

# The RAPSheet

Summer 2010 • Quarterly Publication

## Fitness tests in contracts

By: Joseph Andalina

Many of you have asked me about physical fitness tests over the past decade. Do we put them in a contract? In what form? Should we agree to discipline? For years, I have recommended a big NO to chapters who inquire as to the reasonableness of fitness tests in negotiated contracts.

I've seen plenty of cops screwed over by these so-called measures to determine fitness. Yes, usually they are the large-in-frame guys who suffer



the most, or one can say those officers who are a little on the heavy side. The targets are usually limited to the beer bellies and those who demonstrate a liking of ingesting gourmet food like Big Macs, BK, and the like. I know guys who never could say no to an extra large bag of Fritos, and this comes back to haunt them in their “middle” and middle years of police work.

That doesn't mean they are unfit. These dudes can squeeze your head together like a rotten pumpkin—but of course they have to catch you, first. Some of them can run pretty good, however, for big dudes—but only for short distances. Like lions chasing the zebra. Stay ahead of them for about five minutes and you may be okay. But if they catch you, a “ham sandwich” against the side of your head awaits you.

There is nobody better when you have to pull some obnoxious drunk

off of a bar stool. Most of these big dudes passed their agility tests at one time and continue to do the job in all its glories, regardless of their increasing waist size, and this trait makes the big guy attractive when head-banging is due.

They can write the reports, shoot the apple off your head, and pound someone's rear into submission, if needed. The heavyweights of our department never bothered me. Live and let live is one of my 3,127 mottos. But some chief or skinny, metabolically challenged brass guy will wake up one day after 10 years of Jenny Craig and say hey, you know what? We don't need more hefty guys. Poundage is not productive. We need buffed out dudes and dudettes. We need an IMAGE! Like Chuck Norris! Yeah—that's the ticket, or maybe we can settle for David Hasselhoff (but only if Pam Anderson comes too).

Continued on page 8

### Table of Contents

Chaplain's Corner	2	Garrity Rights	10
Chief's Follies	3	Contract Corner	14
Freedom of Information Act	4	Legal Defense chapters	14
Legislative News	6	Bits n Pieces	15
Member News/Elections	9	MAP News	15
		Member Departments	16



# Chaplain's Column

## Metropolitan Alliance of Police

### Board of Directors

Joseph Andalina  
**President**

Keith George  
**Vice President/  
Treasurer**

Richard Tracy  
**Secretary**

Jeffery Ortinau  
**Legal Advisor**

Michael O'Brien  
**Director**

Raymond Violetto  
**Director**

John Holiday  
**Director**

### Chief Counsel

Joseph Mazzone  
**Co-Counsel**

Richard Reimer  
Steven Calcaterra

### Additional Counsel

Ronald Cicinelli  
Chris Potthoff  
Keith A. Karlson  
Jerry Marzullo

David Wysopal  
Jeffrey Goodloe  
Karen Zajicek  
Nicholas Caputo

215 Remington Blvd  
Suite C  
Bolingbrook, IL 60440  
630/759-4925  
630/759-1902—fax  
e-mail: [mapunion@msn.com](mailto:mapunion@msn.com)  
[www.mapunion.org](http://www.mapunion.org)

By: Thomas Ross

Have you ever wondered the secret of what makes the garden grow? Well, no real surprise; it takes sunshine, water, fertilizer, weeding and a bit of love and luck. Being from Brooklyn that was a lesson I needed to learn after arriving in the Midwest.

Now, what makes kids grow? Once again, the formula is quite easy. It is Love, and a large dose of it. As parents we make sure they have good foods and eat a balanced diet. We try our best to have them exercise. They need responsibility too. We need to listen to them and they need to listen to us. They also need rules and guidelines and a framework within which to live their lives. How do they gain this framework for their lives? Do you remember how you gained that framework?

I present to you that so many of us were raised in 'God fearing' families that had faith in our family structure and that faith provided a strong basis of how we formed into who we are today. But we all admit, that was years ago when things of life were much simpler. Was life simpler? No, not really. We had the Vietnam War, anti-war marches, high interest rates, unemployment, price freezes and salary freezes. And we had a stronger base of people belonging to a Church, educating their children in their faith and attending Sunday services as a family. Let's look at faith in this way. We certainly wouldn't withhold love, or food or opportunity from our kids. I would then think it is natural then, to make sure they have every opportunity to be exposed to faith, a church and knowledge of God's great love for them. Then they'll really grow... on the outside and on the inside, too!

It's that simple! If we keep ourselves in faith, we will feel much better about ourselves and the example we set for our children. Here is an idea, if



you have a child who has missed some religious education, you could contact your church and get some materials to help them get caught up. You might even do this as a family. If we're honest with ourselves we would have to admit that all we have received and continue to receive merits a whole lot more than spending one hour with God each week. So, start with that. Revisit those meal prayers, and how about bedtime time prayers? When we stay close to God things just seem to go better.

And when God seems far away we can ask ourselves the question, "Who moved?"

May the richest of God's blessings come your way this summer. May you find God's work and God's word in the beauty of nature and in each new day. PLEASE, stay safe out there. I like the thought I saw inside of a locker door of an officer that read "I DON'T KNOW ABOUT YOU, BUT I AM GOING HOME TO MY FAMILY TONIGHT." Good thought! Good way to approach every shift.

Peace  
Chaplain Tom Ross Sr  
[sligo8@wowway.com](mailto:sligo8@wowway.com)

No part of this newsletter may be copied or reproduced without the express written permission of MAP.

# Chief's Follies

By: Joseph Andalina

## #1. Do as I say, not as I do.

Yep, that's what's going on in Morris as we head into contract arbitration in that chapter. Entering into the second and third year of a collective bargaining agreement that has a wage reopener for those years, the city offered a 2% increase, which was unanimously rejected by the chapter. Now the city wants us to be fair. After all, everyone is hurting—except the city fathers, of course.

City officials have all voted themselves a 5% pay increase for the next several years. Takes to new heights the above title to this entry, does it not? They have nerve.

Our members offered a matching 5% increase for the remaining two years of the CBA for our cops and then suggested generously donating it back to the city, provided that all the city officials do the same thing with their raise. Exceptions would be for any retiring officers during the next two years. At press time—no takers.

## #2 Quack, Quack, Quack

At a recent Village of Bolingbrook town meeting, the room was full of pissed off cops, firefighters, civilian employees, friends, and fellow countrymen. All assembled to hear the banter of our belligerent, bulbous, and Boss Hogg mayor of Bolingbrook as he and his board tried to

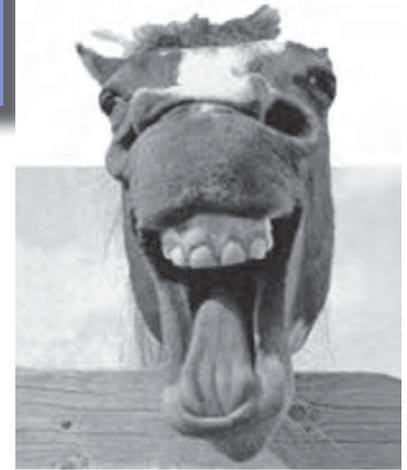
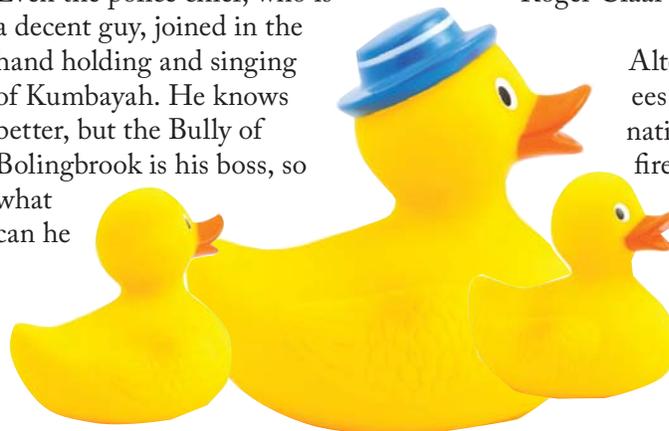
explain why all of the above employees would have cuts in their departments.

Layoffs loomed and the village officials attempted to dance around the fact that they took raises last year, but not this year. It was a typical "bait and switch" routine to make themselves look good, but nobody was buying into their baloney.

So 38 people got laid off because no one took any concessions in any union for a political leadership that would rather throw money at a municipal golf course instead of their loyal workers. Rather, the village will reduce costs while laying off all those workers, but promise to maintain services. This political speak means more work today than you had yesterday with fewer people.

Village officials told a packed audience that staff reductions will not affect the community. More political speak, because you can't say that revenues being diminished would result in reduced services. That is political suicide. But we all know that somewhere along the line you will discover that you cannot put a square peg into a round hole.

Even the police chief, who is a decent guy, joined in the hand holding and singing of Kumbayah. He knows better, but the Bully of Bolingbrook is his boss, so what can he



say? Two less cops on the street means that at the least, calls may back up, or back-up to an officer may take more time because staffing of the street is down. But why would a politician worry about officer safety on the cold, dark streets on midnights?

The local MAP chapter president, as well as the firefighter union president, both gave it to the officials, who eventually turned a blind eye and a deaf ear to the soliloquy of these two gentlemen and numerous citizens who spoke on behalf of the employees. (See the very eloquent speech of Officer John Ward on our website.)

In fact, when the Bully made a comment that the union did not take up his offer to meet and discuss concessions and followed that up with "the Village offered alternatives to layoffs" employees in the stands called Roger Claar (the mayor) a liar.

Alternatives that the employees would like to see? Elimination of fests and jubilees, fireworks display and other non-essential functions. But that won't happen, as some on this Board have never met a cock-tail they didn't like.

Continued on page 5

# The new Illinois Freedom of Information Act

MAP's co-counsel attorney, **Richard Reimer**, provides an analysis of the new IFOIA, which took effect in January of 2010. This is Part II of this important legislative change. Keep in mind that some of the notable changes reflect the reduction of fees that can be charged, a list of documents that no longer need an FOI to obtain, a reduced response time for entities to provide the information requested, and an appeal process, among others.

## EXEMPTIONS TO DISCLOSURE

Denials of FOIA requests must: (1) be written; (2) issued in a timely manner; (3) explain the particular factual and legal reasons for denial (citing the applicable statutory exception); (4) identify the person(s) responsible for the denial; (5) inform the requestor of the right to have the decision reviewed by the PAC; (6) provide the address and telephone number of the PAC; and (7) inform the requestor of their right to seek judicial review of the body's decision.

Exemptions to disclosure are to be narrowly defined and applied. When a document has some information that is exempt and some that is non-exempt, the body should redact the exempt information. There are several other exceptions to disclosure under §7 of the FOIA. Some of these may apply to pension funds in narrow circumstances. Pension board trustees should read all of §7 to understand all of the FOIA exceptions. If a trustee has a question, (s)he should ask for guidance from the FOIA Officer or the board's attorney.

It should be noted, any information that is privileged from disclosure under state (e.g. attorney-client privilege) or federal law (e.g. HIPAA) is exempt under §7(a) of the FOIA. A discussion of all these privileges is too numerous to discuss. However, three exceptions, due to the likelihood they will be asserted by pension board, warrant additional discussion.

Documents containing private information are exempt from disclosure under §7(b) of the FOIA. Under §7(b), the following are exempt from disclosure and should be redacted from documents before disclosure: personal addresses, telephone numbers, and e-mail addresses, personnel files, passwords, biometric information, social security numbers, drivers license numbers, medical records, and other unique identifiers.

Under §7(c), personal privacy is a legitimate exemption to disclosure. In a case-by-case basis, the public body must balance the public's interest in disclosure with the level of intrusion on personal privacy. When asserting this exemption, the public body must submit the proposed denial to the Public Access Counselor for review and approval. For instance, dates of birth are not exempt under §7(b); however, they are routinely approved by the PAC under §7(c). Nonetheless, before redacting a date of birth from a record, it must be sent to the PAC for approval under §7(c). The PAC is in the process of developing a standing order regarding dates of birth to avoid this exercise.

Under §3(g) requests that are "unduly burdensome" to respond to may be denied by a public body. Before denying the request, the public body must balance the burden of complying with the request with the public interest in the information. However, before denying on this basis, the public body must give the requestor the opportunity to narrow his/her request. "If any body

responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body." 5ILCS 140/3(g).

## COPY FEES

With regards to copy fees, the first 50 pages are free. After 50 pages, the board can charge a maximum of \$0.15 per page. However, if electronic copies are requested the board can only charge for the actual cost of the recording medium. Meaning, if the information is provided on a CD, the requestor is only charged for the actual cost of the CD. The public body may charge the actual cost of reproducing oversized or color documents. The board can require copy fees to be paid prior to making said copies. However, the board cannot require a person to make copies; if the requestor wishes to inspect documents without making copies, he/she must be allowed to do so. A public body is never allowed to charge for the labor involved in responding to a request.

## THE PUBLIC ACCESS COUNSELOR AND REMEDIES UNDER THE FOIA

In the past, the only way to dispute a municipal denial of a FOIA request was in court. People who believe a public body has violated the FOIA still have the option of seeking redress in court. However, now, review by the

---

Continued on page 12

# Chief's Follies

Continued from page 3

But Roger says no one in the community ever said to him to eliminate these parties, so the show must go on. Nice, eh? Let's lay off some workers so you can have your party. We aren't even talking about the Bolingbrook Bleeding Red Ink Golf Course or real estate projects, either.

As the meeting ended, the movie *The Mighty Ducks* comes to mind as Gordon Bombay (Emilio Estevez) asks his hockey coach nemesis what he is, as well as his own hockey team—are you a Hawk or a Duck?

Just like the movie, some in the Bolingbrook Village Hall meeting began the “quack, quack, quack” response. They were not talking hockey here. In this case, it was more of a derogatory gesture, rather than a supportive team making one. They were illustrating how the village board continues to follow the Big Duck Mayor. All the little ducklings follow Papa as they vote as one mind for the lead duck of Bolingbrook. It puts new meaning to the concept of ugly ducklings.

## #3 An unhappy camper in Barrington Hills

As we reported last issue, MAP was contacted by Barrington Hills officers who overwhelmingly signed majority petition cards for MAP to be their collective bargaining agent. The village filed unusually stupid motions to prevent the majority petition certification of the petition by the ILRB.

In an April 27, 2010, letter, the attorney for Barrington Hills again tried to quash the petition once more by appealing to the ILRB to interview three officers that the attorney felt did not want to organize. We don't quite get what they're alleging, but he accused two other officers who were involved in the organizing efforts as being agents of MAP, which is pretty darn stupid, as well as being baseless and just not even remotely true. While he cites the names of these officers, he is quiet and leaves out the names of the officers who he says did not want a union—like everyone in Barrington Hills does not know the couple of people who are opposed to the union.

But MAP did get a letter from one of the guys who doesn't want us. We are printing it in its entirety on our website, as “baloney” just doesn't go well with our hard copy Rap Sheet. I responded in my own usually satirical, or as some say, sarcastic manner, and that response can also be found on the web. I do hope that this issue of the Follies does not cause that fellow anymore anguish. We all here at MAP are truly sorry that he feels bad and maybe has a stomach ache. But at least the mayor and the brass are there to console him.

Maybe if those who do not want a union just think of the vast majority who do, they will see that this is what a union is supposed to do—fight for them. We are all brothers and sisters in law enforcement, even though some-



times we can't all just get along, just like real brothers and sisters. I think a quote I read in a recent sports article sums this up best. It's from a Dave Mason song lyric, “There ain't no good guy, there ain't no bad guy, there's only you and me, (union and management) and we just disagree.”

That is the point, as the allegations that Barrington Hills made which MAP had to respond to and fight against, were dismissed by the ILRB. If they would stop filing all this bs, we could just get down to business and negotiate. It's strike two now and the third strike is looming. It's a high fast ball coming right at them.

At this writing, they are swinging and we expect Strike 3 very shortly, but not before we go into production for this summer issue of the Rap Sheet.

Such poor sports they are I say, in my best Yoda imitation.

## #4 Claar and the Kash Cow

And you thought we were done with Rog!

In a recent Daily Herald blog, a blogger had a piece about the Mayor of Bolingbrook. See? I am not the only one who reports on the doings of one of the suburbs “colorful mayors.” They were talking about him organizing a recent fundraiser for another Republican

Continued on page 7

# Legislative News

By: Joseph Andalina

Well, good, bad or indifferent, our lawmakers in Springfield are done until fall. It was a mixed bag of laws, accomplishments and utter failures. But they did resolve the monkey issue—we'll get to that.

There was a sexting law passed. Okay. They did something to protect the horniest of our kids. They combined the governor and lieutenant governor's offices to run as a team. Our legislators messed around with the red-light cameras, too, giving their citizens a pass on white line fever! Not willing to give up their kashkow, they did relent into not giving tickets to motorists who cross the white line or crosswalks at intersections. If your front end even touched those lines, you bought a \$100 ticket. Until those cameras came out, I never even knew you could get a ticket for that. Traffic guys might have known, but the average cop—nope!

The problem with these tickets, in my perspective, is simply that cities took an administrative violation and fine and threw it on the cops to handle an irate public who kept getting socked with \$100 fines. We look like the bad guys (once again) and we were not even there. So then they had cops review the videos of violators and then had us approve the tickets.

Nice, huh? The public gets to dislike us more and we didn't even stop them! Money will continue to roll in, but I'll bet it will not be used to increase any cops wages or benefits.

They totally handed the teachers asses over to them with their pensions, too, didn't they? Politicians and municipi-

pal leaders caused pension problems and new teachers (for now) will get vastly deflated pensions by mid-century when the newbies become oldies and retire, or at least try to.

Don't laugh. We are next. Some police and pension coalitions are trying to negotiate a reduced pension for law enforcement under the guise of well, they are going to do it anyway, so lets have a voice that the teachers didn't. Here at MAP we prefer to fight and get out the vote against these politicians, many of who have their own pensions and only now are supporting reform. The word is that the politicians rejected the coalition reform measures negotiated by some unions and pension groups. I am not surprised. I think the politicians are scared of the 2010 elections and will just wait and screw us over later with a similar slap in the face like they gave to the teachers.

When they figure out an age limit that you can retire at, then you'll see cop pension reform. In the meantime I keep preaching to join forces and fax, write, call, and e-mail your legislators and demand that they pay their premiums as mandated by law and watch the pension debt reduce. Tell them to leave our pensions alone. Trying to negotiate with some of these devils will get you nowhere.

And of course, there is no budget. No new taxes. No fixes. No nothing, so it's more of the same until next year. You can make your own call on that one.



Finally in this abbreviated synopsis, it is now illegal to own a monkey in 2011. Yes, no more Capuchins, Squirrel, Spider, Marmosets, Rhesus or Orangutans as pets in Illinois. No more worries of roaming bands of baboons in Springfield storming the capital. No wait—those were Democrats cans! Can't rein-

and Republi-wait for the carnation of the Tennessee "Scopes Monkey Trial" from 1925.

The fine for having Koko in your garden on a foggy day while reading *Gorillas in the Mist* is a hefty one. It's up to \$1,500 or 30 days in the zoo, no, er, joint. November 2010 can't get here fast enough, can it? Do your homework, folks. Time to back up the truck and clean house, just like our White Sox and Cubbies may do this fall.

I feel so safe now. How about you?

# Chief's Follies

Continued from page 5

hopeful at the village's posh golf course.

Claar, whose service to the ideals of raising cash for his endless political campaigns (where nobody runs against him and when they do, he kicks them off) reportedly suckered, er, I mean raised about \$5,000,000 in cash over the last decade, according to the blog.

They also report that nearly half of his campaign cash comes from companies or individuals who have done business with the Village of Bolingbrook. Those contributors in turn got over \$300 million (a lot of zeros!) in work from Claar and his ducklings.

The Boss Hogg has also taken heat over how he spends the finances, like on trips to the Bahamas, China, and I think India. Much, I guess, can be brought back to the Village of Bolingbrook after a week or two in such exotic locals that help and assist the people of this nice town. Guess what he provided to the employees with all that cultural exchange? Over 40 layoffs, folks! Must have gotten that from the Chinese government. It's better than a tank aimed at you, as the famous shot of Tiananmen Square constantly reminds us.

But to Roger's credit, he has evaded the feds and other investigative inquiries, as well as the media into his campaign affairs and other issues. The law does allow politicians to blow their wads of dough in campaign funds on anything that is linked to their government functions. I would love to read those reports on the Bahamas and India. I could imagine—my trip to the Bahamas was so I could make sure that nobody OD'd on bad drugs in Boling-

brook like Anna Nicole Smith! Or my trip to India was valuable as I learned how to bring over ideas about the Taj Mahal and apply that to my, I mean the Village's very own Rog Mahal (aka Bolingbrook Golf Course and Clubhouse). And we already discussed China, the land of many political and basic human rights violations.

You have to hand it to the mayor—he knows the meaning of pay, or is it how to play the game! I wonder if he has visited Hugo Chavez or Fidel yet. If he did, I hope at least he brought back some cigars!

## #5 Taking Command

I guess when you have a chief where street cops have the town under control with minimal crime, it's the little things that irk them. The chief in McCook is a case in point. He has put out orders not to park squads in front of a fire hydrant or in any area marked by a yellow curb at a fire lane otherwise your car will be ticketed or towed.

Okay, generally that may be okay but really, must the cop park down the road to answer a call because there is a yellow curb, a fire hydrant or lane prohibition in front of the dispatched location? My, oh my, how far politically correctness has come. Be specific here, Chief. This should be left unsaid. Unless you spot the officer in front of Panera's getting his Mediterranean Veggie sandwich, where's the beef? (excuse the pun). Can they park along the yellow curb if on a call? What gives? These are time honored

traditions and lead to rapid response times. Surely he must know that!

Also, the chief found the microwave dirty because an unknown person put something in it and it blew up. I don't know what blew up—maybe a Lean Cuisine or warmed up Tortada. Remember that “thing” at Taco Bell is not a sandwich—it's a Tortada! I hope that wasn't what blew up. Maybe somebody's cat found on the midnight shift (eww!)

Oh well, the chief left the mess for a week! Instead of just cleaning it that day, he left it. He waited for the maid, the perpetrator, or the Girl Scout Brownies to clean it, but nobody did. Knowing cops, a little residue in the oven is not a big thing when one is hungry. So a week later, the chief cleaned it and put out an order that states if “you dirty it, you clean it.” Okay; I can buy that, but he adds “if you don't, the microwave will be removed.”

It's always something that gets our old goat's goat and the microwave in McCook is one of them. (Chief, I'm not calling you an old goat. It's a term of endearment for our leaders handed down from cop generation to generation—like a watch, only with horns. So please, no disrespect there. I, too, am an old goat sometimes, but I don't take away anyone's toys.

Peace.

*Well, we draw to a close until next issue with many other candidates sent in by our faithful readers sitting in a pile on my desk. So many Follies, so little white space...*

# Fitness Tests

Continued from page 1

An image of the pro-military fighting man or woman, buffed out in their summer “blues.” Muscles rippling (as long as you cover those tattoos) and some positive comments on how “fit” this department has become is what they want to hear.

So the chief lays out stats on heart attacks (completely ignoring the fact that it is he who is the #1 cause of heart failure in his department, as well as sick leave) obesity, overweight cops, food labels and the difference between fructose and corn syrup. “See,” he says as he nibbles on his granola bar, “lookie here, my staff should not be eating junk food.” If I can eat this crap, er, I mean health food, then so can you guys! He agrees with Michelle Obama that we are all way too big for our “britches.” Pretty soon police departments all over the USA will have their own vegetable gardens. Organic, too!

So they do some research with the usual suspects, FBI, other departments, fire houses, and Kirstie Alley. Cop brass are assigned to view videos such as *The Biggest Loser*, *Roseanne* (a show about two obnoxious tubbies with a dysfunctional family - sort of like a few police agencies you may know) re-runs of the not-so-slim Mayor of Bolingbrook directing Village Board meetings, and flicks starring Orson Wells in order to gauge varying degrees of “largeness.”

Then they compare these with cop shows like *Magnum PI*, *Serpico*, and *Miami Vice* where the police are always looking good shirtless, with trim beards or pastel colored suits. Series like *Cannon*, *In the Heat of the*

*Night* and *Columbo* are not allowed, as the main guys are either overweight or wear crumpled clothes.

Nothing worse than an overweight cop wearing crumpled clothes—except if he’s eating a donut, too. Bad for that image thing.

Well, after the chief reviews the report by his DC or whomever, he thinks “this is proactive. I’ll be saving lives. This could get me into the FBI Academy and I can have a fleet of well-oiled uni-deputies or uni-cops. Ready for action, ready for toil. Fit, sharp, and I can get rid of those who aren’t. But I will have to be careful here because the mayor and the trustees are known to like a good surf and turf and Fettuccini Alfredo, after some antipasto and before some tiramisu.”

So the fitness test comes up and the young guys like it because they are new and fit and trim and still find this job to be an adventure. After they patrol the same streets for a few years, get no promotions or reassignments, and cleaned up all the parkers on midnights, and have seen through the DC’s crap on advancement, they, too, will see the glory of the neighboring Dunkin Donuts, Tico’s Tacos, or Vinny’s Beef Emporium (especially if it’s half-price!). Food is a stress reliever; otherwise we wouldn’t have the Food Network!

They will then join the ranks of the veterans who know they couldn’t do a sit-up if you threatened them with pepper spray. But the concept is good and everyone wants to be healthy and live long enough to retire so that you

can die of stress after years of that crap building up from your chief, regardless of how many pull-ups you can do.

The brass devises a mile run, sit-ups, push-ups, pull-ups, ladder climb, bench press, and a “speedo” test to see who is really fit. Oh, how nice you will look in that skimpy bathing suit, officer, after we trim some fat. I say go for it, fellas, if you want, but do a couple of things. Call Jimmy Johns! No, wait; only kidding.

Keep in mind the old guys. Soon, your retirement date could go from age 50 with 20 years on, to age 67, just like the teachers, or maybe more like age 55. But things may change in the age category in years to come. Also, us old guys are incapable of acting like 25-year-olds unless we are in a bar, or find ourselves trying to impress that chick from Hooters. So having us do sit-ups is useless. We are not in competition with those right out of college. So any fitness test has to be age-friendly. Add some tests where old guys can use their walkers or where you can drive around the block to catch the bad guys while eating some sliders. Or you can get back to your beat before your sergeant finds you. Now that’s a true fitness test!

So put a couple of things in the contract if you must have a fitness test in it. Incentives based on passing variables can get you extra pay, days off, shift selection, and coupons at Wendy’s if you can actually do that sit-up. No punishment for failure, either. And I mean none. Failure should not be an option, folks.

Example: In my department years ago

Continued on page 13

# Member News and Local Elections

## **Crystal Lake**

Jeremy Beasley  
Ingrid Ketchev

## **Chicago State Univ**

David Harris  
Chester Montgomery

## **CSU Sgts**

Sharon Robinson  
Charles Steward

## **Crete**

Neil McMahon  
Christopher Young

## **DeKalb Co**

Douglas Brouwer  
Shelly Martin  
David Rivers  
Lexi Sachs

## **East Dundee**

Andrew Ritter

## **Hanover Park**

Kevin Pini

## **Lakemoor**

John Meredith

## **McHenry Co Court Clerks**

Jennifer Arndt  
Laura Hart  
Regina Jamieson

## **Metra**

Thomas Babusch  
Kirby Ball  
Kevin Brice  
Joshua Klima  
Henry Palm

## **Prospect Heights**

Jesus Duron

## **Seneca**

Daniel Ellis  
Michael Taylor

## **St Charles**

Lucas Sopcak

## **Wescom**

Katy Falencykowski

## **Promoted**

## **Hoffman Estates**

Mark Mueller

## **Huntley**

Leonard Marak

## **Wescom**

Jan Savage

## **Retired**

## **DuPage Co**

Larry Samora

## **Norridge**

Kenneth Ewanio  
Michelle Mayer

## **Oak Lawn**

Edward Ryba  
Charles Zylius

Congratulations to all of the officers who have been recently elected to their local boards.

## **Bartlett Civilians**

Diane Fuentes *President*  
Matthew Perry *Steward*  
Jean Schuelke *Steward*

## **West Dundee**

Jim Breon  
Mike Hicks  
Scott Rose



**Have a safe and happy summer!**

# Garrity Rights

By: Jeffery Ortinau, J.D., Legal Advisor

Previous articles in The Rap Sheet discussed internal investigations and the protection of the officer's rights under Garrity. The following is a summary and recap of Garrity.

The Garrity rule comes from the United States Supreme Court case of *Garrity v. New Jersey*. It is the right of a law enforcement officer to be free from compulsory self-incrimination. The basic thrust of the Garrity Rule is that a department member may be compelled to give statements under threat of discipline or discharge but those statements may not be used in the criminal prosecution of the individual officer. The courts have held that choosing to work in a police department does not give a person a "watered-down" version of their Fifth Amendment right against self-incrimination.

Before a law enforcement agency can discipline an officer for refusing to answer questions, the agency must do the following:

- Order the officer to answer the questions under threat of disciplinary action,
- Ask questions that are specifically, directly and narrowly related to the officer's duties or the officer's fitness for duty, AND
- Advise the officer that the answers to the questions will not be used against the officer in criminal proceedings.

After being given this warning and the officer refuses to answer the questions, the officer may be

disciplined for insubordination.

When is an employee ordered to answer a question? The order can be oral, written or implied.

An employee is ordered to answer a question if:

- The officer subjectively believes that he/she is compelled to give a statement upon threat of loss of job (or other discipline that would constitute a substantial economic penalty)
- The officer's belief is objectively reasonable at the time the statement was made.

## Routine reports

The law in this area is not entirely settled. However, the general consensus is that routine reports prepared by law enforcement employees are not considered to be compelled. It is unlikely that any officer would believe that failure to prepare a routine report concerning an incident would result in a severe sanction such as dismissal or a lengthy suspension. The few cases that have addressed the issue have agreed and held that unless there an officer has an objectively reasonable belief that failing to complete reports would lead to dismissal or some other serious sanction, it is not compelled. If under normal circumstances an officer would be punished for insubordination or poor work performance for failing to submit a report, it is not a severe enough sanction to be covered by Garrity. As of 2002, there are no reported cases that found that

requiring an officer to file a report was a compelled statement. However, this is an emerging area of the law.

## What type of immunity is granted by the warning?

A statement compelled by a Garrity warning is for immunity from prosecution in a subsequent criminal proceeding. The compelled statement may be used in other matters such as:

- Civil matters including a lawsuit against the department or the officer
- Disciplinary proceeding against the officer
- Disciplinary proceeding against another officer
- Criminal proceeding against another officer or other person

## Under what other circumstances can an officer be ordered to give a statement?

An officer can be ordered to give a statement in any circumstance. The only issue is whether the order gives the officer immunity from self-incrimination. For example, you can order an officer to give a statement against another officer (i.e. if the officer being questioned is not the subject of the investigation.) If there are no potential criminal sanctions (e.g. asking an employee whether they violated a work rule about computer use, or took too long of a work break, or was working out of an assigned area . . .) the officer can be ordered to give a state-

Continued on page 11

# Garrity Rights

Continued from page 10

ment. No immunity attaches because none is necessary. Garrity does not give an officer the right to refuse to answer a question if there are non-criminal consequences attached such as termination or other discipline. However, assuring an employee that there are no potential criminal sanctions has the same practical effect of giving a Garrity warning – there is no possibility of criminal sanctions.

Does the employee have any protections if the employee is untruthful in the compelled statement?

If an individual is untruthful when giving the compelled statement, Garrity does not provide any additional protections to the employee for the consequences of lying in an administrative investigation. Having given the warning does not prohibit an employer from taking severe administrative action, including termination, against individuals who lie during an administrative investigation.

## Voluntary statements:

- If the employee gives a voluntary statement, it can be used in a criminal matter against the employee.
- The employee can refuse to give a voluntary statement and cannot be disciplined for refusing to make a voluntary statement without getting Garrity protections.
- The employer is not required to take a compelled statement from the accused officer. The employer may allow the employee to choose whether make

a voluntary statement. This means that an employee facing a pre-disciplinary hearing may be faced with a choice of:

- a) making no statement at the hearing and having the discipline based on the other evidence that has been obtained, or
- b) making a voluntary statement which could be used against the employee in a subsequent criminal proceeding.

\* Having to make such a choice does not violate the employee's constitutional rights.

## Conclusion:

In addition to Garrity, police officers should be familiar with the Uniform Peace Officer's Disciplinary Act, 50 ILCS 725/1, otherwise known as the Police Officer's Bill of Rights. If a Police Officer is covered by a collective bargaining agreement, he or she should be familiar with the chapter governing Discipline and their rights during internal formal investigations. We know that Garrity protects an Officer's right to be free from compulsory self-incrimination during formal investigations. Police officers can be ordered to answer certain questions during a formal investigation. If the officer is ordered to answer questions under the threat of disciplinary action, the questions must be answered. But the officer must be advised that those answers cannot be used against him or her in a criminal proceeding. A caveat to this is that the statement can be used against the officer in subsequent

disciplinary proceedings, civil lawsuits, and criminal proceedings against someone other than that officer.

Internal investigations are always going to occur. People are going to make accusations against the police. The brass will always be watching over you and second-guessing your actions. Departments have an obligation to investigate citizen complaints of officer misconduct. The investigation should be done in a swift and professional manner. The investigation will exonerate the officer or sustain the complaint. Nobody is perfect. The punishment should fit the crime or misconduct. If it doesn't, there is an appeal process with the police and fire boards, the circuit court, and the appellate courts.

Remember, for the most part, you do not have any recourse but to talk and answer the internal investigators' questions. When answering those questions, use your common sense and be truthful. Keep to the point at hand. Don't expound with unnecessary statements. Do not give opinions. Remember Sgt. Friday's quote "just the facts, ma'am". Most important, ask for your union rep or MAP representative. When at all possible, confer with them before you give an oral or written statement. Keep good notes for yourself. List any possible witnesses to the incident at hand. Don't panic nor fear the questioning. Remember, it's part of the job and it comes with the territory. Know your rights under your collective bargaining agreement and under state statute. Think before you talk and call MAP with any questions or concerns. We are here for you.

# Illinois Freedom of Information Act

Continued from page 4

PAC is an alternative to litigation. The PAC will not review cases that are in litigation. The requestor must seek review by the PAC within 60 days of receiving the body's denial. After conducting its investigation, the PAC can (1) mediate a resolution of the disagreement; (2) issue a binding decision; or (3) issue a non-binding advisory opinion. If the PAC issues a binding decision either party can seek administrative review in circuit court.

Violators of the FOIA can be fined between \$2,500 and \$5,000 per violation. Fortunately, these fines are to be assessed only when access to public documents was denied willfully and intentionally. Also, attorney's fees and costs of litigation can be assessed against a public body found in violation of the FOIA.

## THE OMA

All meetings presumably should occur in public. In order to meet in executive session, the pension board must disclose in open session which exemption under §2(c) of the OMA allows it to meet in executive, or closed, session. When meeting in closed session, the board may not

take any action. Also, a verbatim electronic, video, or tape recording of the entire executive session must be made. Twice per year, the board must decide whether closed sessions should remain confidential.

Any gathering, whether in person or via electronic means, of a quorum of members of a board constitutes a "meeting" under the OMA. For pension boards, three members of the board are a quorum. Remember, a majority of the board is necessary to take any action. Meaning, if only three board members attend a meeting, all three must agree before it can act. A trustee can appear at a meeting by telephone if: (1) there are three trustees physically present at the meeting; and (2) the member is not able to attend in person due to illness, injury, business reasons, or a family/personal emergency.

At the beginning of each year (calendar or fiscal) the public body must publish notice (date, time, and location) of its meetings. Notice should be posted at the body's principal office, or if there is no office, at the location of the meeting. If the body changes said sched-

ule, it must give 10 days notice and provide that information to a newspaper. Also, the body must post the agenda of the meeting at least 48 hours before said meeting. If the pension board has a website, it must make its minutes (within 7 days after they are approved) and agendas (48 hours before the meeting) available on that website.

Any matter can be discussed by the board during a meeting. However, the OMA prohibits voting on matters not disclosed on the agenda. Before the board can vote it must publicly recite the matter being considered.

Pension boards must keep minutes of their meetings. Those minutes must include: (1) the date, time, and place of the meeting; (2) a list of members absent and present at the meeting; (3) a summary of all matters discussed, deliberated, or decided; and (4) a record of any votes taken.

## CONCLUSION

In sum, the FOIA and OMA empower the public to demand documents be presented quickly and meetings be conducted in an open and public manner. While noble in intent, the new version of the FOIA is prime for abuse by ill-intentioned people. As pension board trustees, it is your duty to comply with these laws. The PAC has a website with information regarding these laws — <http://foia.ilattorneygeneral.net/default.aspx>. Pension trustees with questions regarding this matter should contact their FOIA officer or pension board attorney.

## Quote:

All out of breath  
and out of time  
With feeling the grind.  
Tell Uncle Misery goodbye,  
and put breezin' in style

- *Breezin'*  
Al Jarreau and George Benson



# Fitness tests

Continued from page 8

when I actually did these tests (hey, I was young!) an overweight guy actually had to pension out—temporarily. He lost weight, came back, got large again, and eventually retired on the heavy side, but happy as we got rid of the fitness tests. He is now a chief and is commanding his own troops in a cow town somewhere. I bet he doesn't have a fitness test there!

Also, in Jeffersonville, Indiana, their fire department is having trouble with their fitness programs, such as inconsistencies on a sit-up test versus abdominal crunches. You want to see an abdominal crunch? Tease your fattest guy and see him crunch your abdominals! Isn't pretty and doesn't feel good, either. But I digress.

Some in this test did crunches and some did sit-ups. You get three attempts in 90 days to pass. If you don't, your future life is decided by a Merit Board. (I hope there are some heavy guys on the Board.) The fire guy who failed this test just wants to go to work, but the contract states "if a firefighter does not pass the fitness standard (he or she) will be considered unfit for duty and shall be referred to the appropriate pension board."

So they ask, what if the pension board finds the firefighter fit for duty? Then what? Do they get the "axe," or is it the "hose"? This is a recent event but as I said, I saw it play out live and in person, and it isn't pretty. Guys who have performed their job

perfectly and now are going to be raked over the coals and considered unfit because they can't do sit-ups?

It's stupid. Also, if you want to have a fitness test, negotiate that you can lift weights, run and jump, and "get your Body by Jake" while you're working. Yes, you have an hour or two, paid for by the employer, three times a week to look like Chuck Norris or Christie Brinkley. Watch your upper brass start to gag, choke, and fart on that one. But if they go for that one, brother, you'd better get fit!

My advice? You are what you are. Everyone should be healthy. It is something to strive for to have a fun, exciting life on the streets wrestling with drunks on midnights. You can look good on the beach and at your local gym and that fine Salma Hayak look-alike just might return your leering, salivating and disgusting grin.

But it isn't easy being skinny and some don't have the jeans—no—genes for it. Some don't want to make the effort and since you've been doing this job for a while, a few kilos of weight is equivalent to the expertise the average cop possesses when they call over "Big John" to restore peace in the city.

Bottom line. There is good and bad in fitness tests and most of it is bad for the few who just can't do those sit-ups or two-mile run. If you want to implement one, remember, well spelled out tests, incentive based and don't ever,

ever, agree to punishments for failure. That will come back to haunt you.

Don't be like Survivor here and get kicked off the PD just because you snuck a Twinkie in the squad car. Redistributing your waistline, like your wealth, can have consequences if it's all or nothing. There is no hope and change if you don't get a job because you like to eat fried foods at KFC and can't do sit-ups.

Overweight, lightweight, or just right weight can be a good thing. Concentrate on readiness, happiness, and fairness rather than shape-ness! In my view, we are all God's creatures, no matter how many hot dogs you can eat in a single sitting.

Stay safe.

*Note: No calls, please. I'm in the gym trying to talk to that Salma Hayak look-alike and trying to convince myself I look good in that speedo. All in fun, folks, all in fun.*



# Contract Corner

## Steve Calcaterra

### SEECOM

Initial CBA settled. Implementation of a wage scale resulting in an average increase of 15.09% per employee for the duration of the contract (2008-2012). Establishment of a 5/2 – 5/3 work schedule with shift bidding rights by seniority, 8-hours sick time per month, \$3.00/hr for acting supervisors, \$1.50/hr for training officers

### South Barrington

Two-year CBA 2%-2%. Officers to move step on anniversary date rather than waiting for the following fiscal year date; added permanent shift selection by seniority; modified overtime pay provisions so that vacation is no longer excluded from “hours worked” for overtime calculation; added compensatory time language regarding the rights of officers to use time with sufficient advance notice; eliminates the ability of the Fire & Police Commission to increase punishment on disciplinary appeals; added uniform allowance for detective.

## Ronald Cicinelli

### Seneca

Received an increase in shift differential pay: 3 p.m. to 11 p.m. went from .25 an hour to .40 an hour 11 p.m. to 7 a.m. went from .35 an hour to .75 an hour Starting April 1, 2011 to March 30, 2012 shall receive a .60 an hour raise/increase Starting Officers' Salary = \$37,066 - Top Salary = \$48,443 Sergeants' Salary = \$54,642

### Park City

One year extension, only change was a 3% wage increase.

## Legal Defense Chapters

Belvidere Sgts  
Bensenville Sgts  
Channahon Sgts  
College of Lake County  
Cook County Canine  
Cook County Corrections  
Cook Co Correctional Sgts/Lts  
Cook County Sheriff's Police  
Country Club Hills Sgts  
DuPage County Corrections  
Elgin  
Evergreen Park  
Hampshire

Hawthorn Woods Sgts  
Hinsdale Sgts  
LaGrange Park  
Lakewood  
Lake County  
Lake Villa  
Manhattan  
McCook Civilians  
Norridge Auxiliary Officers  
Northfield  
Northlake  
North Riverside Command  
Oak Lawn Dispatch Supvs

Palatine  
Palos Park Police part-time  
Peotone  
Roselle Command  
Round Lake Park  
Sleepy Hollow  
South Barrington Command  
Tinley Park Sgts  
Winnetka CSO  
Woodridge Sgts

# Bits n Pieces

## Thoughts and Prayers

Our sincere sympathies to the family of our secretary, Richard Tracy, on the passing of his mother-in-law, Ethel Wallis.

## MAP Website

Suffering from a somber illness? See the President's Opinion for that and other news at our newly revised MAP website; [www.mapunion.org](http://www.mapunion.org)

**All content in the Rap Sheet or website cannot be reproduced in any form without written permission by MAP. Call and we'll give it to you, as long as the source is given.**

## MAP News

### New Chapters on the MAP

#### Majority Petitions:

Momence  
Moraine Valley Campus Police

#### Petitions Pending:

Harvey Sgts  
Kane Co Supvs  
NEIU Campus Police  
Winfield Sgts

### Recent MAP Elections

MAP wins over Teamsters!

Glenwood  
Homewood  
Oak Forest  
Orland Hills

### Negotiations

Barrington Hills (awaiting certification)  
CenCom E-911 Dispatch  
Darien PD  
Darien Civilians  
Elwood  
Gilberts  
Harvey Sgts  
Lakemoor  
Lemont Sgts  
Naperville Civilians  
Northwest Central Dispatch  
Oak Brook Sgts  
Palos Park  
TriCom Dispatch  
Wheaton PD  
Wilmington  
Winfield Sgts (awaiting certification)

### Arbitrations

DCSI Deputy Chiefs  
Minooka  
Morris  
Romeoville  
Westchester Sgts  
Western Springs Sgts

# Collective Bargaining Chapters

Arlington Heights	DuPage Co Coroner	McCook PO and Sgts	Romeoville Sgts
Addison	DuPage Co Forest	McHenry Co Crt Clerks	Roselle
Addison Sgts	Preserve	Metra	Roselle Sgts
Algonquin	Dwight	Midlothian	Round Lake Police
Algonquin Police CSO's	East Dundee	Momence	Round Lake Supv
& Dispatch	Elwood	Minooka	St Charles
Barrington Hills	Elk Grove Village	Montgomery	St Charles Sgts
Bartlett	Ford Heights	Moraine Valley College	Schaumburg
Bartlett Civilians	Genoa	Morris	Schaumburg
Bensenville	Gilbert	Morton Grove Sgts	Command
Bolingbrook	Glenwood	Mt Prospect	SEECOM
Bolingbrook Civilians	Grundy County	Mt Prospect Sgts	Seneca
Bolingbrook Sgts/Lts	Hanover Park	Naperville Civilians	South Barrington
Bourbonnais Sgts	Harvey Sgts	Naperville Sgts	South Elgin
Braidwood	Hawthorne Woods	New Lenox Sgts	South Elgin Civilians
Bridgeview	Hickory Hills	Niles Police	Steger
Burr Ridge Sgts/Cpls	Hoffman Estates	Norridge	Streamwood
Carpentersville Civilians	Hoffman Estates Sgts	North Aurora	Streamwood Civilians
Carpentersville Police	Homewood	Northbrook Sgts	Streamwood Sgts
Carpentersville Sgts	Huntley	Northeastern II	Sugar Grove
CenCom E-9-1-1	IL DOC Investigators	Campus Police	Tinley Park
Channahon	Indian Head Park	Northern IL Emergency	Tricom Dispatch
Chicago State	ISTHA	Comm Center	University of Illinois
University Police	ISTHA Call-takers	Northern Illinois	Villa Park
Chicago State	John Stroger Hospital	University	Warrenville
University Sgts	Sgts	Northern IL University	Warrenville Sgts
Coal City	Johnsburg	Security Officers	Waukegan Sgts
Cook County EM and	Justice	Oak Forest	Waukegan Lts and
Dispatch and	Justice Sgts	Oak Lawn	Commanders
Vehicle Service	Kane Co Supvs	Oak Lawn Telecom,	Wescom Dispatch
Cook Co DCSI Deputy	Lake Forest	CSO's, & Detention	Westchester Sgts
Chiefs	Lake in the Hills Police	Aides	West Dundee
Cook Co Dispatch	Lake in the Hills	Orland Hills	Western Springs
Supvs	Dispatch/CSO's	Orland Park	Western Springs Sgts
Crest Hill	Lakemoor	Oswego	Wheaton Sgts
Crest Hill Sgts	LaSalle County	Palos Hills	Will County Mgmt
Crete	LaSalle Co Correctional	Palos Park	Association
Crystal Lake	Officers	Park City	Wilmington
Darien Police and Sgts	Lemont	Plainfield	Winfield
Darien Police Civilians	Lemont Sgts	Prospect Heights	Winfield Sgts
Des Plaines	Lisle	Prospect Heights Sgts	Winnetka
Des Plaines Sgts/Lts	Lockport	Quadcom Dispatch	Woodridge
DeKalb County	Matteson	River Valley Detention	
DuPage Co Patrol/	Matteson Sgts	Center Supvs	
Court Svcs	Maywood Sgts	Romeoville	