

## LEGAL UPDATE

The AZCPOA legal team is continues to fight for the rights of AZCPOA Members. In addition to currently representing several members who were denied workers' compensation and correctional officers who were accused of using excessive force on inmates, AZCPOA continues to defend the rights of covered employees under the personnel rules.

Most covered State employees know that a disciplinary suspension of more than eighty hours, a demotion resulting from discipline, or a termination can be appealed to the Arizona State Personnel Board. However, some employees are not aware that the Personnel Board's decision goes back to the agency director for review, and the agency director makes the final decision.

Over a three year period, AZCPOA represented a correctional officer in his fight to help set the rules that the agency director must follow when making the final decision. The officer was fired from the Department of Corrections in 2014, and AZCPOA legal team filed his appeal. The Personnel Board agreed with the officer's argument that Corrections could not prove the charges in the dismissal letter. The Personnel Board said that there was not cause for any discipline at all, and that the officer should be returned to his job. Instead of returning the officer to his job, Director Ryan rejected the Personnel Board's Decision.

AZCPOA supported the officer in an appeal to the superior court, where the officer argued that he had a right to a new hearing in front of the judge. After a year of AZCPOA's legal team fighting for the officer, the superior court decided that the officer was entitled to a new hearing. The Department of Corrections appealed that decision to the Court of Appeals, but the Court of Appeals dismissed their appeal and sent the case back to the superior court.

The superior court ordered that the officer be put back to his job at Department of Corrections, and ordered that he receive backpay for the nearly three years that he had been fighting to get his job back. More importantly, the judge said that there are restrictions on the Director's freedom to reject a decision of the Personnel Board, which sent a message to the Director that he is not above the rules, and cannot ignore protections that employees have under the law.

In another case, AZCPOA is fighting the Department of Corrections and the Personnel Board to try to protect the rights of employees. The Department of Corrections tried to put a 10 year corrections employee back on "original probation!" ADC then fired the correctional officer from a covered, permanent status position with the Department of Corrections. The Department of Corrections told him that "his services were no longer needed" and that he could not appeal. AZCPOA legal team filed an appeal with the Personnel Board anyway. The Personnel Board would not hear his appeal --- until the AZCPOA legal took the case to the superior court. The superior court ordered the Personnel Board to hear his appeal.

After the superior court ordered the Personnel Board to hear the appeal, Arizona Department of Corrections put the officer back to work, but would not give him backpay or restore his benefits until the Personnel Board's hearing officer required the Department of Corrections to pay it. When the officer asked the Personnel Board to reverse the dismissal, the Department of Corrections said that the dismissal had already been removed from the officer's personnel file. It had not. Then, the Department of Corrections said that the dismissal had been reduced to an 80 hour suspension. The problem is that

the Department of Corrections cannot change its mind about the level of discipline once the disciplinary action has been appealed to the Personnel Board. The Personnel Board went along with the Department of Corrections violation of the law, so the officer appealed to the superior court – again. More than two years later, AZCPOA is still supporting this member in the fight to get the dismissal reversed. AZCPOA continues to support this long-time member not only because he was wronged by the Department of Corrections, but also because it is important to send a message to the Directors of State agencies that just like their employees, they need to follow the laws, rules, and policies.

In the last year AZCPOA legal also worked to file a lawsuit on behalf of members who were severely injured by inmate assaults. The suit is in federal court. The claim is that ADC has been deliberately indifferent to the safety of its officers. Short staffing, damaged and failing safety equipment, inmate cell door locks that inmates can open, and placing dangerous inmate in low custody yards are all factors that led to inmate assaults on officers. And all were easily preventable. ADC asked the judge to dismiss the lawsuit arguing that ADC could not have known it was illegal to be deliberately indifferent to the safety of its officers! The judge saw right through that and denied ADC's motion. ADC has appealed.

AZCPOA legal is now exploring the same type suit for members working at the Arizona State Hospital. There the patients can attack and punch, kick and bite our members with no repercussions. Our members cannot even call the police to report the assault *unless the call is approved by a supervisor!* The reality is that the State Hospital takes no steps to protect employees. Employees are not allowed to wear safety gear and are not allowed to fight back when attacked. It looks to us that ASH has been deliberately indifferent to its employees' safety for years. Lawsuit to follow.

## YUMA RIOT STORY

AZCPOA had a number of members involved in the recent Yuma riot. It was clear to AZCPOA legal team that the riot was not a spontaneous incident. Months before the riot, inmates had been reporting that they were going to riot when ADC's integration plan went into effect. ADC management paid no attention to the warnings. Even families of inmates contacted ADC to warn of the riot. On March 1, 2018, the integration was to go into effect at Yuma's Cheyenne Unit. The Yuma TSU asked if they should stand by in case of an issue, - they were told to go home. Officers who passed along warnings from inmates about the riot were ignored. On March 1, 2018 the Cheyenne inmates wrapped up their own personal belongings and placed them under their beds. In the evening, the inmates erupted.

Inmates rampaged, destroying control rooms (they got access because the control room ceilings had never been secured, the ceilings were drywall that inmates kicked through), kitchens, bathroom fixtures, cameras and basically anything else that wasn't nailed down. Inmates tore the doors of refrigerators and then used the doors as shields. In fact, one officer described it as the inmates lining up like a Roman army. Inmates stood side by side using mattresses and refrigerator doors as shields while inmates behind the shield wall threw rocks at officers. This was a highly organized, pre-planned inmate riot. Some of our officers who were surrounded tried to escape the inmates by climbing onto the roofs at Cheyenne. Inmates were able to breach and made their way onto the roofs. Officers had to jump from the roof and run for safety. Other inmates knocked down one of the perimeter fences and were about to break out of the facility.

Fortunately, ADC officers responded like heroes. Off duty officers rushed to the prison to support those on duty to help face down the inmates. It took several hours but ultimately the riot was put down. Although a lot of officers were injured, thankfully none were killed or needed to be hospitalized.

Then in the aftermath ADC started its CIU investigation. AZCPOA got lawyers for its members who had used force during the riot. Frankly, it's very difficult to imagine how officers' use of force could not be completely justified when inmates were attacking them and were trying to break out of prison!

We continue to monitor ADC's investigations and hope that ADC addresses the real reasons for the riot. It's clear that ADC disregarded warnings of the riot and then failed to staff correctly to head off the problem before it turned into the riot. We understand that ADC already fired the Yuma DW and demoted and transferred a Major. It seems that ADC is beginning to hold management responsible for creating a mess that officers had to risk their lives to clean up. We'll keep you updated.