



Fall is off to a very busy start. Over the past month, the FDSA wrapped up some labor intensive, but, very rewarding events. The golf tournament is always a big undertaking- and I am happy to tell you, it's growing and getting better each year! Also, we have some promising developments for our members related to the reopener of our contract with Fresno County. This is a process that, at times, is stressful and exhausting. However, provisions were agreed upon that provide a portion of benefits back to deputies that were taken during the economic crisis. These negotiations ended in an agreement that I feel is fair. It is also clear those deputies on the front lines at the Fresno County Sheriff's Office- are the priority of the Board of Supervisors.

Below, you will find more specifics on these topics and the highlights of both the tournament and reopener negotiations.

Update to Stockton Bankruptcy Case

I would like to inform you about a new development that occurred on October 30, 2014 related to a ruling regarding the City of Stockton and the Stockton POA about pension benefits. Below in italics, is an email written by Robert Bonsell. He is the corporate counsel to PORAC and has been following this case from the start.

You may recall, last month, Judge Klein weighed in that pension is not held sacred. It means pension for those who are currently working towards retiring, and those employees who have retired- are now living their lives off the vested benefit.

Judge Christopher Klein just confirmed the Plan of Adjustment of Debts as proposed by the City of Stockton. According to Judge Klein, the City had negotiated at arm length with each of the municipal bargaining units, including the Stockton Police Officers Association. Ultimately, these parties reached agreements "incorporating significant modifications and concessions" in wages, hours, terms and conditions of employment set forth in the collective bargaining agreements covering the City's workers. However, in order to avoid the inevitable flight of workers, particularly public safety employees, if the employees were forced to suffer reductions in their pension benefits, the parties agreed to refrain from impairing the Cal-PERS obligations, other than as required by PEPR. Franklin High Yield Mutual Fund (Franklin) objected to the Plan of Adjustment on multiple grounds, each of which Judge Klein rejected. The most significant of the Judge's findings of fact and rulings of law are as follows.

First, Judge Klein found that Franklin was not improperly classed as an unsecured creditor along with the retirees, thus he rejected Franklin's argument that the Plan proposed by the City constituted a "cram-down plan" which would require a higher

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standard to be met for confirmation. The Judge found that a clear majority of this particular class and all other classes of creditors had approved the Plan. He also conclude that Franklin's claim that it was receiving only 1% of the value of its \$34 million dollar claim was incorrect. He concluded that they were receiving in excess of 12% and that they were being treated fairly in comparison with others in the class (i.e. the retirees were giving up \$545 million dollars in estimated health benefits).

Second, Judge Klein found that while the City of Stockton had the legal right to reject it's contract with Cal-PERS, it had no obligation to do so. Rather, the City could exercise its business judgment to determine whether impairing such a contract was in the best interest of the citizens of Stockton. The Court found that the City had a real and legitimate concern that impairment of the Cal-PERS contract would cause a flight of workers, particularly police and fire, to other agencies, especially in light of the new portability rules which could enhance such a flight of workers. The Court recognized this would cause further stress for the City. Judge Klein also did not question the City's conclusion that Cal-PERS was the "low cost provider" and that there were "no better options" available for public employee pensions.

Third, although the Judge found that the City could reject the Cal-PERS contract under Section 365 of the Bankruptcy Code, doing so at this point would necessarily require the City to renegotiate all the collective bargaining agreements with the City's employees and their bargaining representatives. This would entail the undoing of multiple contracts which included significant concessions. More importantly, Judge Klein found that the standard for impairing collective bargaining agreements under Bankruptcy Court is much more difficult in light of NLRB v. Bildisco, 465 U.S. 513 (1984) and Section 1113 of the Bankruptcy Code. Judge Klein found that "this would be no simple task" and, as a practical matter, it was difficult to imagine that reopening these contracts would likely result in any greater concessions than those which had already been obtained through arms length negotiations.

Fourth, judge Klein found that the Plan was proposed in good faith, contrary to Franklin's suggestion that the City had somehow colluded with the employees representatives to benefit their members in an unfair way. The Court expressly rejected Franklin's argument that the employees were unaffected, citing significant concessions made during the negotiations between the parties. In fact, Judge Klein characterized Franklin's claim as comparatively small in light of the concessions made by the active and retired employees. In addition, the Judge referenced Franklin's rejection of the option offered in the Plan of Adjustment which would allow access to a special fund for creditors if the City prospered and it's finances improved. Franklin had the opportunity to join in this pool, but rejected

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that offer and instead elected to challenge the Plan of Adjustment. With this Plan confirmation, Franklin can no longer participate in that fund.

Fifth, Judge Klein made a special point of noting that Chapter 9 proceedings are “very expensive cases” to litigate and that “Chapter 9 should not be entered into lightly.” He pointed out that the expenses of a Chapter 9 proceeding greatly increase due to the inevitable battles and legal challenges by creditors such as Franklin. The Judge stated that the overall and expense in the Stockton bankruptcy should be “sobering” to any municipality considering this course of action. Comparing this case to the Vallejo bankruptcy, Judge Klein opined that Chapter 9 was “neither easy nor an inexpensive process.”

Sixth, the Judge found that under Section 943(b)(7) of the Bankruptcy Code, the Plan of Adjustment proposed by the City of Stockton was in the best interest of the creditors and was feasible. “Having taken a long and hard look at this case,” Judge Klein stated that the Plan was “the best under the circumstances” particularly when considering the alternative would be sending the parties “back to Square One” which would certainly result in millions of additional expenses without the likelihood of reaching any different of better result. In the final analysis, Judge Klein concluded that the Plan represented “the best that could be done.”

Finally, Judge Klein rejected Franklin’s challenge to the \$13.8 million dollars in professional fees and cost which the City had incurred up to May 2014 for representation and other professional services in the Chapter 9 proceeding. Noting that the City of Vallejo incurred in excess of \$9 million dollars, the Court simply recognized that this as further evidence that the propriety of proceeding with a Chapter 9 petition in bankruptcy should be carefully weighed.

Although Judge Klein incorrectly ruled that a municipalities pension obligations to Cal-PERS may lawfully be impaired, he correctly rejected all challenges to the Stockton Plan of Adjustment which did not impair the employees pension rights. Equally important, Judge Klein was not shy in articulating his assessment that Chapter 9 must never be taken lightly. The Stockton bankruptcy should serve as a cautionary tale for any public agency which contemplates a reorganization of its debts and it clearly reflects that the sound decision of a municipality to refrain from impairing it’s pension obligations will pass the business judgment rule under the Bankruptcy Code.

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Four CA Officers Killed in Four Days

Over the last couple weeks, I have sent out LODD notifications to all of our members about the California law enforcement officers who have recently died in the line of duty. Below is an article that was published by the Fresno Bee's Editorial Board. I wanted to share it with you since it gives a good overview of who these officers were and the incidents that took their lives. Three of the four officers killed in late October died from gunshot wounds. All of the suspects were taken into custody.

Placer County Deputy Michael David Davis Jr. was slain — 26 years to the day after his father was killed in the line of duty. His father, a Riverside County deputy, lost his life in a helicopter crash during a narcotics task force operation on Oct. 24, 1988.

Though last week's tragedy didn't take place in our community, we should still take time to contemplate the harrowing life-and-death nature that our public-safety officers face and be grateful for the men and women who step up to do this job.

Davis, 42, is survived by his wife and four children. He worked for the Auburn Police Department for three years before joining the Placer County Sheriff's Office in 1999.

Sacramento County Sheriff's Deputy Danny Oliver, 47, a husband and a father of two daughters, also was killed. The 15-year veteran was described by fellow deputies as a model officer.

Oliver approached a car off Sacramento's Arden Way where an AR-15 rifle-bearing gunman shot him in the head. Imagine the bravery these deputies exhibit every day. For an officer to die in a motel parking lot for no known reason is a tawdry backdrop for indescribable courage. That assault weapons remain on the streets is a travesty.

Following this crime, the gunman and his female companion set off on a carjacking spree, leading schools into lockdown. This swath of fear ended because more brave officers put their lives on the line, as they do each and every day, with the arrest in Auburn of Marcelo Marquez, 34.

Officers take their share of criticism. Second-guessing comes with police work. But ask the thousands of citizens who were terrified across two counties, in homes and schools and stores, if these officers' sacrifices made them feel like someone was on their side.

What two deputies gave was something that the average citizen cannot. The courage all the officers and deputies exhibited Friday was a gift to their communities.

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The rest of us throughout California can give one thing: heartfelt, fervent thanks for those who keep us safe.

Early Tuesday a Ventura County Sheriff's deputy, Eugene Kostiuchenko, was instantly killed after he was struck by a passing vehicle during a traffic stop on the northbound 101 Freeway. The driver was arrested on suspicion of driving under the influence.

Kostiuchenko, 41, is survived by his wife and two sons.

Each time an officer starts his shift, he or she does so knowing that what might appear to be routine can turn deadly in a split second.

FDSA Ratification to Reopener

On Thursday, October 30, I presented the membership with the proposal the FDSA was given from Fresno County Labor Relations- in regards to the reopener we have in our labor contract. I have been reporting for the last few months on the status and what this means for our MOU. Since April, I have received several questions as to where we are with this reopener. Finally, there is resolution to a piece of the reopener.

When I presented the offer to the membership for approval, there was a unanimous vote to accept the proposal. During all the prior ratifications, that I have been a part of with our organization- not once have I ever seen it at one-hundred percent approval. Thank you to those of you who were able to attend and listen to the presentation.

Now that we have ratified with the voting membership, this agreement now gets sent to the Fresno County Board of Supervisors for approval. The date for approval is tentatively set for December 2, 2014.

Those who were unable to attend the ratification, can call me for details. Right now, I have a request from Fresno County Labor Relations to refrain from publishing the full package until the final approval from the Board of Supervisors. My newsletter on December 3, 2014 will have all the details regarding the reopener. Thank you again for your patience on this item.

FDSA Peace Officer Memorial Fund Golf Tournament

On October 17, 2014, the FDSA hosted our 8th annual Peace Officer Memorial Golf Tournament at Eagle Springs Golf and Country Club. All of the proceeds from this tournament go to our Peace Officer Memorial Fund. This fund supports any deputy sheriff

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killed in our agency, and also helps provide support to any officer killed within the State of California.

The tournament was a huge success filled with many milestones and growth in several areas. We had more players and more sponsorships than all of our prior years. We had a total of 152 golfers play this year- a normal tournament generally holds 144 golfers. The day was perfect for golf - sunshine, mixed with clouds and a light breeze. The morning was cool and brisk and the daytime temperature topped out at 78 degrees.

I would like to express my sincere thanks and gratitude to all of our sponsors of this tournament. Also, my thanks to those players who came out and helped support a wonderful cause. I also want to give a big thanks to Joni Sarafian, owner of Complete Market Solutions, for all of her time and dedication she has given to the FDSA.

You can mark your calendars now to be a part of this tournament next year. We have reserved Friday, October 16, 2015 for the 9th annual event to be held at Eagle Springs Golf and Country Club. We look forward to another fun filled day on a beautiful course!

We have been dealt a rough hand at the end of October. As we all know, we will always honor our fallen partners above and beyond any other job. However, in our line of work, we can't dwell on the risks. It is not hyperbole to say we leave our families every day not knowing if we will return. But our job is to protect and serve, to ensure our neighbors live without fear.

Cops aren't perfect; we make mistakes. We understand thoughtful discussions must be had when those of us in uniform fall short. We are part of our communities, and accountability is part of the contract we make with our neighbors.

Please take care of each other and stay safe each and every day.

-Eric

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