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## **Discipline Delayed: Taxpayers Foot The Bill While Government Employees Languish On Paid Leave**

*By Mark Flatten, Investigative Reporter*

A Phoenix police officer was quick to mete out punishment when his son got in trouble at school in March 2009. The officer made the 10-year-old boy stand at the foot of his bed to be beaten with a leather belt.

The officer's discipline from the Phoenix Police Department would be much longer in coming. For more than a year he was assigned to paid administrative leave, sitting at home and drawing a paycheck while the agency's Professional Standards Bureau conducted an internal investigation to determine how he should be dealt with.

There was little dispute about what happened. The officer admitted to Child Protective Services that night that he whipped the boy. The only discrepancy was whether the child was struck more than 90 times, as a sibling claimed, or 15 times, as the father said. He admitted it again when questioned by Phoenix detectives during the internal investigation.

In the end, the officer got a three-day suspension after pleading guilty to one count of misdemeanor assault. By then he had racked up 2,426 hours of paid administrative leave, about 14 months, according to documents obtained by the Goldwater Institute through a public records request.

His case is not unusual.

The Phoenix Police Department sent officers home on paid administrative leave for a total of 25,472 hours – about 12 years of work time – during the 30-month period that ended June 30, 2010. City records do not say how much those employees were paid in salaries and benefits during that time.

Other city departments do not track administrative leave.

State agencies under the Department of Administration's personnel system added 88,175 hours in a two-year period that ended in April 2010 at a cost to Arizona taxpayers of more than \$1.6 million, not counting benefits. That is the equivalent of more than 42 years of staff time based on a 40-hour work week.

The Arizona Department of Public Safety, which is not in the state system, did not track its leave by hours. However, records provided by the department show DPS personnel were on paid leave for a total of more than 70 months in a two-year period that ended June 2010, which would amount to about 12,000 hours.

Virtually all of that time was because of disciplinary investigations.

The numbers make it clear that employees are being kept at home with pay when they shouldn't be, said Brian McNeil, Gov. Jan Brewer's deputy chief of staff for operations.

"Were we alarmed at some of these numbers? Yes," McNeil said of the reports generated in response to the Goldwater Institute's public records requests. "Does it appear reasonable that people have taken the admin leave and stretched it out beyond the point, in some cases, that they should have? I don't think there's any doubt about that."

Since the Goldwater Institute started asking questions, several agencies have revamped the way they handle administrative leave.

Corrections Director Charles Ryan implemented a new policy in May 2010 that requires employees under investigation to work in administrative jobs or perform other duties. If the allegations against an employee warrant removal from the workplace, assignment to traditional administrative leave must be approved by a division director, deputy director, or Ryan himself.

"It's not our intention to place anybody on administrative leave," Ryan said. "They will be reassigned somewhere else to a non-contact duty if in fact it had anything to do with inmates. I believe now administratively to place someone on administrative leave is the exception and not the rule."

At the City of Phoenix, officials in the personnel department are developing a system to track administrative leave in all agencies, not just the police department. Kathy Haggerty, deputy human resources director for the city, said that decision had nothing to do with the Goldwater Institute's records requests.

Phoenix police also say they are making policy changes to speed up internal personnel investigations. If there was the possibility of related criminal charges, the past practice was to wait until that case was finished to proceed with the personnel investigation, according to Nick DeBenedetto, a lieutenant in the police Professional Standards Bureau. Now, internal affairs investigators will conduct simultaneous investigations, where appropriate, to speed disciplinary reviews, he said.

## **Idle Police**

Most of the cases reviewed by the Goldwater Institute that resulted in long periods of administrative leave involved police officers.

The allegations in almost every case seem fairly simple, not the kind that would explain investigations lasting a year or more. No one was accused of taking bribes or shaking down drug dealers. Only a few of the cases involve allegations that the officer used improper force on the job.

Frequently, it is an off-duty incident or a domestic dispute that gets cops in trouble, according to cases from Phoenix police and DPS. The case of the Phoenix officer accused of beating his son is fairly representative. The underlying facts are usually known early in the investigation. Typically, the officer admits to the conduct when questioned, though there is often disagreement as to whether it should warrant discipline or how severe it should be. Yet the officer is left on paid leave while the investigation drags on for months.

Phoenix police had 13 people on paid leave for more than 1,000 hours during the period reviewed. Among them:

- A Phoenix detective was put on paid leave for almost a year after he posted nude photos and inappropriate remarks about an ex-girlfriend on the Internet. The detective admitted posting the photos and comments about the woman when questioned by the internal affairs investigators. His case was sent to the Maricopa County Attorney's Office, which declined to prosecute on felony charges of computer tampering. The detective was given a three-day suspension in June 2010.

- A sergeant was put on administrative leave for almost nine months after officers in his unit complained about his use of derogatory terms to describe Hispanics, blacks, and Asians. The sergeant was ultimately terminated and the city settled a civil claim brought by an Asian officer alleging workplace harassment for \$86,000 earlier this year.
- An officer was put on administrative leave for more than eight months after he was accused of stealing \$750 from the room of a man who had died at a Phoenix hotel. That charge was unresolved, but during the investigation it was found the officer had failed to complete or turn in more than 30 investigative reports in the time frame required by department policy. The officer was given a five-day suspension.
- An officer was put on administrative leave for eight months following a heated argument with his lieutenant. The officer had been called to the lieutenant's office to be put on leave over an earlier incident in which he got into an altercation with his sergeant. He was given a one-day suspension in April 2010.

The Goldwater Institute is not publishing the names of disciplined employees in an effort to balance an examination of policy issues with the privacy of rank-and-file government workers.

The reason officers stay on paid leave so long over incidents that end up drawing minor discipline is a failure of police administrators to prioritize their cases, said Dave Kothe, vice president of the Phoenix Law Enforcement Association (PLEA), the union that represents frontline officers. If an officer is being paid to sit at home, that case should take priority, Kothe said. Instead, investigations get caught up in "bureaucratic mumbo-jumbo" in the agency's internal affairs unit, where even simple cases can linger for months, he said.

The police union has been pressing for a six-month deadline to resolve disciplinary investigations, absent extraordinary circumstances such as a criminal indictment, Kothe said. In the latest round of negotiations with the city, management agreed to a provision that says disciplinary investigations should be completed within 180 days, but there is no consequence if they are not.

Having police sitting at home for months drawing a paycheck is a disservice to the officers, the department and the taxpayers, Kothe said.

"We find this to be totally ridiculous that you are spending years, literally, to investigate and finalize misconduct," Kothe said. "As a taxpayer, you are paying for a person to do a job

that their managers have decided ‘well, we’re going to give him a time-out right now.’ Your focus should be those guys that you have determined need to be home right now. Get that concluded quickly, efficiently and fairly and have a resolution. If the employee needs to be terminated, terminate him. If the employee’s conduct results in a suspension, suspend him. But get it done.”

DeBenedetto, the lieutenant in the police Professional Standards Bureau, acknowledged that the amount of time some officers have spent on administrative leave is frustrating. But resolving their personnel investigations is not as simple as it sounds, especially if there could be criminal charges, he said.

Several of the incidents that led to long periods of administrative leave were referred to the county attorney’s office to decide whether criminal charges were warranted. The practice has been to wait until the criminal case is finished before proceeding with the personnel investigation so that no criminal cases are jeopardized, he said.

Officers accused of a crime can invoke the Fifth Amendment protection against self-incrimination in a criminal case. They cannot refuse to talk in a personnel investigation. If they do, they will be fired.

Compelled statements from the personnel investigation cannot be used in the criminal case. If they are, a judge is likely to throw out the charges.

On the other hand, if an officer remains on duty and is later convicted of felony or fired, every case the officer was involved in will be in jeopardy, DeBenedetto said. That means even with simultaneous investigations, the agency will have no choice but to put some officers on administrative leave while their cases make their way through the courts.

“We don’t want to put ourselves and the community we serve in the position of losing a case based on a technicality that we felt, due to efficiency, we need to get somebody out on the street again,” DeBenedetto said. “I can’t imagine standing before a victim and saying ‘I’m sorry we let this officer back in before we should have and now the courts have thrown out his ability to testify and your case is out.’ How do you look that person in the face?”

The use of administrative leave for police took on a new twist when a judge blocked the Phoenix Police Department from proceeding with a disciplinary hearing that could lead to the firing of a police officer indicted on second-degree murder charges in October 2010. The charges stem from an on-duty incident in which an unarmed domestic violence suspect was killed.

The day after the indictment was issued, the officer was notified that his termination was being contemplated, and that he could make his case as to why he should not be fired in a meeting with Jack Harris, the city's public safety manager.

The officer sued, arguing if the city proceeded with its personnel case he would be forced to either give up his right against self-incrimination and talk to Harris, or face being fired. His union-hired lawyers asked that he be placed on paid administrative leave until the criminal case is finished.

Judge Donald Daughton of Maricopa County Superior Court sided with the officer, granting a preliminary injunction that effectively freezes the disciplinary case for now.

Phoenix City Attorney Gary Verburg said he is not aware of any similar case in Phoenix or elsewhere in which a judge has blocked a government employer from proceeding with a personnel hearing after an employee is indicted on felony charges. City officials will decide on whether to appeal after a final order is issued by the judge.

The police union sought the injunction in that case because Harris did not even wait until the personnel investigation was completed before scheduling a pre-termination hearing, Kothe said.

City personnel rules do not require a criminal conviction to fire an officer. The city only needs to show that the employee committed acts that could be charged as a felony. Therefore, an agency could proceed with discipline without waiting for the case to make its way through the courts. Conviction of a felony is grounds for automatic termination.

Kothe said the union would not fight the termination of an officer who is fired after being convicted of a felony. There would be no basis to challenge the action since a felon is prohibited from being a peace officer in Arizona.

The argument that leaving an officer who faces criminal charges on duty during an investigation could jeopardize other cases is a valid one, Kothe said. But there are other non-enforcement duties within the department that the officers could be performing, such as administrative functions and possibly transporting prisoners. The worst thing for a cop under investigation is to be forced to sit at home and wait, according to Kothe.

"You are paying for somebody to be doing a job they are not doing," he said. "For the individual officer, it's a nightmare."

## **Year-Long Nightmare**

For one Phoenix detective, that nightmare began after he told his live-in girlfriend to clear out of his home in Avondale. The couple had been in a volatile relationship since early 2007. By July 2008, they'd had enough of each other and the detective told her to leave. After the breakup, the detective created a MySpace page under a phony name and posted an angry diatribe about the woman, along with more than 20 nude photos she'd sent him while they were still dating.

After the woman discovered the page, she contacted the detective's supervisor to complain. By then the page had been taken down.

Nearly three months later, in October 2008, the detective was told to surrender his badge and gun. He was being put on administrative leave and sent home to await the results of the department's investigation. His house was searched and his computer seized.

The detective was told he had to stay at home between 8 a.m. and 4 p.m., available to be called in for duty. He was not allowed to identify himself as a police officer. He was not allowed to discuss the allegations against him with anyone except his legal representative and department investigators.

"It's not just the fact that you turn over your badge and gun," the detective said. "You turn over your life."

Initially the investigation was intense. Detectives from the Professional Standards Bureau grilled the officer aggressively, repeatedly calling him a liar and pounding their fists on the table, he said. The detective admitted to everything up front. He said he was angry when he created the MySpace page and posted the disparaging remarks and photos to warn others about the woman.

The detective says now that the MySpace postings were stupid and immature but clearly not a crime and not something he should be fired over.

After the initial round of interrogations, the detective waited. Weeks passed, then months, but still no resolution. The officer said he became an emotional wreck. He began drinking heavily. When 4 p.m. came, he would clear out of his house. He became paranoid and withdrawn. Friends stopped calling him. Co-workers became suspicious of him.

"You think 'what should I do now?'" the detective said. "Should I kill myself, put myself out of my misery? Is that what the department wants me to do? Do they want me to take

care of it myself so they don't have to worry about investigating me anymore just to be done with it?

"When I'm in prison at my own house, I did everything I could to get out. At 4 o'clock I would get in my car and leave. Every minute that I had that I could get out of the house, I left. It was like my own personal, giant prison cell."

The only reprieve the detective had was testifying on cases he'd completed before being put on leave. He said that while sitting in court, he wondered if his department would try to put him in the defendant's chair.

As for his open cases, they sat idle while he was on leave, he said. Other detectives had their own work to do. His investigations were his responsibility, and no one worked them for a year, he said.

"That makes you feel terrible because now you feel like you are letting the family down because you can't do the job that I was paid to do, that I took an oath to complete," he said.

Phoenix police sent the results of their criminal investigation to the Maricopa County Attorney's Office to determine if any charges should be filed. The file apparently got lost, and the case languished until August 2009, when prosecutors notified the department no criminal charges would be filed.

About that time, the command staff in the detective's unit changed and his new boss pushed to get the case resolved. The detective was returned to duty in October 2009, a few days short of a year after he was placed on leave.

The department finally imposed the punishment in June 2010: a three-day suspension without pay.

"I think I was a waste of money for a year," the detective said. "If you are a taxpayer and you are looking at what happened to me, I would think that you'd say if he did anything that bad, fire him. And if he didn't, put him back to work because why waste my money having this kid sit around the house doing nothing?"

"You lose everything. I lost my identity, my friendships. I lost my passion for the job, which I've since gotten back because I want to catch bad guys. That's what I do."



## **Personnel Rights And Public Safety**

The cases involving prolonged administrative leave at the Arizona Department of Public Safety (DPS) are similar to those at the Phoenix Police Department. So is the explanation given by agency officials.

The two DPS cases in which a worker spent the most time on administrative leave involved criminal allegations. Both employees were terminated.

The first, a worker in the evidence room, was found to have been stealing money seized in forfeitures from evidence envelopes, according to agency reports. More than \$22,000 in seized cash was missing. That employee spent a year on administrative leave. In August 2010, he was dismissed for “commission of any crime classified as a felony,” meaning he was found to have committed acts that could be charged as felonies even though he had not been indicted.

The other officer who spent the most time on leave was a narcotics detective who obtained fraudulent prescriptions for painkillers. He eventually pleaded guilty to two felony counts of facilitation to illegally obtain a narcotic drug. Before he was fired in March 2010, the officer spent about 10 months on paid leave.

But other DPS cases seem far simpler.

Several officers spent months on administrative leave as domestic violence allegations or other off-duty conduct was investigated.

Among those put on leave for on-duty conduct, one officer was recorded shouting profanity and threats at a motorist he suspected of smoking marijuana. It turned out the driver was smoking a cigar. That officer was terminated after three months on paid leave.

Another officer who had injured his back spent almost four months on paid leave when he was found driving erratically on Interstate 10 after having a bad reaction to pain medication. He ended up with an 80-hour suspension.

Capt. Dan Mitchell, commander of the Professional Standards Bureau at DPS, said long periods of administrative leave typically come because there is a concurrent criminal investigation into the officer’s conduct. The agency’s practice in the past has been to wait until the criminal investigation is done before proceeding with the personnel case. Aside from ensuring compelled statements made in the administrative investigation do not jeopardize the criminal case, the policy allows criminal investigators to turn up evidence

through such things as search warrants, which are not available to internal affairs investigators, he said. In some instances, such as domestic violence cases, agency officials also want to make sure an officer does not have underlying emotional or stress issues that might pose a danger to the public, Mitchell said.

Steve Campbell, who until recently was the deputy director of DPS, said the agency has been looking at ways to streamline its personnel investigations and ensure people are not placed on administrative leave longer than they need to be. But the decision in each case is going to be what's best for the public, he said.

"Based on what the allegations are, do we risk the credibility of the agency by allowing this person to work out there?" Campbell said. "We've got to look at the balance there, to maintain the credibility and integrity of the department and the safety of the employee and the community, to make that judgment of whether that person goes on administrative leave."

## **Costly Wait**

Cops are not the only government workers who spend months on paid leave pending disciplinary investigations. The 88,000 hours of leave imposed by state agencies outside of DPS did not involve police officers. Typically there were corrections officers and benefits clerks.

The most costly employee for the state was an assistant attorney general put on paid leave for almost eight months after a judge complained he was missing court dates and had submitted legal papers riddled with errors. That cost the state \$67,994.

The lawyer responded with a threatening letter on the Attorney General's letterhead, in which he told the judge she had defamed his reputation by calling him incompetent. He wrote that he had contacted the Arizona Commission on Judicial Conduct and was contemplating a lawsuit that would embarrass the judge.

"Perhaps a public airing of this matter would enlighten Arizona citizens of some of the realities of Arizona's judicial system," the lawyer wrote.

Some of that time the man spent on leave was to allow the agency to conduct its investigation, according to court records. But part of it was because the agency was trying to coax him into a settlement through which he would retire rather than be fired, court records show.

Pamela Culwell, chief counsel of the civil division at the Attorney General's Office, said the case dragged on so long because the agency determined it would be cheaper and easier to negotiate an agreement allowing the lawyer to retire rather than try to fire him. The man had been with the agency for more than 33 years and was the last assistant attorney general covered under merit protection, Culwell said. The lawyers in the agency are now at-will employees.

That explanation does not sit well with other agency directors, who rely on the attorney general's office for advice when they try to fire an employee.

## **Policy Corrections**

Charles Ryan, the state corrections director, said when he took over in January 2009, he found too many employees on paid leave and too many disciplinary investigations languishing, in part because of the advice the agency was getting from the Attorney General's Office.

In the two-year period reviewed by the Goldwater Institute, the Department of Corrections had employees on paid administrative leave for 26,624 hours. That works out to almost 13 years.

The state employee with the most time on administrative leave was a prison guard who was charged with drug trafficking. He was kept on the payroll and spent almost 2,400 hours on paid leave at a cost to taxpayers of more than \$45,000. He resigned in May 2010, a month after pleading guilty to a felony charge of attempted money laundering.

Another case was more even more costly. In September 2008, a corrections department sergeant used his cell phone to take photographs of an inmate killed at a Tucson prison and then showed the pictures to other employees. Three corrections investigators were aware of the incident but failed to mention it in their departmental reports. All three were placed on paid administrative leave pending a disciplinary investigation. The total amount of paid leave that resulted from that incident was 3,457 hours. Cost to the taxpayers was more than \$67,000.

The officers ultimately got 40-hour suspensions.

The cases involving the three corrections officers were among those Ryan ordered to be resolved shortly after taking over as corrections director.

“They were sitting at home because the supervisors or division directors at the time thought their behavior was far more serious than what we saw,” Ryan said.

Since the Goldwater Institute began asking questions, Ryan revamped his policy on administrative leave to ensure corrections workers are not sent home with pay any longer than they need to be. Unless there is a compelling reason for a worker to be sent home, employees will be expected to show up for work.

## **Expensive Office Spats**

The agency that used administrative leave the most during the time examined by the Goldwater Institute was the Department of Economic Security (DES), with 38,246 hours, or the equivalent of about 18 years.

The DES workers who spent the most time on leave tended to be benefits specialists who processed applications for state aid. One woman was put on administrative leave for more than seven months after she got into an argument with a co-worker over how to process a benefits card. She ended up receiving a 16-hour suspension.

Another benefits worker was dismissed after seven months on paid leave. She’d told a client to lie about how much money she made so she could qualify for assistance, according to agency reports.

One employee in the office spent more than five months on administrative leave after he complained that a supervisor took money out of an account created by employees to pay for office parties. He became irate and confrontational when other supervisors got involved, and eventually drew an 80-hour suspension.

Brian McNeil, the governor’s deputy chief of staff for operations, said the reports generated for the Goldwater Institute have spurred discussions with agency directors on ways to minimize the amount of time state employees spend on paid administrative leave during disciplinary investigations. Paid leave should be a last resort, not simply a way to remove a problem employee from the office, he said.

“People have a right to know that their taxpayer dollars are being paid to folks for work rendered or leave earned,” McNeil said. “There’s a lot of gray and there’s a lot of times that it’s not a real easy call. That is not an excuse for anybody taking an undisciplined approach to admin leave. There’s no excuse for it. I’m confident that people have received the message from this exercise.”