



# The Fourword

Volume 43 Number 9

September 2016

## FOP LODGE #4 PREVAILS IN RETIREE SUBSIDY CASE

Baltimore County Police Officers that retired between February 1, 1992 and June 30, 2007 retired under collective bargaining agreements that stated the health insurance subsidy at the time of retirement would remain in effect for a retiree until the retiree reached age 65 or was eligible for Medicare.

Through the negotiation process the terms and conditions for health care changed for active employees in 2007. However the county also elected to increase the health insurance subsidy for our retirees. This was in clear violation of the Memorandum of Understanding and the FOP filed a class action grievance on behalf of the retirees.

We won the grievance in July 2008 and the County appealed. We won in Circuit Court in August 2010 and the County appealed. The County won in the Court of Special Appeals in November 2011 and we appealed to the Court of Appeals where we prevailed in November 2012. The County filed a motion to reconsider in December 2012 and that motion was denied.

County Executive Kevin Kamenetz refused to comply with the Court of Appeals decision so we filed a Motion to Enforce in Baltimore County Circuit Court which we won in August 2013.

On November 5, 2013 the Circuit Court ordered the County to restore retiree health care subsidies. December 5, 2013 the Circuit Court denies the County's motion to stay the order. On December 20, 2013 the Circuit Court orders the County to produce the subsidy information. On March 6, 2014 the Circuit Court orders the County to pay \$1,413,120.81 for overcharge subsidies.

County Executive Kamenetz refused to comply so on April 14, 2014 a Show Cause Order was issued based on the FOP's petition for contempt. On April 17, 2014 the Circuit Court orders the County to pay \$213,446.47 in interest. On May 28, 2014 the Circuit Court rules against the County's motion to quash the show cause order.

In May and June 2014, the County issues three checks totaling \$1,801,479.54 and restores the health care subsidy rates.

County Executive Kamenetz filed three appeals to the Court of Special appeals. On December 17, 2014 the Court of Special Appeals denied all three of the County's appeals.

The County appealed and on August 25, 2016 the Maryland Court of Appeals ruled against the County and for the FOP.

We are glad we were able to prevail on the retirees behalf. We understand the legal system and its purpose for litigants to be able to get resolution for legitimate claims. But in this case Kevin Kamenetz had several opportunities to bring resolution. Instead he chose to disrespect collective bargaining agreements. He chose to disrespect court orders and decisions up to and including Maryland's highest court, the Court of Appeals.

Further he disrespected our retirees, their service to the county and the profession of law enforcement. Please remember this as Kevin reaches the conclusion of his second and last term as the Baltimore County Executive. He may seek elected office in the future and we believe this case serves as one example of why he should not be considered to govern. Please feel free to share your thoughts with him directly at [kevin@baltimorecountymd.gov](mailto:kevin@baltimorecountymd.gov).

Representing the Professional Police Officers of Baltimore County





## MEETING MINUTES August 2016

- The August General Business meeting was held on August 22, 2016 at FOP Lodge 4. President Weston called the meeting to order at 7:30 p.m. Chaplain DiCara gave the invocation. President Weston led the Pledge of Allegiance.

## ROLL CALL OF OFFICERS

- Second Vice President Rose, Secretary Patterson and Trustee Patterson were on vacation. All other Officers were in attendance as well as Legal Advisor Mike Marshall.

## APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

- A motion was made by Brother Folio to accept the minutes of the May General Membership Meeting. A second was made by Brother King. There was no discussion. The motion passed.

## REPORTS OF OFFICERS

### ~ PRESIDENT WESTON ~

- July 28– Attended the bi-monthly meeting with Chief Johnson, his bureau chiefs and members of the Executive Board of Directors.
- August 1– Responded to a police involved shooting in PC #2.
- August 3– Attended a meeting with the County Administrative Officer in reference to the County's plan to redesign Patriot Plaza.

- August 11– Met with members of the Police Memorial Committee in reference to the County's plan to redesign Patriot Plaza.
- August 12– Conferred with counsel about IRS 415-B police pension cap regulations.
- August 14-17– Attended the Biennial Maryland State Fraternal Order of Police Conference in Baltimore City.
- August 19– Met with a member and his spouse concerning retirement planning.
- August 22– Attended a Political Action Committee meeting and chaired the Lodge #4 General Membership meeting.

### ~ 1<sup>st</sup> V. P. COMEGNA ~

- August 2– Met with President Weston, Second Vice-President Rose, Secretary Patterson and Treasurer Caskey in reference to the upcoming Maryland State FOP Conference.
- August 3– Met with representatives from Baltimore County in reference to possible changes to the design of Patriots Plaza in Towson.
- August 4– Visited Precinct #8, Parkville.
- August 11– Met with a member of the Baltimore County Police Memorial Fund in reference to proposed changes to Patriots Plaza in Towson.
- August 14-17– Attended the Maryland State Lodge, Inc. 25th Biennial Conference in Baltimore City.
- August 22– Attended a meeting of the Political Action Committee and the August General Membership meeting.

## LODGE 4 OFFICE

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Toll Free (888) 313-3501  
www.foplodge4.org

## ELECTED OFFICERS

Cole B. Weston  
**President**  
(443) 956-2679

Steven G. Comegna  
**1<sup>st</sup> Vice President**  
*F.O.P. Lodge 4*  
(410) 409-0293

David M. Rose  
**2<sup>nd</sup> Vice President**  
*F.O.P. Lodge 4*  
(443) 956-2643

Donna M. Patterson  
**Lodge Secretary**  
*PC-12*  
(410) 365-8481

Robert W. Caskey  
**Treasurer**  
*CID-Robbery*  
(443) 956-2615

W. Don Patterson  
**State Trustee**  
*Retired*

Ryan Massey  
**Sergeant at Arms**  
*CID - Homicide*

Anthony DiCara  
**Chaplain**  
*PC-8*

L. Timothy Caslin  
**Past President**  
*Retired*

## EXECUTIVE BOARD of DIRECTORS

Kenneth F. Schubert  
**Chairman**  
*Retired*  
(410) 404-2788

Mike DiCara  
**Vice Chairman**  
*PC-4*

Thomas G. Scally  
*CID - Arson*  
David Sweren  
*PC-6*  
James P. Rommel, Jr.  
*PC-3*  
Robert Graff  
*PC-6*

Kathy Kraemer  
*PC-6*  
Sekou Hinton  
*CID-Property*  
Ryan Franks  
*CID-Property*  
Patrick Zito  
*Retired*

## LODGE STAFF

Nancy Skinner—Administrative Assistant

## LEGAL ADVISORS

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

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

## **Fourword Editors**

Donna Patterson  
Don Patterson

~2<sup>nd</sup> V. P. ROSE~

- July 27– Met with Major Hlavach to discuss the July 5, 2016 order to Pfc. Flanary.
- July 28– Attended the Executive Board of Directors meeting with Chief Johnson.
- July 29– Presented the Form W2 grievance at Step #3.
- August 2– Communicated with a National Advocate for police mental health.
- August 3– Attended a presentation for renovations to Patriot Plaza in Towson and met with Chief Johnson and his commanders to discuss the August 1, 2016 officer involved shooting.
- August 4– Communicated with the Executive Director of the Colorado State FOP and a member of the National FOP's PTSD Subcommittee.
- August 5– Discussed moving forward in the Flanary case with Kathleen Cahill.
- August 9– Attended the Pension Board of Trustees meeting and had a conference call with Kathleen Cahill and Heather Flanary.
- August 14-17– Attended the Maryland State FOP Conference in Baltimore City.
- August 16– Communicated with a member and his Commander in reference to a transfer.
- August 18-24– Vacation.
- August 18– Communicated with a member about an overtime issue and with attorney Martin Cadogan about an upcoming hearing board.
- August 22– Communicated with a member and his Commander about an IAS case disposition and with a member about a worker's compensation question.

~SECRETARY PATTERSON~

- July 28– Attended the Executive Board of Directors meeting with Chief Johnson.
- August 14-17– Attended the Maryland State FOP Conference in Baltimore City.

~TRUSTEE PATTERSON~

- July 28 – Attended the Executive Board of Directors meeting with Chief Johnson.
- August 14-17– Attended the Maryland State FOP Conference in Baltimore City.
- Registration for the Conference began on Sunday, August 14, 2016. It was probably the most exciting registration day of any conference. Protestors entered the hotel disguised as Otakon characters and chained themselves to the escalator outside our registration room. Hotel staff, Baltimore City Police and Fire worked for several hours to remove them.
- Monday, August 15, 2016 started the business of the conference. Baltimore City's Honor Guard presented the colors. An officer from Lodge 70 sang the National Anthem. Chaplain Merkle gave the invocation. President Canales spoke briefly and then turned the conference over to 1st VP Atkinson so that he could tend to family matters. 1st VP Atkinson introduced Lt. Governor Rutherford. Lodge #3 President Gene Ryan introduced City Police Commissioner Davis. National 1st VP Les Neri was introduced and gave a report. National Trustee Bob Cherry made a motion to make no endorsement in the Presidential election. Motion was seconded and passed. All other State Officers gave their reports. Attorney Herb Weiner gave his report and issued 3 valuable

points, first NEVER give a voluntary statement, NEVER expect to receive public support from your agency and Thank God for the FOP.

- Tuesday, August 16 began with a report from the Credentials Committee. There were 391 registered delegates, 12 alternates, 1 National Officer and 11 guests for a total of 415. Nominations were opened for the site of the 2018 State Conference, no nomination was made. Indianapolis made a presentation for the 2021 National Conference. Pretty gutsy to do that in Baltimore. Nominations were then made for State Officers. Nominees for President were Vince Canales (Lodge 89) and O'Brien Atkinson (Lodge 70). First Vice President nominees were Mike Young (Lodge 30) and Clyde Boatwright (Lodge 5). Second Vice President had only one nominee, Matt Frasca (Lodge 35). Kenny Schubert was the only nominee for Recording Secretary. For Treasure Earl Kratsch (Lodge 3) and Bob Caskey (Lodge 4) were nominated. Glen McIntyre was nominated for Corresponding Secretary. For the office of Conductor Darryl Jones (Lodge 89) and Tracey Lieberman (Lodge 30) were nominated. For Guard Rich Towers was nominated and for Chaplain Paul Merkle was nominated.
- After nominations National President Chuck Canterbury was introduced.
- There was a motion made to conduct an audit of finances after every change of leadership. The motion passed.
- Wednesday, August 17 began with credentials report. There were 491 registered delegates. Audit Committee Chair, Bill

Bates reported everything was in order. The election for officers was held and the results were: President, Vince Canales 253, O'Brien Atkinson 222. First VP, Clyde Boatwright 250, Mike Young 223. Treasurer, Earl Kratsch 245, Bob Caskey 231. Conductor, Darryl Jones 251, Tracey Lieberman 221.

- Wednesday evening the Presidential Dinner was held at the Top of the World and all officers in attendance were sworn in.

## **NOTARY PUBLIC**

**If you are in need for a notary, we provide free notarization at the lodge. Please call Nancy Skinner at 410 668-0004 to make an appointment**

### **EXECUTIVE BOARD OF DIRECTORS REPORT**

**~ Ken Schubert~**

- An Executive Board of Directors meeting was not held in August 2016 due to the Maryland State FOP Conference. During the conference, delegates met and discussed several issues.
- A motion was made to make a \$350 donation to sponsor a Baltimore County police softball team in the FOP Lodge 70 Tournament. The request was made by Brother Rob Easter. The motion was passed by the Executive Board members in attendance.
- At the General Membership meeting a motion was made to write a letter in support of Assistant State Attorney Al Webster for appointment to Judge of the District Court. The motion was passed.

## **REPORTS OF COMMITTEES**

### **ATHLETIC COMMITTEE**

**~Don Patterson~**

- The Annual Golf Tournament was held on Friday August 26, 2016. A full report will be given at the September General Membership meeting.

### **DONATION REVIEW COMMITTEE**

**~Mike DiCara~**

- The committee met and made the following motion:
- To donate \$350.00 to sponsor a Baltimore County Police softball team in the FOP Lodge 70 Annual Softball Tournament.

### **GRIEVANCE COMMITTEE**

**~Dave Rose~**

- Earlier this year the FOP filed a Class Grievance on behalf of 41 members who incurred an additional cost for filing an amended tax return because the County originally gave them incorrect W2s and did not issue correct ones until seven weeks later. A total of 271 incorrect W2s were given to our members who collectively incurred additional cost of tax preparation totaling \$2,393.50.
- A grievance hearing was held on July 29, 2016 at the Office of Administrative Hearings in front of ALJ Lawrence Stahl. The FOP entered 22 exhibits as evidence in support of the grievance.
- On September 7, 2016, ALJ Stahl issued his decision stating the grievance was denied. He does not mention the many positions or exhibits we presented in our case. He states the FOP has no authority to present the grievance.

- Several weeks before presenting this grievance, FOP leadership and County Executive Kamenetz spoke about this grievance and asked him if he could help bring resolution and relief to those members who had incurred the additional cost because of the County's error. His response was that he would allow the grievance to proceed in the process.
- This once again shows the lack of this administrations will to take responsibility and resolve simple disputes even when their actions are clearly shown to be wrong. The United States Federal Court recently found the County did discriminate against older employees by having them pay more into the pension system than younger employees. The estimates of over payments by employees reached as high as \$19 million dollars. The County vehemently argued that neither prospective or retroactive relief was merited and was pleased with the decision when the court ruled in their favor by not requiring them to pay back the employees.
- The irony here is, back in 2009 an audit of the pension system revealed that through an error by the County, they were not deducting the correct pension amount from some employees. The County quickly contacted those employees to have them pay back the contributions owed and they wanted interest on that money. Another audit revealed the County had inadvertently overpaid an employee approximately \$1,900 over three years. Again, they quickly contacted that employee to demand repayment.
- It appears to be that when the Kamenetz administration makes an error that causes employees to owe them money they seek to

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collect and sometimes with interest. However, if they make a error that causes the employee to incur an additional expense from their household, the County strongly argues against the reimbursement. When they are successful in forcing employees to bear the expense of their error, they simply state "the County is pleased with this decision and happy that it was effectively able to finally end this litigation."

### **LEGAL ADVISORY COMMITTEE**

~Dave Rose~

- On March 9, 2016 we filed a notice of intent to arbitrate as per Article 8, Section 8.3, step #4 paragraph (b) of the Memorandum of Understanding in our healthcare subsidy grievance. On June 15, 2016 we met with our labor attorney and healthcare consultant to discuss and prepare for the grievance as we move forward into arbitration. We have tried to arrange a meeting with the County Administration to resolve the issue outside of arbitration but the County has not expressed a desire to do so. Our attorney is currently working with OHR Director Gay to select an arbitrator and a hearing date.
- The Heather Flanary case is filed with the EEOC. We have exhausted the 180 day requirement and have received the right to sue letter we have requested.
- Flanary's appeal of the Temporary Restraining Order denial for protection from the January 21, 2016 order is filed with the Court of Special Appeals. A briefing schedule has been set. The County's brief was due September 1, 2016. A hearing date is projected for February 2017.

### **PENSION COMMITTEE**

~Dave Rose~

- At the August 9, 2016 Pension Board of Trustees meeting the Board approved twenty-three (23) total retirements. Four (4) of those was from the police department.

### **POLICY REVIEW COMMITTEE**

~Dave Rose~

- The committee members reviewed two (2) policies this month. There were no bargaining issues identified.

### **POLITICAL ACTION COMMITTEE**

~ Steve Comegna ~

- The Political Action Committee met on Monday, August 22, 2016. There was one motion presented to the Executive Board of Directors. That motion is as follows:
- To direct President Weston to write a letter endorsing/supporting Baltimore County Assistant States Attorney Allan Webster for an appointment as a District Court Judge in Baltimore County.
- This motion was approved by the Executive Board of Directors on August 22, 2016. It was approved by the General Membership on August 22, 2016.

### **LODGE #4 FALLEN HEROES MEMORIAL SCHOLARSHIP AWARDS**

*Applications for the Fall 2017/Spring 2018 scholarships are available now by contacting Lodge #4. Nine (9) \$3,000.00 awards are made each year.*

*Applications for these awards are open to the sons, daughters, adopted children, step-children or legally court appointed wards, who are citizens of the United States. The applicant's parent or guardian shall have been an Active or Retired member in good standing of Baltimore County Lodge #4 for at least one (1) full year prior to the date of application for the current year scholarship awards. The applicant must be or will be a full-time student at a recognized college or university.*

*The deadline to return the completed application with required attachments is February 1, 2017.*

### **Bereavements**

**Retired Brother  
Lawrence Schissler**  
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**Herbert M. Hynson,  
Father of Brother  
Thomas Hynson**  
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**Phyllis J. Steindler,  
Mother of Retired  
Brother Mark Steindler**  
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**Claudette Anderson,  
Mother of Brother  
Norman Anderson**  
\*\*\*\*\*

**Cynthia Mellerson, Mother  
of Sister Terrah Paige-  
Young**  
\*\*\*\*\*

**Angelo R. Petrone Sr.,  
Father of Sister Rebecca  
Petrone**

Finally, after almost nine years I am happy to report that the retiree health care subsidy case has finally come to a conclusion after two separate rulings by Maryland's highest court.

This case began back in September 2007 under then County Executive Jim Smith as a simple class grievance for what we perceived as a violation of clear and unambiguous language in the 1992- 2007 Memorandum of Understandings (MOU). That language "The health insurance subsidy in place at the time of retirement will remain in effect until the retiree or the retiree's surviving beneficiary reaches age sixty-five." In September of that year, the County increased the subsidy splits for employees and retirees. It was our position that any member who retired under the MOU's between 1992 and 2007 could not have their subsidy changed.

Our grievance was denied at the step #3 level by then Labor Commissioner Gay. We filed a timely appeal to arbitration and a step #4 hearing was held in May 2008 in front of Arbitrator Bloch. The issue argued was "Do officers who retired after February 1, 1992 and before July 1, 2007 have a vested right to retain the health insurance premium split applicable to active officers at the time of their retirement?"

The County claimed that the grievance was filed in September 2007 and the FY 2007 MOU had expired, therefore the issue was not grievable. In addition, the MOU applies to "employees" and retirees are not "employees" the FOP has no right to file a grievance on their behalf.

The FOP pointed out that the expiration of a labor contract does not necessarily signal the death of negotiated rights thereunder, including the right to have a dispute over that matter resolved in arbitration. (Supreme Court *Nolde Bros. v. AFL-CIO & Litton v. NLRB*)

On July 2008 Arbitrator Bloch issued a decision granting the FOP's grievance.

The County quickly appealed to Circuit Court in an attempt to vacate the decision. In August 2010 Judge Finifter granted the FOP's motion for summary judgement.

The County appealed to the Court of Special Appeals asserting the Circuit Court erred in upholding the arbitration award for nine reasons. (The same nine they asserted in Circuit Court including that the decision usurped the budget powers of the County Executive) In December 2011 the Court, in an unreported decision, reversed the arbitration award but did not address any of the "alleged errors".

In December 2010 County Executive Kevin Kamenetz took elected office. He met with the FOP in an attempt to understand and settle this case and several other remaining cases from the Smith Administration. Estimates by the Administration were done and spreadsheets compiled with data from the affected members. At that time settlement estimates were in the 400K-500K range. Settlement talks progressed to the point where a draft agreement was completed. Those settlement talks quickly halted when the County Administrative Officer Fred Homan did not agree with the settlement terms.

The FOP applied for a Writ of Certiorari with the Court of Appeals and was granted a hearing. The County did not file a cross petition but in its brief it again asserted the same nine positions it had raised at each level.

In January 2013 the Court of Appeals issued a decision reversing the 2011 Court of Special Appeals Decision. The Court ruled that The question of arbitrability was for the arbitrator to decide in the first instance. The Circuit Court had applied the proper standard of review and found no reason to disturb the Circuit Courts award of summary judgment in favor of the FOP. The arbitration award was consistent with the MOU and did not demonstrate a "manifest disregard for the law".

The County filed a motion for reconsideration to the Court of Appeals asserting the award is unenforceable since there have been no funds appropriated through the executive budget process to afford relief." The Court denied that motion in January 2013.

In February 2013 the Court of Special Appeals reversed it's 2011 decision.



The County refused to comply with the arbitration award and rescind the modification to the retired officers' subsidy or refund the excess deductions it had taken for premiums.

The FOP filed a Motion to Enforce the arbitration award in Circuit Court. The County conceded the award was valid but that it was "unenforceable because the enforcement of the award without appropriation would usurp the authority of the County Executive and County Council under the County Charter.

It was obvious the County was confused about the difference between "interest arbitration" and grievance arbitration". Interest arbitration is contract negotiations where new items may be asserted into the collective bargaining agreement. Those items would need to go through the budget process. Grievance arbitration is a dispute over a provision that is already in the MOU.

In August 2013 the Circuit Court issued an order rejecting the County's argument and granted the FOP's motion to enforce the award. It also concluded that the law of the case doctrine precluded them from reprising the no-appropriation argument.

At the damages hearing the County continued to raise the same argument and tried to re-argue the merits of the arbitration award. At the conclusion of the hearing in April 2014 the Circuit Court ordered the County to refund retirees amounts totaling more than \$1.6 million, including pre-judgment and post-judgment interest.

The County quickly appealed to the Court of Special Appeals.

The County continued to not comply with the judgment of the court and the FOP initiated contempt proceedings and asked the court to issue a show cause order for County Executive Kamenetz, Administrative Officer Homan and Budget Director Dorsey and to have them held in Contempt of Court if they did not comply with the Courts award. The County filed a motion to quash the order. Judge Finifter denied the County's motion. In June 2014 the County then filed a certificate of compliance that it paid the judgment with funds from the OPEB Fund "without the required appropriation".

Later in 2014 the Court of Special Appeals affirmed the Circuit Court in a very Comprehensive opinion. The Court noted that the County's "no appropriation" argument had been specifically addressed and rejected in the first case and that summary judgment was properly granted by the Circuit Court.

As per their usual course, the County quickly appealed and was granted Certiorari by the Court of Appeals. They specifically focused on the "no appropriation" argument and would that support a public policy exception to the enforcement of the arbitration award.

In August of 2016 the Court of Appeals ruled that this case did not support a public policy exception to the arbitration award and that the lower courts correctly applied the law of the case doctrine. They also noted that the damages were paid from the OPEB Fund. Those funds are budgeted for and approved by County Council to specifically pay for employee benefits. In addition, they noted the County's confusion between interest arbitration and grievance arbitration. The purpose of grievance arbitration is to interpret an already agreed to MOU and not set the terms of a new MOU. The County's position on this particular issue was determined to be incorrect.

This case has come to its long awaited conclusion. This has been a long arduous process and the despicable, inexcusable actions by the County Administration, while surprising no one, have tried the patience of those involved. Those actions and tactics have failed. The County Executive, only under threat of incarceration, paid the damages owed to our retirees and ordered to be paid by the Court. Yet he continued to litigate and delay this inevitable conclusion while fourteen of our members have died waiting to receive their reimbursement for health care premiums for which they were over charged. The FOP will be reaching out to any surviving family members to see that the reimbursement they deserve is delivered to the rightful heirs.

As always we will continue to fight for the rights of our members and the protection of the provisions in the MOU.

The October

**FOP Lodge 4  
GENERAL  
BUSINESS  
MEETING**

will be held on

**Monday,  
October 24, 2016  
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 28, 2016  
7:30 p.m.**

at  
FOP Lodge 4  
9304 Harford Road