

ATTORNEY NOTES . . .

THE NEWSLETTER OF THE ASSOCIATION OF DEPUTY



DISTRICT ATTORNEYS OF LOS ANGELES COUNTY

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PRESIDENT'S MESSAGE: By ADDA PRESIDENT STEVE IPSEN. WHAT'S IPSEN UP TO?

Normally, this is where the President's Message would run. But ADDA President has been a little busy lately. He sends us these haphazard dispatches from his hectic life on the road.

Sent: Sun, 15 Apr 2007

Subject: Catherine and Steve welcome baby Grace Catherien

Hi everyone,

Our little Easter bunny, Grace Catherine Ipsen, was born at 5:35 a.m. on Easter Sunday, April 8th, weighing 6 lbs 8 oz and 20 inches. She is 2 days old in these pictures. We are all doing well and having lots of fun.

Steve and Catherine Ipsen

MORE INFO?
go to deputyda.com



REVERSAL OF FORTUNE

How the CAO may have squashed the hopes of DDAs to be represented in a DDA-only bargaining unit.

The morning session of ERCOM (*The Employee Relations Commission of Los Angeles County*) on April 16 should have presented a many obstacles to John Garisi, Lead Representative of the Office of the Chief Administrative Officer (CAO). Garisi was

facing a petition for certification from the LA Deputy District Attorneys (DDAs) asking to be represented by the ADDA in bargaining in a "DDA only" bargaining group.

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COUNTY/CAO STALL SAFETY RETIREMENT

By ADDA Sr. V.P. Frank Tavelman

County antics to block certification hurt safety retirement effort.

When the Governor signed into law the legislation called AB 2023, its provisions permitted and encouraged California counties to provide enhanced retirement plans (3% at 55 - commonly called safety retirement) to Deputy District Attorneys (DDAs), Deputy Public Defenders (DPDs) and Deputy Alternate Public Defenders (DAPDs).

Your ADDA established an exploratory committee with the PD's Association and representatives from the APD's office. The members of this committee named it the "Coalition for Pension Reform," or "(CPR)." CPR's goal was to convince the Board of Supervisors to implement the 3% at 55 retirement plan as permitted by AB 2023. To do so, CPR was first required to determine the costs of providing

(Continued on page 2)



JUSTICE FOR HOMICIDE VICTIMS HONORS DDAs

5

Pictured left are ADDA Pres. Steve Ipsen with presenters and recipients

BAKER TO VEGAS: A TRADITION CONTIUES

8

Pictured right is Baker to Vegas runner Alva Lin & Support Crew



ERCOM HEARING Cont.

(Continued from page 1)

In an earlier session on March 29, Walter F. Daugherty, a witness for the ADDA, stated the standard for evaluating the petition. Daugherty is the former Executive Officer of ERCOM. He stressed that the standard for certification is an "appropriate unit," not a "perfect unit."

To show that the ADDA was an "appropriate" unit, Helen Schwab and Derald Breneman of the law firm of Green and Shinee presented the ERCOM Hearing Officer, Robert D. Steinberg, with solid evidence. Months earlier, the ADDA filed hundreds of signature cards with ERCOM announcing the desire of DDAs to be represented by the ADDA in labor discussions in a "DDA only" bargaining group. But the CAO filed an opposition to the ADDA's petition. Appearing on behalf of the CAO at the March 29 hearing, Garisi explained that if DDAs were given their own bargaining unit, DPDs, DAPDs and Child Support Attorneys would each want their own units too.

ERCOM could have granted the ADDA's request without a contested hearing. Testimony on March 29 by DDA Hyatt Seligman revealed that in the early 90's, he coordinated the submission of signature cards by DDAs requesting a DDA only bargaining group. Seligman appeared before ERCOM, and received ERCOM's approval for a countywide election by DDAs to decide if they could be represented by a DDA-only bargaining group. At that time, the CAO made no objection to Seligman's request. But soon thereafter Seligman was beseeched by PDs requesting a joint bargaining unit. So he resubmitted his request and asked for a joint bargaining unit made of PDs and DDAs. Due to political differences, PDs swamped the election with "NO" votes and "torpedoed" the proposed bargaining unit.

But even more recent history, from an unlikely source, lent credence to the ADDA's petition for a separate DDA bargaining unit. Bart Deiner, Special Assistant to the President of Local 721 of the Service Employees International Union (SEIU) described his efforts, on behalf of SEIU's leadership, to organize PDs, APDs, DDAs and Child Support Attorneys into one SEIU bargaining group. Deiner noted that although SEIU initially wanted all these attorneys in one SEIU group, SEIU conclusively found that DDAs and DPDs will never be able to operate together.

But perhaps the greatest hurdle faced by Garisi and the CAO was not the testimony of one, but the votes of many. ADDA President Steve Ipsen detailed the hotly contested 2005 ADDA Officer Elections. A slate of candidates, lead by Ipsen, ran for re-election to ADDA Officer and Board of Directors positions. Ipsen's slate favored an independent DDA only bargaining group loosely aligned with the Association of Los Angeles Deputy Sheriffs. This slate was opposed by a slate of candidates who favored working with PDs and APDs in a joint unit. The Ipsen slate won the vote by ten to one.

The hearing was continued to the morning April 16 so that Garisi could present witnesses for the CAO. Although the outcome is in doubt, Garisi may have succeeded in convincing the Hearing Officer that a DDA-only bargaining unit is not an appropriate bargaining unit, and that the only appropriate bargaining unit must force together DDAs, DPDs, DAPDs and Family Support Attorneys

Garisi began the CAOs presentation on April 16 by performing an abrupt about face. During the March 29 hearing, Garisi had steadfastly maintained, in arguments with the participants and observers, that DDAs, DPDs and APDs were salaried and exempt employees.

(Continued on page 10)

County/CAO Stall Safety Retirement

By Sr. VP Frank Tavelman

(Continued from page 1)
safety retirement.

To determine the safety retirement's costs, CPR consulted with a financial economist and an actuarial firm. To pay for the actuarial study's cost, the ADDA solicited donations from members. The ADDA deposited that money in a separate bank account, where it remains today. Historically, the County's Chief Administrative Officer ("CAO") routinely authorized LACERA (our retirement association) to provide retirement data to any union requesting it. As a registered employee organization, but not a union, the ADDA believed the CAO would act reasonably and disclose this data. Regrettably, we soon discovered that we were wrong. ADDA representatives on CPR soon discovered that the County planned to stonewall CPR and refuse to disclose this information. Without this data, our consultants could not complete the actuarial study, and we were blocked from making any progress in obtaining safety retirement.

Since the County and the CAO refused to provide us with even basic information, the

only option to pursue safety retirement is to unionize. As a represented group, the CAO would have to provide us with the information we needed, and the CAO would be obligated to discuss issues in good faith with our union during bargaining. In addition, a union would permit us to bargain for better wages, and change unfair work conditions. The first step was completed over a year ago when we circulated and submitted signature cards calling for a certified bargaining group comprised of DDAs. *(These cards were called "blue cards" because the ADDA printed them on blue paper.)*

Once again, the CAO chose to obstruct our efforts, and has objected to a DDA only bargaining group. The CAO demanded that any bargaining unit be forced to include DPDs and DAPDs. However, the history of collective bargaining on behalf of DDAs demonstrates that when DDAs were forced to be in the same bargaining unit as DPDs, the unit collapsed due to infighting. The matter was heard by the Employee Relations Commission (ERCOM), and referred to a hearing officer for an administrative hearing and fact finding and recommendation. The CAO's representative then delayed the hearing for almost a year, claiming unavailability. The hearing finally started on March 29; final briefs to be filed by June 1st.

The "Safety Retirement Fund" remains intact. Certain expenses for services provided by the economist and the actuary have been paid, but the majority of the funds remain in a separate account to pursue safety retirement. Recently the ADDA Board passed a resolution authorizing expenses from the fund for union related activities as necessary in our efforts to obtain safety retirement. The ADDA also authorized a return of funds to any contributor who has decided to abandon support for our efforts to obtain 3% at 55. Much has been done in our fight for safety retirement, but ultimately each DDA will have an opportunity to vote on whether we become a union. Should ERCOM rule in our favor, such a ruling would not automatically result in a union. A vote of our members would generally be required (although the CAO may use an expedited option not requiring a vote if they find a sufficient number of interest cards were filed and are valid. That discretion lies with the CAO, but is not being requested by the ADDA).

As always, your ADDA's officers and directors are available to answer any of your questions and address any concerns as we navigate this challenging process. As other Counties are providing safety retirement for prosecutors (most recently Orange County authorized 2.7% at 55), your ADDA will continue to fight for you.

ERCOM HEARING Cont.

(Continued from page 10)

Ms. Schwab began her cross examination by immediately addressing Bernardi's characterization of the 9/80 program. After a testy exchange, Bernardi conceded that well over half of the DDAs of the office are not given the opportunity to have 9/80 work schedules.

Although Garisi had seemed to raise the issue of the availability of 9/80 to DDAs earlier in the hearing to demonstrate the similarity between DDAs and DPDs, Bernardi denied knowing anything about the operation of the 9/80 program in the PD's office. But, Bernardi also added that he had confirmed that DPDs are not salaried. Bernardi said that "I've looked at their item and their county salary schedule and they're paid exactly the same rate as Deputy DA's. They are on the same salary schedule. They get the same rate." But when asked how public defenders complete their time cards and are paid, Bernardi stated "I don't have anything to do with it."

Ms. Schwab then followed up this line of questioning by asking if it was possible for DDAs to transfer to the PD's Office. When asked with the fact that the PD's Office would be a completely different employer than the DA's office, Bernardi replied, "[w]ell, technically, not. Were all employees of the County of Los Angeles. Not the District Attorney. DA's can transfer to the Public Defender's Office. I can think of one offhand who has done that. I know of several Public Defenders who have transferred to the DA's Office. And I know a DA who has transferred to County Counsel." But when asked earlier if DPDs could attend the DA's Saturday Seminars, Bernardi laughed and replied "We don't want to train the other side."

Garisi presented three more witnesses after Bernardi to make the CAO's case. Christopher John Chadwick was the first of these witnesses. He testified about his employment with the CAO as a Senior Analyst and his experience compiling compensation and classification studies. Chadwick noted that there were instances of different classes of employees who were lumped into the same bargaining group.

Chadwick also testified that since the 1970s, the county has sought to keep parity between DDAs and PDs so that the prosecution and defense are balanced and the scales of justice are not tipped.

But on cross exam by Schwab, Chadwick conceded that, although compensated simi-

larly, investigators from the PDs and the DAs offices each had their own separate bargaining unit. However, in a moment that seemed incongruous with Bernardi's testimony, Chadwick quickly ducked into the role District Attorney Investigators play in law enforcement, namely that they "are peace officers." On follow-up questions, Schwab also elicited from Chadwick acknowledgements that DDAs are subject to more stringent background checks and are issued badges. But then Chadwick deflected further questions by stating that he was unfamiliar with District Attorney Policy and Procedures.

The next witness by the CAO was Debra Lynn Popkins. Although not employed by the CAO, Ms. Hopkins represents LA County management in Healthcare labor discussions. Garisi had her acknowledge that registered nurses and nurse practitioners were part of the same LA County bargaining group. She then detailed that registered nurses and nurse practitioners have different, non-interchangeable differences in their duties.

However, on cross exam she conceded she knew nothing at all about the job duties of PDs and DAs. Further, she conceded that registered nurses and nurse practitioners share the same mission: to deliver patient care. They don't oppose each other. She also knew of no political cause that would divide nurse practitioners from registered nurses.

James Andrew Adams followed Popkins on the witness stand. Adams identified himself as the Division Director of the Employee Relations Division of the CAO. Adams was nonchalant as to multiple classifications of employees being lumped in the same bargaining unit. Citing a variety of differences in nurse positions, Adams indicated that lumping professionals together is "really problematic, but it's doable." Adams then set his sights on the ADDA's petition and testified that if it were granted, there would be demands by four different classes of attorneys demanding their own bargaining units. Further, the similarity between APDs, DPDs, Child Support Attorneys and DDAs dictated that forcing them into the same bargaining unit was feasible.

But under cross-examination, Adams' confidence in his conclusions seemed misplaced. Adams was forced to acknowledge that none of the other groups (APDs, DPDs and Child Support Attorneys) had submitted, or were even circulating, petitions for certification, and that there was no indication they would even want individual bargaining units. Adams also described his role supervising the 56 different Memoranda of Understanding (MOU) the county has with various employee bargaining units. He conceded that ninety percent of the language in each MOU is boilerplate.

Although he deflected most questions about differences between PD and DDA jobs, Adams stated that the county tried to make compensation the same for all attorneys. However, differences in management may result in PDs benefiting because they are not required to account for all workweek hours on an hour-for-hour basis (consistent with a "salaried" designation). However, in a moment that seemed to draw laughter, he retorted "well if we let DDAs have their own unit, we'll be forced to hear DDA complaints such as the fact that DDAs aren't docked the same as PDs."

Adams was the final witness called by Garisi for the CAO. After Garisi concluded, Helen Schwab called ADDA Sr. VP Frank Tavelman to testify in rebuttal.

Tavelman's rebuttal testimony clarified fundamental differences between DDAs and PDs. Tavelman explained that PDs and APDs have client obligations not found in the duties of a DDA. For instance, DDAs do not have an attorney-client privilege, APDs and DPDs do. In fact, in addition to statutory discovery obligations, DDAs have an obligation to reveal exculpatory information. Also, DDAs are required to work closely with peace officers, and even deal with them as members of the same agency (i.e. DAs). In testimony that quickly discounted the testimony of the Healthcare Management Representative, Ms. Popkins, Tavelman explained that ninety percent of the interaction between PDs and APDs is adversarial. Seizing on Popkins efforts to detail the differences between registered nurses and nurse practitioners, Tavelman explained "registered nurses and nurse practitioners don't oppose each other, it's not like one is trying to kill the patient while the other is trying to keep him alive."

Garisi had no cross examination for Tavelman and attempted to excuse him from the witness stand. However, ERCOM Hearing Officer Steinberg had his own questions. Steinberg asked Tavelman if it was true that PDs and DDAs could simply "transfer" back and forth between departments. Tavelman explained that the process would actually require the applicant to be rehired, with the applicant's prospects in maintaining his status through a lateral placement uncertain due to the discretion of the agency.

Although the taking of evidence has concluded in this matter, both the ADDA and the County will be submitting briefs on June 1st, with a decision rendered by the hearing officer within 30 days. ATTORNEY NOTES will continue to apprise of developments in this matter.

**The Newsletter of the
Association
of Deputy
District
Attorneys
of Los Angeles County**



**The Association by
and for the Deputy
District Attorneys
of Los Angeles County**

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ATTORNEY NOTES . . .

SAVE THE DATE

May

May 10-Criminal Justice Awards
Dinner, Los Angeles County Bar

**DODGER NIGHT
Wednesday, May 16
7:10 p.m.**

**L.A. Dodgers vs.
St. Louis Cardinals
Tickets: \$ 20 ea.**
(Lower Reserve,
Behind Home Plate)

Proceeds to benefit the LPA
Scholarship Fund
**Contact Shelly
Torrealba
(213) 974-5948
or your local
LPA member**



Assn. 6pm. Omni Los Angeles Hotel,
Bunker Hill Ballroom, 251 S. Olive
St., LA

May 15-ADDA Board of Directors
Meeting. 5pm, Younger Conference
Room, 18th floor, CSFCJC

May 19-Saturday Seminar, 8:30am to
12:30 p.m., Board of Supervisors
Hearing Room, Kenneth Hahn Hall
of Administration, 500 W. Temple
St.,

May 21-23-Evidence Seminar (South),

Sponsored by the Cal. Dist. Atty's
Ass'n (Contact: Pam Matalucci,
pmatalucci@cdaa.org). (916) 443-
2017. The Hotel Del Mar, Santa
Barbara CA.

June

June 4-7-Trial Advocacy Skills Work-
shop (North), Sponsored by the Cal.
Dist. Atty's Ass'n (Contact: Suzanne
Hunter, shunter@cdaa.org). (916)
443-2017. Monterrey Marriot, Mon-
terrey CA.

June 8-Advanced Trial Topics Work-
shop, Sponsored by the Cal. Dist.
Atty's Ass'n (Contact: Lindsay Shoe-
maker, lshoemaker@cdaa.org). (916)
443-2017. DoubleTree Hotel Sonoma
Wine Country, Rohnert Park, CA.

June 11-13-Advanced Gang Prosecu-
tion Seminar, Sponsored by the Cali-
fornia Dist. Attorneys Association
(Contact: Pam Matalucci, pmatalucci@cdaa.org). (916) 443-2017.
Sheraton Fisherman's Wharf, San
Francisco CA.

June 19-ADDA Board of Directors
Meeting. 5pm, Younger Conference
Room, 18th floor, CSFCJC

June 20- (Wednesday) - **LPA Gen-
eral Meeting and Happy Hour** at
Tamayo's Restaurant located at 5300
E. Olympic Blvd. ELA at 5:30 PM

June 23-Saturday Seminar, 8:30am to
12:30 p.m., Board of Supervisors

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