.75% / 4.5% / 4.25% | Shift Differential increase .50 \$1,000 wellness incentive, increased uniform allowance, retention bonus, additional 6 weeks parental leave, light duty and Juneteeth Holiday |
| OSU Wexner Medical Center Dispatchers | Between 8.1% and 14% increase | New bargaining unit, initial labor contract |
| Stark County Corrections Officers/Mechanics/Clerks and Dispatchers | 17.25% / 4.5% / 4% | The first year included rolling in longevity which has the first year at 5.6% |
| Clark County Deputies | 25.9% over 3 years | Increased Cell Phone stipend by 138%, life insurance went from 20k to 100k, added cash out of 40 hrs vacation, doubled FTO pay and longevity scale. |

ARBITRATION NEWS

SUSPENSION NOT WARRANTED FOR POLICY VIOLATION

The Grievant was a Sergeant in the Patrol Division. The Employer had a policy that required Deputies to place any property or evidence obtained into a secured property-storage area before the end of their shift. It also required a shift supervisor to bring drugs, money, and guns to the main property room downtown on a daily basis. By email, a Captain directed Sergeants that the Sergeant working from 2200 to 0600 would be responsible for reviewing, checking, and evaluating all Patrol mail, arrests, etc. and transporting them to the proper courts and/or downtown.



The Grievant was the supervising Sergeant on duty within the Patrol Unit from 1800 to 0600. Between 2300 and midnight, the Grievant took all property and evidence to the main property room downtown. Shortly after midnight, a Patrol Deputy made an arrest and seized a firearm. It was unknown when the Deputy put the firearm in the district's secured property-storage area. The Grievant did not transport the firearm to the main property room downtown because he was performing other administrative duties, and the firearm was properly secured. Four days later, another Sergeant took the firearm to the main property room downtown. The Grievant was suspended for 24 hours for insubordination for failing to take the firearm to the downtown property office.

The Employer argued that the Grievant committed a policy violation and also “knowingly” did not

comply with a directive, which is a more serious form of insubordination that allows for a three (3) day suspension for the first offense.

The Union argued that the Employer did not have just cause to suspend the Grievant because he did not violate a policy or “knowingly” disobey a directive by failing to transport the firearm to the main property room downtown. The Union contended that the policy did not require the Grievant to make a second trip downtown to transport drugs, money, and guns, and the email directive did not require a Sergeant to complete transports at a specific time or make multiple transports, and it did not even refer to property or evidence. Further, the Union argued that the Grievant's suspension was improper because he was treated in a disparate manner compared to the other Sergeants who also failed to take the firearm downtown over the four-day period but were not disciplined. The Union also pointed to a Sergeant who received no discipline for failing to take evidence to the downtown property room. The Union also argued that progressive discipline should have been imposed according to the CBA.

The Arbitrator held that the Grievant had to be aware of the general policy requiring night Sergeants to transport evidence downtown and that his conduct could be characterized as insubordination. However, the Grievant's conduct did not reach the level of being “knowingly” insubordinate. Therefore, the level of insubordination charged by the Employer was not supported and the Grievant's suspension was without just cause. The Arbitrator also found that the Employer subjected the Grievant to disparate treatment when another Sergeant received no discipline for the same violation.



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OUTCOME

Grievance sustained. The Employer was ordered to make the Grievant whole.

ARBITRATION NEWS

EMPLOYEE PREMIUM CONTRIBUTIONS MAY NOT BE INCREASED FOR DECLINING TO PARTICIPATE IN WELLNESS PROGRAM



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The Employer and the FOP/OLC entered into a collective bargaining agreement (CBA) that stated the Employer shall pay 85% of the cost of the medical insurance premium and employees shall pay 15% of the cost. The Employer instituted a Wellness Program which increased the amount paid by employees who did not participate in the Wellness Program. Employees who did not participate in the Wellness Program paid \$600 more a year.



The FOP/OLC filed a grievance, claiming that the Employer violated the CBA by charging employees who did not participate in the Wellness program more than 15% of the premiums, the amount set forth in the CBA.

The Employer claimed that the employees' premium contributions did not change but the additional cost was a "penalty" for employees who did not participate. The employees who

participated in the Wellness Program are rewarded while employees who did not participate are penalized. The Employer argued that such penalties/incentives are part of the Program, not the premium, and that such costs are acceptable under the ADA.

While the Arbitrator found there was nothing in the CBA to prohibit the Employer from including a Wellness Program, he found that the additional cost to those employees who did not participate in the Wellness Program resulted in those employees paying more than 15% of the premiums. The Arbitrator found the language in the CBA was clear and unambiguous and that this penalty for employees who do not participate in the Wellness Program has effectively raised their premium contribution percentages above 15% in violation of the CBA.



OUTCOME

Grievance sustained. Any monies which were paid in excess of 15% of the cost of the premiums shall be refunded to those employees. Further, the Employer is ordered to cease and desist from taking more than 15% of the total health insurance premium costs from the employees

LEGISLATIVE UPDATE:

The Ohio legislature continues to be very active going into the holiday season. One of their main priorities is to make changes to the recreational marijuana ballot initiative that just passed this November. We have asked the legislature to change where the proceeds of the 10% tax that will be applied to the sales of marijuana to benefit law enforcement; we have requested that THC levels be capped; that the limit of how much one person can possess be adjusted from 2.5 ounces (which would be among the highest in the nation) to 1 ounce; that restrictions on when field sobriety tests are permitted be removed and also that the provisions allowing home grown marijuana be stricken. We will see where the legislature comes down on these requests in the coming weeks, as the law goes into effect on December 7.



Getty Images

House Bill 51, dubbed the Second Amendment Preservation Act, in its simplest terms prohibits state law enforcement from working with federal law enforcement in the enforcement of federal gun laws. It creates a private cause of action and a \$50,000 civil penalty per occurrence for the state or political subdivision. The penalty would also apply to any political subdivision that knowingly employs someone who is acting or previously acted as a federal agent or employee and who, after the effective date of the bill, enforces federal gun laws or gives material aid or support to the efforts of another in enforcing federal gun laws. This bill is a classic legislative overreach for a problem that does not exist and places our members at risk.



Jay McDonald
FOP of Ohio
Legislative Chair
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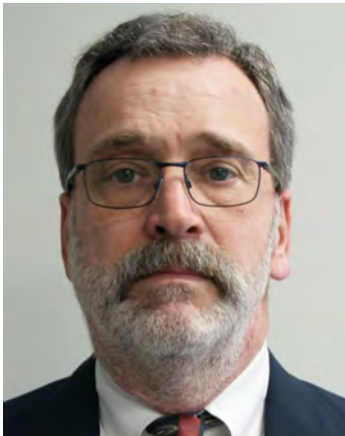
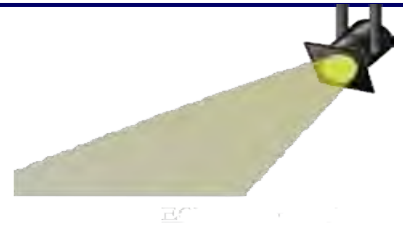
Ohio Police & Fire Pension Fund

HB 296 / SB 194 would equalize the employer rate between in the Ohio Police and Fire (OP-F) Pension System at 24%. Employers' contributions to the Ohio Police and Fire Pension Fund haven't changed since 1986. HB 296 reasonably phases in modest increases in the employer share of police pensions over five years to bring it up to the same level as firefighters. We're asking legislative leaders to consider using proceeds from the recently passed recreational marijuana effort to fully fund our pension. The FOP of Ohio believes that earmarking the marijuana funds can support first responders while easing the burden on employers; it's the perfect solution for all. It helps localities and requires them to fund the police and public safety retirees.

The FOP of Ohio continues to support HB 94, which would assist in the portability of pensions between OP-F and the Ohio Public Employees Retirement System (OPERS). The bill eliminating the requirement that in order to transfer credits earned under the Ohio Police & Fire Pension Fund or the State Highway Patrol Retirement System into OPERS the member must have more service credits under OPERS than in those other two systems. This unfairly penalizes our members who have changed jobs and therefore pension systems. It also hurts recruitment of law enforcement officers who would be negatively impacted.

Lastly, the FOP of Ohio has recently testified against the elimination of the death penalty (HB 259) and in favor of increasing penalties for drug trafficking (HB 230).

STAFF SPOTLIGHT



Doug Behringer
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Doug Behringer, General Counsel

Douglas Behringer is an attorney for the FOP/OLC, working out of the Columbus office. He was born and raised in northwestern Ohio. Doug started his military career early when he joined the Army Reserve as a junior in high school. He received his undergraduate degree from The Ohio State University before going on active duty in the Army.

After a stint in the Army, he returned to college and obtained his law degree (J.D.) from The Ohio State University, with honors. He was in private practice in central Ohio for six years before joining the FOP/OLC in 2002.

Doug has over twenty-three years experience in litigation, administrative, labor and employment matters. He has represented members of the FOP/OLC in disciplinary matters, investigations, grievances, arbitrations, contract negotiations, mediation, civil service appeals and unfair labor practice matters..

Lucy DiNardo, Senior Staff Representative

Lucy DiNardo started her career in public safety as a 911 Dispatcher and Assistant Tac Officer with the City of Independence in 1994. While working for the police department, Lucy became the Union Associate and remained in that position for over eight years. After her ninth year with the PD she accepted a position with the FOP/OLC as a Staff Representative. She has extensive knowledge in LEADS, BCI and NCIC policy and procedures. In her years with the FOP/OLC she has represented members in contract negotiations and covered many Officer involved shootings and numerous discipline cases and has extensive experience in the defense and contract negotiation process. She's earned the nickname "Pitbull" from numerous members and strives to maintain it.



Lucy DiNardo
Senior Staff Representative
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STAFF SPOTLIGHT



Denise Young was presented with the William Stewart Matthews, II Award by FOP Lodge #113 in recognition of her distinguished and devoted service to the law enforcement profession. From left to right is Stew Matthews, Esq., Denise Young, and Jim Martin, President of FOP Lodge #113.

CAUGHT ON CAMERA



OLC September Board Retreat back row Aaron Crawford, Mark Scranton, Chris Hamberg , Dan McCormick, David Trend, Dan Ozbolt, Linda Shutts, Lisa Beam, Denise Young, Kay Cremeans, Front row Gwen Callender, Bruce Szilagyi, Mike Bammann.



FOP/OLC Board Members Chris Hamberg, Dan McCormick, David Trend, Linda Shutts, Lisa Beam, Bruce Szilagyi Mike Bammann.



OLC Staff members attended the FOP Great Lake's Area Coalition Training in Indianapolis, October 2023.



Executive Director Gwen Callender and Office Manager Denise Young were the winners of the Annual Halloween Chili Cook-off Costume Party.



Knox County honors Patrol Division Deputy of the year, Sgt. Devolid and Jail Division Deputy of the year, Sgt. Talbott.



OLC Attorney Jess Franken was runner up as Cowgirl Barbie!

Training Opportunities



UNIQUE TRAINING OPPORTUNITY

Officer Involved Shootings/Critical Incident Training

Topics

Immediate steps to Protect Your Rights after scene is secure
What to expect in the BCI Investigative Process
FOP Critical Incident Response Service
Presentation and Q&A from an Involved Officer

Instructors

BCI Special Agent
FOP/OLC Staff Representatives
FOP Critical Incident Response Program Coordinator

Date, Time & Location

Thursday, December 21, 2023 from 9:00 a.m. to 2:00 p.m.

FOP Lodge 32
315 Concord Avenue
Mansfield, OH 44906

Lunch and beverages will be provided by FOP Lodge 32.
Parking is available at the adjacent school lot (Cypress School)

Please RSVP to Dozbolt@FOPohio.org



You better watch out... SCRANTON Clause is Watching!



From our house to yours...
Have a very happy and
safe Holiday Season!



Pass Along...

Use the QR code to access the dues card!

Have you completed your dues card?

Do you need to update the information?

The FOP/Ohio Labor Council, Inc. tries to make sure that the information that we gather is correct. If you are unsure if you have filled out a dues card, or if the information on the dues card is correct you can now follow the QR code and complete it electronically.

Just open your phones camera until you see the yellow box and then tap within the box. Just make sure you have an account at the FOPohio.org website!

If you have any questions, contact Aaron Crawford, Deputy Director.
ACrawford@fopohio.org

Stay Safe!

