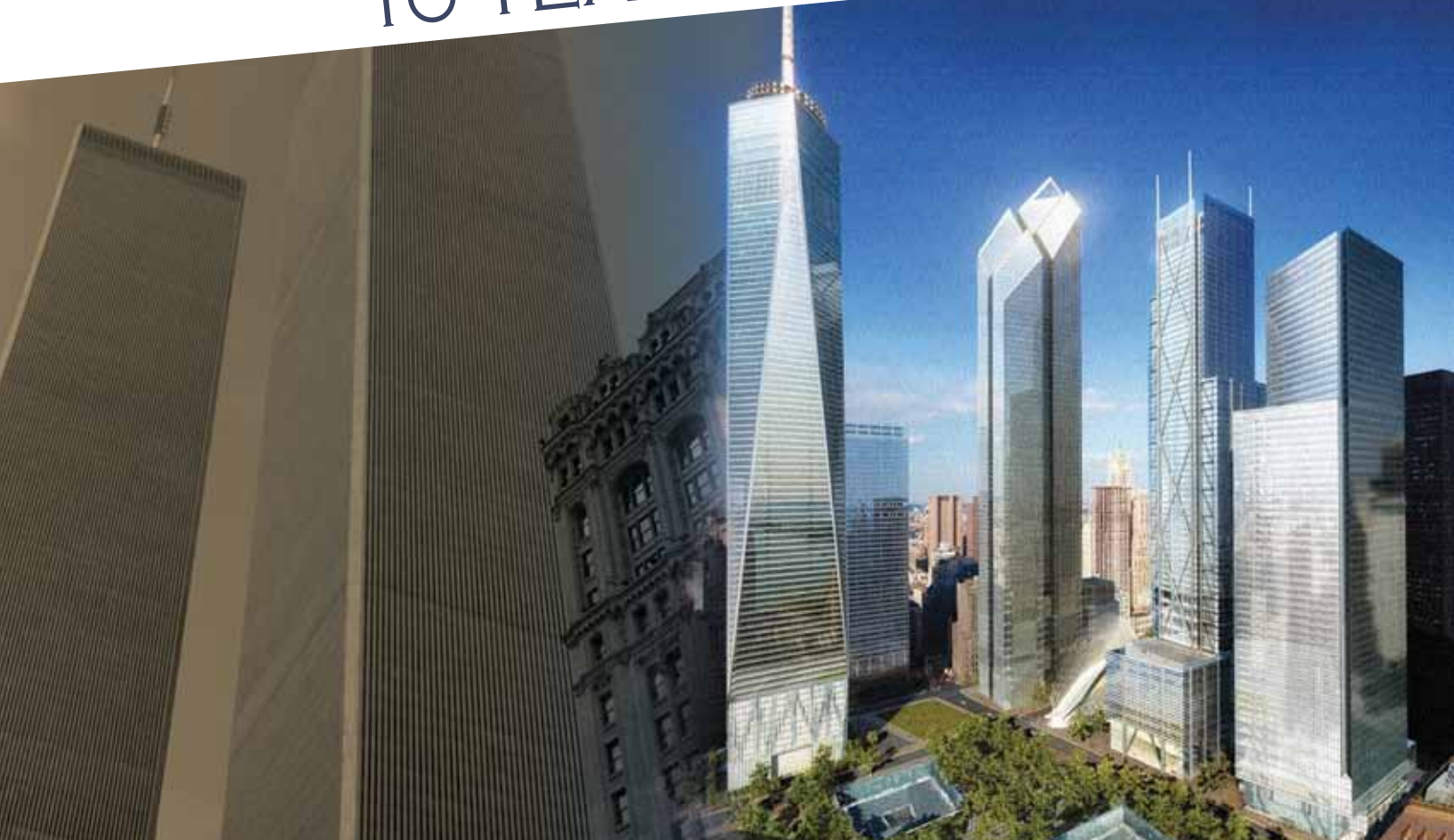


CAPTAINS ENDOWMENT ASSOCIATION BULLETIN

Official Publication of the Captains Endowment Association
Police Department, City of New York
"Managing the FINEST"

REMEMBERING 9/11 10 YEARS LATER



ROY T. RICHTER

PRESIDENT



We cannot forget their sacrifice and the suffering they endured as a result of their unselfish acts of bravery and service as first responders on the days of, and following, September 11, 2001.

It is hard to believe that 10 years have passed since the terrorist attacks on the United States that occurred on September 11, 2001. Murdered that day were nearly 3,000 people, including 343 firefighters, 23 members of the NYPD, 37 members of the Port Authority Police, and many other first responders who joined in the rescue and subsequent recovery at "Ground Zero."

We are now facing the lasting health impact of exposure to the toxins, particulated glass and metals caused by the collapse of the buildings located at the World Trade Center. To date 50 members of the NYPD have died from various cancers and pulmonary diseases linked directly to their exposure. These 50 include four members of the CEA: Captain Edward Gilpin, Inspector Richard Winter, Inspector Donald Feser and Captain Barry Galfano. We cannot forget their sacrifice and the suffering they endured as a result of their unselfish acts of bravery and service as first responders on the day of, and days following, September 11, 2001. Prior to his death on June 26, 2011, Barry Galfano worked with the CEA to tell his story of courage, sacrifice and determination in a video production. The video

was made to inform the public about the plight of our members and attracted extensive media coverage. The video is available for viewing on the CEA website at www.nypdcea.com.

At our September 16, 2011 CEA golf outing, money was raised to endow an additional scholarship in the name of Captain Barry Galfano. CEA memorial scholarships enable dedicated, college bound children of our active and retired members to carry on the memory of our fallen heroes.

The challenge to provide existing levels of benefits for our current and future members is expected to continue this year. Two state employee unions recently agreed to contract terms that provided no salary increases for the first three years, unpaid furloughs, and an increase in employee health insurance premium costs by up to 6%. NYC employees and retirees do not share in health insurance premiums for the basic HIP/GHI plan. Recently, I met with senior mayoral officials along with another uniformed union leader and discussed various benefit issues. The City advised us that controlling health insurance costs and increasing employees financial share of costs is their top priority in the coming year.

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CEA PRODUCES VIDEO ON HOW 9-11 CHANGED US ALL

THE STORY OF CAPTAIN BARRY GALFANO

“In His Own Words”

Captain Barry Galfano served in the NYPD for 25 years and retired as a Captain in 2006. He joined the NYPD Emergency Service Unit just three weeks prior to September 11, 2001, and was on vacation the day the hijacked planes flew into the Twin Towers. For nearly three months, Galfano spent every day at Ground Zero.

Less than eight years after 9/11, Galfano was suffering from cancer of the liver, lungs, legs and brain. Prior to his death, he worked with the CEA on creating a video about that horrific day and how it changed his life forever.

As we mark the 10th anniversary of the terrorist attack, we must not forget those who continue to struggle with pain and life changing disabilities as a consequence of their selfless police service. “In His Own Words” details Galfano’s pride in his service to the public while an NYPD Captain, the shock and subsequent call to action in the wake of the terrorist attack, and the search, rescue and the recovery of remains



of victims at the World Trade Center site. This story portrays Galfano’s courageous battle with the cancer he incurred as the result of his repeated exposure to the toxins at Ground Zero, his subsequent will to live and his love of family and friends who helped him survive this battle.

The video was created by the New York City Police Department Captains Endowment Association to provide its viewers with an accurate portrayal of the service that New York City police officers performed on behalf of the people of the City and State of New York — service that was made without regard to the exposures suffered or personal sacrifices made, in defense of our country following the terrorist attack.

The video can be seen on the CEA website at: www.nypdcea.com

It is with deepest sorrow we report the passing of retired Captain Barry Galfano on June 26, 2011.

CEA OFFERS CERTIFIED FINANCIAL PLANNING SERVICES

The CEA has engaged the services of Peter Thomann, a retired NYPD Lieutenant, as a Certified Financial Planner® (CFP) to assist active members with tax and retirement planning issues. In addition to being a CFP®, Peter has a Bachelor’s degree in Accounting, a Master’s degree in Financial Planning,

and more than 10 years experience advising NYPD members with their unique retirement planning needs. He is available to provide one-on-one retirement counseling sessions on a wide variety of topics:

- SOC Annuity distribution rules
- SOC Annuity IRC 72(t) election
- Increased Take-Home-Pay
- 50% additional deductions
- NYC Deferred Compensation Plans
- Defined benefit (VSF) DROP
- Final pension loan
- Beyond 20 years of service
- Federal/NYS tax laws
- Distributions/rollovers/conversions of retirement plans

Peter Thomann, CFP®, Thomann Tax & Asset Management, Inc.
1688 Victory Blvd. Suite 200 | Staten Island, NY 10314

718.720.1712 or 718.619.0340 | info@nycinvestmentadvice.com | www.nycinvestmentadvice.com

Get Information Superior Officers Council

If you need information regarding prescriptions, eyeglasses, dental and annuity – please call the S.O.C. at (212) 964-7500, then press option #1 for Health & Welfare.

Verizon Discount for CEA Members

Verizon Wireless is offering CEA members a 19 percent discount on nationwide single line and family share calling plans, featuring Friends & Family. Please contact Jeff Greenberg, Verizon Wireless business specialist, for additional information on products, pricing and services. He can be reached at (212) 353-4533 or (917) 816-8252, or via e-mail at Jeff.Greenberg@VerizonWireless.com.

NEWS

BRIEFS

Arbitration Settlement Use of Vacation by Executives Filing For Retirement (Department Sought to Impose Pre-Retirement Notification Period and Approval Prior to Commencing Pre-Separation Leave)

Last year a memorandum was forwarded by the Deputy Commissioner of Labor Counsel to the Department's senior executive staff advising them that they "may deny vacation to any member of the service who fails to provide you with adequate advance notice of their intention to retire." The memo was in response to a rare instance of a member, in a precinct command position, who retired and commenced pre-separation leave with minimal notice to the Department. The CEA has favorably entered into an agreement to settle the arbitration challenging the new authority contained in this memorandum with the following terms:

The following represents the understanding between the City of New York, New York City Police Department, and the Captains' Endowment Association, with respect to the meaning and intent of the memorandum dated August 18, 2010 from Deputy Commissioner - Labor Counsel David M. Cohen to Bureau Chiefs, Borough Commanders and Deputy Commissioners.

Commissioner Cohen's memorandum deals with problems caused when rank-

ing uniformed members of the service fail to provide appropriate notice of their intention to retire, thereby adversely impacting the Department's ability to provide for an orderly transition period.

Patrol Guide Procedure No. 205-42 sets forth the procedures to follow when applying for retirement. The procedure directs members to:

- Notify their commanding officer of their intention to file for retirement
- Telephone the Police Pension Fund for an appointment for retirement processing
- Report to the Police Pension Fund at least 30 days prior to discontinuance of service (retirement or vested interest). A member applying for terminal leave is requested to report to the Police Pension Fund at least 10 days prior to the commencement of such leave to allow for clerical processing.

CEA agrees that members should recognize their professional responsibility as ranking managers within the Department to provide appropriate advance notice to their commanding officers, and that members designated as commanding officers should normally provide as much advance notice as practicable of their intention to retire, in order to permit an orderly transfer of responsibility. CEA members will be advised that professional decorum encourages two to four week advance notice of the member's intention to leave their employer. The CEA will

publicize this understanding in its newsletter and on its web site.

Based upon our mutual understanding set forth above, CEA will withdraw its complaint in BCB-2901-10.

ITHP Litigation Tier III Members

On July 6, 2010, the CEA and PBA commenced a lawsuit in New York State Supreme Court on behalf of new Department hires who were placed in a Tier III pension benefit. The CEA represents newly appointed Police Surgeons. The action seeks declaratory and monetary damages from the City and the Police Pension Fund for failing to apply the Increased Take Home Pay ("ITHP") provision to Tier III police officers and surgeons. This action is important because, if the City is forced to pick-up 5% in ITHP pension contributions it substantially improves our bargaining ability to regain lost pension benefits for new police hires. After several Court conferences, in April of 2011, the Court sua sponte transferred the case to a non-commercial part and converted the case to an Article 78 proceeding. In August, the Uniformed Fire Officers Association joined the lawsuit on behalf of their newly appointed medical officers. We are waiting for the assignment of a new trial judge.

Richter v. Kelly – Pension Fund Trustee Rights Victory

(Enforcement of Statutory Rights of the CEA as Trustee of the Pension Fund)

The CEA is a statutory trustee of the Police Pension Fund. At monthly meetings, multiple items of business are discussed and voted upon by the Trustees of the Pension Fund. The CEA became aware of action by the Fund that reduces the pension payment of retired Chiefs of Department, arguably, in direct conflict with the relevant NYC Administrative Code section. After months of discussion the CEA introduced a resolution, seconded by another Pension Fund trustee, to change the procedures of the Pension Fund as they apply to retired Chiefs of Department. The Police Department Chairman of the Pension Fund refused to allow a vote of the Pension Fund Trustees based on the direction of the NYC Corporation Counsel.

After hearing oral arguments on March 16, 2011, the Court, in a decision dated April 6, 2011, granted the petition brought by the Captains Endowment Association. In the decision, the Court held that the Board of Trustees must vote on a resolution put forth by a trustee, and rejected the position that the Board of Trustees is prohibited from voting on a resolution that would adopt a statutory interpretation contrary to the one put forth by the Corporation Counsel. In reaching its decision, the Court noted that: "It is the Board's duty to determine how police pensions are administered and may only take action by resolution. When it fails to do so, it fails to fulfill its duty." While the City initially filed a notice to appeal the decision, the appeal was withdrawn this past August. Separately, Joseph Dunne filed a lawsuit to have his pension calculated in accordance with the Administrative Code that pertains to Chief of Department and was successful. That decision continues to be appealed by the City.

CEA Officer Elections

Pursuant to the Constitution and By-Laws of the Captains Endowment Association our monthly meeting scheduled for October 5, 2011 at Villa Barone in the Bronx will begin the process to identify our Board of Officers for the next four years. The Constitution states "It shall be the duty of the Recording Secretary to accept written nominations for election to the Board of Officers from the membership and determine if the persons nominated are eligible and willing to become candidates. At the October General Membership meeting of an election year, the Recording Secretary will present a written report to the President and formally nominate the candidates for office. Additionally, oral nominations will be accepted from the floor from eligible members."

ROY T. RICHTER PRESIDENT

Continued from page 2

It should not go unnoticed that more than 40,000 Verizon employees recently returned from strike after Verizon sought to impose health insurance co-premiums on Verizon employees. To date, the City unions who are members of the Municipal Labor Committee have been successful with maintaining the status quo on medical benefits. We have helped our self by restoring the financial stability of our health and welfare funds that provide prescription drug, dental and optical benefits to our active and retired members. This is especially important given the City's seeking to negotiate a reduction in welfare fund spending with the Municipal Labor Committee. The CEA will continue to take

an active role in opposing any attempt to reduce medical or related benefits.

Lastly, I write this message at the end of a four-year term as your union President. I wish to thank all of the members who have supported my administration and allowed us to make improvements in many areas. Chris and I will seek nomination for a second four-year term of office at the upcoming October general membership meeting and look forward to continuing to serve you in the future.



On August 27, 2010, President Roy Richter testified in Washington, D.C. seeking passage of what is now the James Zadroga Law, while holding a photo of Inspector Donald G. Feser's car in the aftermath of 9/11.

IN MEMORIAM: FRIENDS WE LOST



CAPT. EDWARD C. GILPIN
Patrol Borough
Manhattan South
Appointed 5/11/1970
Died 9/7/2006

Captain Edward C. Gilpin served the New York City Police Department for 32 years before his retirement in 2002. He was recognized four times in his career for excellent and meritorious police duty. Captain Gilpin served as Executive Officer of the 9th Precinct and the Manhattan South Task Force, and worked in the Brooklyn Housing Bureau and Police Service Areas 1 and 2 during his career. He is survived by his wife, Mary Jane and son Michael.



INSP. DONALD G. FESER
Manhattan Traffic Task Force
Appointed 4/30/1965
Died 9/12/2009

Inspector Donald G. Feser served in the 50th Precinct, Highway Division and Manhattan Traffic Task Force, was twice recognized for Excellent Police Duty and received an Honorable Mention during his 37- year career. A member of the Manhattan Traffic Task Force since 1995, he served as its Executive Officer and Commanding Officer, and survived his vehicle being crushed when the towers fell. Inspector Feser was instrumental in helping emergency vehicles pass and civilians escape on September 11.



INSP. RICHARD D. WINTER
Fleet Services Division
Appointed 3/1/1967
Died 10/25/2008

Inspector Richard Winter served the Department for 37 years, retiring in 2004. In the aftermath of the 9/11 attacks, he led the Fleet Services Division's repairs of half of the Emergency Service fleet in just 48 hours. Inspector Winter served the 73rd, 66th, 79th, 109th precincts, Employee Management Division, Communication Division, Electronics Section, Quartermaster Section, the Inter-City Correspondence Unit, Brooklyn South Internal Affairs Unit, Chief of Department's Strategic Analysis Section, Compstat & Trafficstat Units, and the Fleet Services Division.



CAPT. BARRY GALFANO
Emergency Services Unit
Appointed 10/20/1981
Died 6/26/2011

Captain Barry Galfano served the Department for 25 years, retiring on December 31, 2006. He began his career by joining the New York City Transit Police Department in October 1981. Two years later, in March 1983, he was accepted into the Transit Canine Unit, where he went on to become a member of the canine training staff. In September 1987, he was promoted to Sergeant and retained in the unit to direct the unit's training needs. In 1988, he was promoted to the rank of Lieutenant and was assigned to a Transit

FROM 9/11

ABOUT OUR MEMBERS

PROMOTIONS

Captain**EDWARD GILPIN****Inspector****DONALD FESER****Inspector****RICHARD WINTER****Captain****BARRY GALFANO**

District as a platoon commander. In June 1990, he was appointed the Lieutenant/Commanding Officer of the Transit Canine Unit. He remained at this post until his promotion to Captain in December 1993. As a Captain, he worked at District 11, District 34, Brooklyn Street Crime and Emergency Service Unit.

On September 11, 2001, Captain Galfano responded to the attack at the World Trade Center. During the initial response and rescue phase, he was placed in command of the extensive canine operations that took place at the site. He went on to work at the site for several consecutive months supervising the Emergency Service Unit officers under his command.

JUNE 24, 2011

To Inspector
Kenneth E. Corey
Donald J. McHugh

To Deputy Inspector

Phylis S. Byrne
Edward R. Armstrong
Edward J. Winski
Raymond Porteus
Jose A. Navarro

AUGUST 2, 2011

To Chief of Transit
Joseph Fox

To Assistant Chief

Brian J. Conroy

To Deputy Chief

William Aubry
James W. Murtagh
Edward A. Thompson

To Inspector

Kathleen O'Reilly
Joseph V. Dowling
Robert J. Lukach

To Deputy Inspector

John B. Hart
Daniel J. McNulty
Michael Riggio

To Captain:

Sergio Centa
Craig M. Contrera
Julio E. Delgado
Stephen I. Espinoza
Paul F. Franzese
Anthony S. Gazis
Benjamin Graham
Frederic J. Grover
Matthew C. Harrington
James M. Lynch
Nicole Papamichael
Flerida Sheehan
Thomas J. Taffe
Andrew V. Valenzano

RET. CAPTAIN WALKER PUBLISHES BOOK SEQUEL

More than 30 years ago, Retired Captain Tom Walker published *Fort Apache: NY's Most Violent Precinct*, introducing the world to the 4-1, a South Bronx precinct that was home to more murders than the entire city of San Francisco. To this day, his story about life as a Police Lieutenant in the 4-1 precinct remains the definitive account of the vicious cycle of violence that gripped urban America in the late 20th century.

The battle between criminals and law enforcement did not end in 1971, but massive controversy over the book's publication precluded the release of a sequel — until now. With *Return to Fort Apache: Memoir of an NYPD Captain*, Walker finally tells the rest of his fascinating life story.

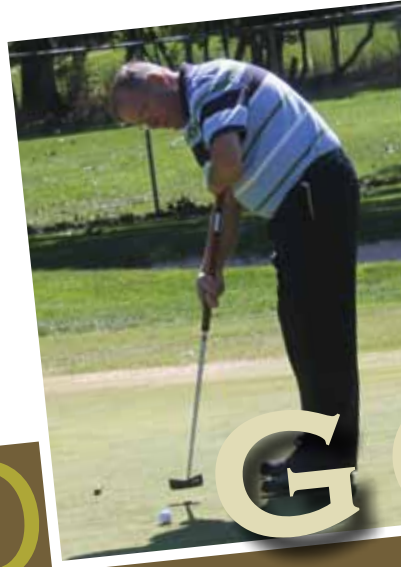
Return to Fort Apache was written to counter the prevailing politically correct opinion that the officers in Fort Apache used their weapons first and their wits last. In addition, Walker hopes to memorialize the courageous officers he served with in the 4-1, to remember forever their sacrifices, their courage, and their daily brushes with death and violence.



More than 140 golfers came out for this year's Annual CEA Golf Outing, which raises money for our Scholarship Fund. An additional 60 attended the dinner, making this the largest turnout to date.

ANNUAL GOLF OUTING

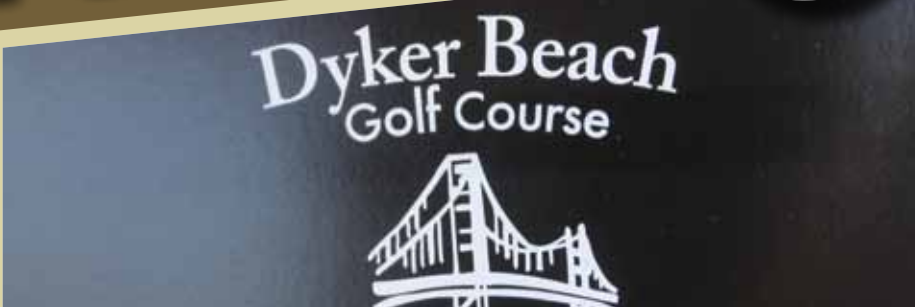
Sunny skies, lots of prizes and raffles and 18 holes of golf at Dyker Beach Golf Course in Brooklyn made Friday, Sept. 16 the place to be. CEA President Roy T. Richter said the Union thanks the 40 sponsors, and of course all the golfers, who helped make the event such a huge success.



3RD

GOLF





IN THE NEWS

4TH ANNUAL SCHOLARSHIP NIGHT @ MCU PARK



Top row: Lauren Cassidy singing God Bless America, Megan McGrath receiving the Galfano Scholarship. Second Row: Jessica Hough receiving the Feser Scholarship, Xavier Michael Perez receiving the Winter Scholarship. Bottom row: Miranda Saryian, Paula Marques, Paul Saryian and Mary Christine Meyer enjoying the evening, Elizabeth Richard receiving the Gilpin Scholarship.



Police Commissioner Raymond W. Kelly



Inspector Michael Cassidy with his family



BBQ & Baseball Night at MCU Park Benefit Scholarship Fund

Wednesday, July 13 marked the 4th annual CEA Scholarship Night, once again held at MCU Park in Coney Island. This year's awards included memorial scholarships in the names of the late Captain Barry Galfano, Captain Edward Gilpin, Inspector Donald Feser and Inspector Richard Winter, all of whom died from cancers contracted from their exposure to toxins at Ground Zero in the immediate aftermath of the World Trade Center terrorist attack on the United States.

The night began with a barbeque followed by a ballgame of the Staten Island Yankees verse the Brooklyn Cyclones. More than 900 CEA members and their families were in attendance. Prior to the game, the winners of CEA College Scholarships were presented with their award on the field by home plate.

Police Commissioner Raymond W. Kelly delivered the certificate and cash award to the winners and was joined by CEA President Roy T. Richter, Jacqueline Bourne (representing Capt. Barry Galfano), Mary Jane Gilpin (widow of the late Capt. Edward Gilpin), Joseph Dippell (President of the Centurion Foundation), Reginald Ward (Chairman of the New York Law Enforcement Foundation) and Mitch Levey (President, Police Reserve Association).

Both the Centurion Foundation and the New York Law Enforcement Foundation sponsored three scholarships.

"We're glad to be able to give back to the children of our members," said President Richter. "As we mark the 10th anniversary of the tragic events of 9/11, it's especially meaningful that four of our scholarships are given in the names of those members we lost from Ground Zero illnesses."

**INSPECTOR DONALD FESER
MEMORIAL SCHOLARSHIP**
\$2,250

JESSICA L. HOUGH
Daughter of
Capt. Gregg Hough
Rochester Institute of Technology

**CAPT. EDWARD GILPIN
MEMORIAL SCHOLARSHIP**
\$2,250

ELIZABETH RICHARD
Daughter of
Ret. Insp. Robert Richard
Stevens Institute of Technology

**INSPECTOR RICHARD WINTER
MEMORIAL SCHOLARSHIP**
\$2,250

XAVIER MICHAEL PEREZ
Son of
Capt. Maria Codd-Perez
Temple University

**CAPT. BARRY GALFANO
MEMORIAL SCHOLARSHIP**
\$2,250

MEGAN McGRATH
Daughter of
Ret. Capt. James McGrath
Northeastern University

**\$2,000 SCHOLARSHIP
WINNERS**

CONNOR MEEHAN
Son of Capt. James Meehan
University of Notre Dame

GARRETT DOWD
Son of Chief Charles Dowd
Stevens Institute of Technology

ADINA C. KATZ
Daughter of Ret. Capt. Gary Katz
Hunter College

BRENDAN DOLAN
Son of Ret. DI Brendan Dolan
St. Thomas Aquinas





LEGAL UPDATES

REPUTATION UNDER ATTACK

POLICE EXECUTIVES ASSAILED BY MEDIA STORIES

CEA members continue to be profiled in news reports that attack our reputation and detail false information based on rumor and anonymous sources, or by individuals who seek personal gain at the expense of the police executive. The CEA continuously reviews our legal options to punish individuals who make slanderous claims in the newspaper against our members.

Recently, a Commanding Officer was profiled in the New York Daily News and alleged to have sexually harassed a same sex sergeant. The sergeant, who was the source of the article, claimed the Commanding Officer routinely commented on his appearance and placed a pen in his mouth with sexual overtones. Since the article was published, the allegations were investigated and found to be false. In response to this fact pattern, our CEA counsel commenced a slander lawsuit against the sergeant seeking \$1 million in damages for the Commanding Officer. The sergeant was personally served with the lawsuit papers and a court conference is scheduled for mid October.

Separately, in late August, a Captain was the subject of a complaint to Internal Affairs alleging off-duty criminal conduct. Given the nature of the complaint, the Captain's duty status was changed. Internal Affairs commenced an investigation that revealed videotape surveillance exonerating the Captain of unlawful conduct and exposed false information reported in the original complaint. Internal Affairs authorized the arrest of the complainant for filing a false police report and he spent the night in central booking.

It is encouraging that we have been able to take action against persons who make malicious reports against our members. In no way does it correct the harm caused to the reputation of the police executive. Hopefully, these actions will reduce false complaints directed at our members in the future.

NEW HOPE FOR FLSA PROTECTION

On August 5, 2011, the 2nd Circuit Federal appeals court ruled that NYPD Sergeants are covered under the overtime provisions of the U.S. Fair Labor Standards Act. The decision allows Sergeants to earn overtime for activities other than those outlined in the Sergeants Benevolent Association contract with the City.

Stephen P. Younger, attorney for the SBA, which brought suit in 2004 seeking the FLSA protections, told the New York Law Journal that he expected damages to total tens of millions of dollars. Further, he said, the decision "affects broader categories than police Sergeants and firefighters. It affects a broad range of first-responders."

"We are quite pleased with the court's decision and the recognition that New York City Police Sergeants are entitled to overtime-pay protection under Federal law," Mr. Younger said in a statement. "We look forward to vindicating these rights of our city's first-responders, who put their lives on the line to protect New Yorkers every day."

The City Law Department said it was still considering its options. "We are extremely disappointed in the ruling," Karen Griffin, Senior Counsel of the Appeals Division, said in a statement. "Sergeants' primary duties are supervision and management, and therefore they fit squarely within the executive exemption as set forth in the FLSA." Ms. Griffin was referring to the provision of the FLSA statute that exempts workers with executive duties. Such workers must regularly supervise at least two employees; have management as their primary duty; and have input into the job status of subordinates, such as hiring, firing, promotions or assignments. The trial court accepted the City's argument that the tasks performed by Sergeants are largely managerial.

The Second Circuit Court of Appeals ruled that the executive exemption was trumped by a provision concerning first-responders that was added in 2004. It says the overtime exemption does not apply to law-enforcement officers, cor-

rection officers, firefighters, ambulance workers and “similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work,” according to the U.S. Department of Labor.

The City argued that the courts should ignore the first-responder clause because it conflicted with the executive exemption. The United States Secretary of Labor Elaine Chao submitted a brief in the appeal at the request of the federal appeals court that supported the recent “first responder exemption” to managerial or professional job titles. In light of the Labor Department opinion and the first-responder exemption, the appeals court ruled, “the Sergeants’ primary duty is not management but field law enforcement. . . . Plaintiffs are therefore entitled to the overtime-pay protections of the FLSA.”

Members of the Captains Endowment Association have historically been identified as managers and exempt from protection under the Fair Labor Standards Act. Past president, William P. Kelly commenced litigation against the City of New York for FLSA protection under the “salary basis test” – a mechanism that gives managers protection under the FLSA if their employer routinely imposes fines for “non-safety violations” of workplace rules. A number of police unions across the country commenced similar claims and in 1998 the United States Supreme Court ultimately imposed stringent criteria when applying the “salary basis test” in a decision titled *Auer v. Robbins*. A 2001 federal court decision ultimately ruled against the CEA in a decision titled *William P. Kelly v. David Dinkens* that we would receive no protection under the FLSA. This recent federal appeals court decision carves out a new exemption that gives a police supervisor protection under the FLSA, a “first responder exception.” The CEA has been in contact with Stephen P. Younger, the attorney for the SBA and we are considering a study to determine if CEA members qualify for similar FLSA protection.

ANABOLIC STEROIDS SETTLEMENT

The CEA, as a member of a coalition of all NYPD police unions, has entered into a settlement with the Department on the use of anabolic steroids and human growth hormone. The details of the agreement are set forth in the newly published Personnel Bureau Memo #44, series 2011, dated July 1, 2011. The CEA shares the Department’s zero tolerance with regard to use of illegal narcotics, or other unlawful substances. The grievance was commenced because the original Personnel Bureau memo (Personnel Bureau Memo #95, series 2009) placed the onus of identifying “exceptional” dosages of anabolic steroids and related substances prescribed by a licensed medical practitioner upon the member of the service receiving treatment. All five police unions collectively filed an improper practice petition challenging the new responsibility detailed in the original memo. The settlement identifies a member’s District Surgeon as a resource to seek review of member’s medical treatment that potentially runs afoul of Department policy. The agreement further identifies specific banned substances and withdraws the blanket ban on all dietary supplements. If any member continues to have concern after reviewing the revised PB Memo #44 s. 2011, please contact the CEA office.

EMPIRE BLUE CROSS DRUG REBATE LAWSUIT

1ST DEPARTMENT LOSS AND APPEAL TO THE NYS COURT OF APPEALS

As Trustees of the Superior Officers Council, the CEA is continuing to press the claim against Empire Blue Cross for the return of \$6 million in prescription drug rebates. These rebate dollars were collected by Empire Blue Cross based upon our members prescription drug usage while Empire managed our prescription drug program. Our initial lawsuit in 2009 received an unfavorable ruling by a New York State Supreme Court judge that we appealed to the Appellate Division, First Department. In a 3–2 decision by the Appellate Division dated June 30, 2011, our appeal of the unfavorable decision was denied. We have now filed legal papers for ultimate appeal to the New York State Court of Appeals. Our law firm has agreed to continue the appeal on our behalf without any further attorney fees charged to the SOC. Most importantly, our

LEGAL UPDATES

Continued from page 13

appeal to the Court of Appeals requests they agree with the dissenting opinion in the First Department ruling where they stated “based on defendant’s failure to advise plaintiffs about the advantages of a drug formulary and to advise plaintiffs that defendant was managing a drug formulary and receiving rebates for drugs that were being used by plaintiffs’ members. Section 4.1.1 required defendant to advise and assist plaintiffs. . . . Such advice and consultation services are at the crux of the agreement to advise and assist the Group in a consulting capacity regarding benefit design.” Empire Blue Cross was terminated as our prescription drug provider effective January 1, 2009.

RETIREE LINE OF DUTY DRUG LAWSUIT

Sworn members of the NYPD receive benefits in the nature of Workers’ Compensation for all medical care, treatment and hospitalization costs, including prescription drugs and appliances related to injuries and illnesses sustained in the discharge of their police duties (line of duty treatment costs). These line of duty treatment costs are paid by the City of New York pursuant to the NYC Administrative Code. During their continued employment with the City members who are injured in the performance of duty receive compensation for lost wages in the form of unlimited sick leave and the full and complete cost of medical care and treatment of the injury or illness the members incur in the performance of duty. These active members have no obligation to meet deductible thresholds or make any co-payment. The City makes payments for line of duty treatment costs directly to medical providers.

However, upon a member’s retirement, the City discontinues making direct payment to the medical and prescription drug providers even when the member continues to need treatment for the job-related injury or illness. As a result, the retiree is forced to submit claims for benefits using the health insurance and/or union-negotiated health and welfare fund prescription drug benefits rather than the benefits for line-of-duty injuries provided by statute. The member must satisfy applicable deductibles and make required co-payments that were not required prior to the member’s retirement. The retired member is also subject to annual and lifetime maximums when receiving benefits through their underlying health plan or its union health and welfare fund.

The CEA has joined with the other police unions (the PBA, DEA, SBA and LBA) and filed a lawsuit seeking a judgment that the City violates the NYC Administrative Code and public policy when it stops paying line of duty treatment costs upon retirement. The City has filed a motion to dismiss the action and the motion was argued before Judge Barbara Jaffe in New York State Supreme Court on August 16 2011. The City argues that the plain meaning of the NYC Administrative Code applies the benefit of fully paid treatment costs to active employees only. We argue that the statute does not condition continued treatment on continued employment. We anticipate a decision within the next 30 to 60 days.

ARBITRATION LOSS COMP TIME AUDIT

The CEA received an unfavorable arbitration decision on June 26, 2011 in a matter that originally dates back to 2004. The ruling pertained to the Quality Assurance Division conducting audits of CEA members overtime records to determine whether the original overtime was within parameters detailed in the Administrative Guide procedure. The arbitrator ruled “the New York City Police Department’s action of reducing Captains’ compensatory time for previously approved overtime worked by covered employees, in light of Q.A.D. #1064s. 05 and Q.A.D. #1621s. 05, did not violate Article III, Section 1 of the collective bargaining agreement between the City of New York and the Captains Endowment Association and/or the attached side-letter concerning compensatory time.” A prior decision in this matter, that ruled that the imposition of limits on the accrual and use of compensatory time was a mandatory subject of bargaining, continues to be in effect.



COST-OF-LIVING ADJUSTMENT

The cost-of-living adjustment (COLA) for September 2011 through August 2012 benefit payments is 1.4%. As a result, an eligible retired member with an annual benefit of \$18,000 or more received a maximum monthly increase of \$21.

New York's permanent, automatic COLA is designed to help offset inflation's adverse effects on the fixed retirement benefits of the state's public retirees. By law, the COLA is calculated by taking 50% of the March-to-March Consumer Price Index increase (rounded up to the next higher one-tenth of 1%) and multiplying it by the first \$18,000 of the retirement benefit. (The CPI increase from March 2010 to March 2011 was 2.68%.) The annual increase is a minimum of 1% to a maximum of 3%.

To be eligible for a COLA, you must either be:

- At least 62 and retired at least five years; or,
- At least 55 and retired at least 10 years; or,
- A retiree receiving an Accidental Disability Pension for at least five years (regardless of age); or,
- A surviving spouse of an eligible retiree receiving a lifetime benefit. (By law, the spouse receives an increase equal to one-half the COLA the retiree would have received.)

Retirees who become eligible for the COLA after September will receive their adjustment when first eligible.

LIPITOR FOR LESS THAN THE AVERAGE COST OF A GENERIC STATIN



If you currently take LIPITOR, and have been approved by the SOC Health and Welfare to receive the drug, you may be eligible to receive the cholesterol-lowering medicine for as low as a \$4 co-pay. If you're an eligible patient, use the LIPITOR Co-Pay Card every time you fill your prescription for LIPITOR to instantly start saving. **Does not apply to Mail Order Pharmacy Program. The card and program expire on December 31, 2012.** Terms and conditions apply.

If your insurance co-pay is \$54 or less, you pay only \$4. If your co-pay is \$55 or more, you will save \$50 off your monthly cost, up to \$600 of savings per calendar year. For more information and to register for the Co-Pay Card, go to www.lipitor.com/patients/lipitorcopaycard.aspx, complete and submit the online registration, and you should receive your LIPITOR Co-Pay Card within four to six weeks.

To qualify for this offer, your out-of-pocket expense must be greater than \$4 per prescription. If your out-of-pocket expenses

for a one-month supply (30 tablets) are \$54 or less, you will pay \$4 for a one-month supply. If your out-of-pocket expenses for a one-month supply (30 tablets) exceed \$54, you qualify for up to \$50 in savings for a one-month supply. In either case, you can only qualify for up to \$600 of savings per calendar year. After maximum of \$600, you will pay usual monthly out-of-pocket costs.

This card is not valid for prescriptions that are eligible to be reimbursed, in whole or in part, by Medicaid, Medicare or other federal or state healthcare programs. This Card cannot be combined with any other rebate/coupon, free trial or similar offer for the specified prescription. The Card will be accepted only at participating pharmacies. Offer good only in the U.S. and Puerto Rico. The Card is limited to one per person during this offering period and is not transferable. Offer limited to one use per month. Pfizer reserves the right to rescind, revoke or amend the program without notice at any time.

UPCOMING EVENTS

CEA General Membership Meetings

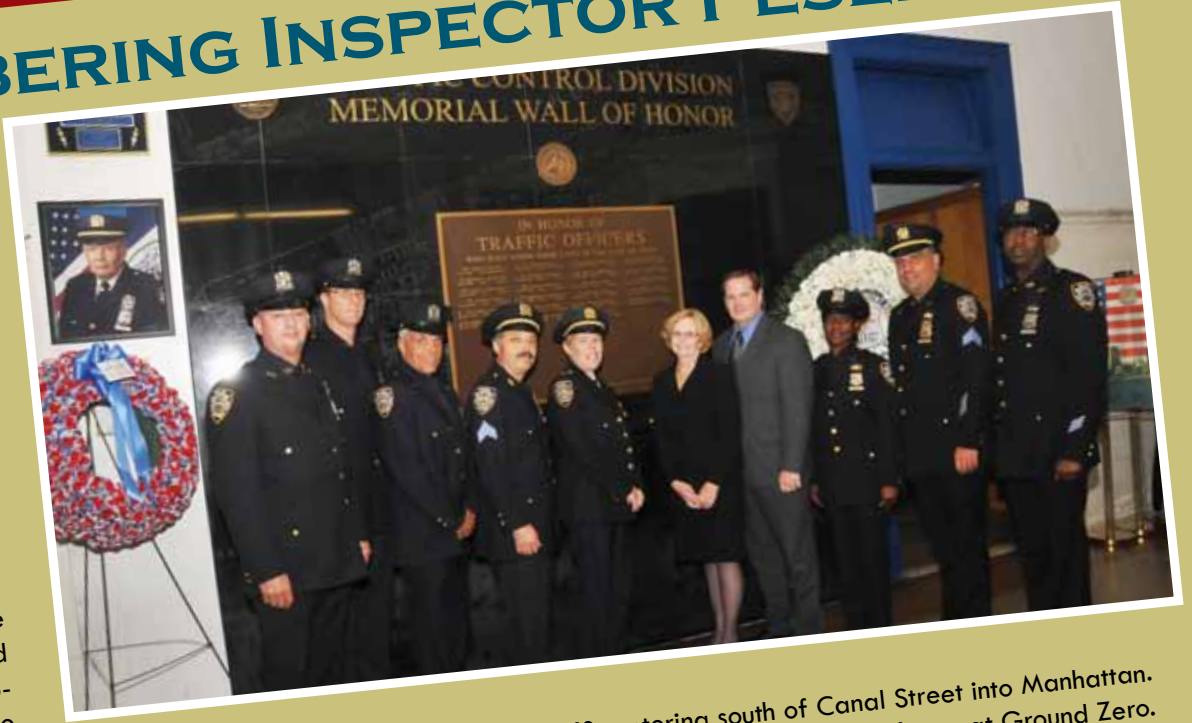
Wednesday, October 5, 2011 at 10:00 a.m. - Villa Barone, Bronx (Flu shots available for active and retired members)

Tuesday, November 15, 2011 at 10:00 a.m. - Antun's Caterers, Queens

Tuesday, December 13, 2011 at 6:00 p.m. - El Caribe, Brooklyn. **Note:** There will be a retiree meeting conducted by Ken McGrath at 5:00 p.m.

REMEMBERING INSPECTOR FESER

On September 12, 2011, on the 2nd Anniversary of Inspector Donald G. Feser's death, a memorial dedication was held at the Old Traffic Control Division Station house where Inspector Feser's name was enshrined on the memorial wall that honors traffic officers that died in the line of duty. Inspector Feser responded to the attack on the World Trade Center on September 11, 2001. He assisted in evacuating people from tower #1 and coordinated the lock down of vehicular traffic entering south of Canal Street into Manhattan. Inspector Feser became ill with cancer, which was subsequently linked to his exposure to toxic fumes at Ground Zero. On September 12, 2009, he succumbed to his illness, but his sacrifice will forever be remembered on the memorial wall of honor at the station house he commanded.



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CAPTAINS' ENDOWMENT ASSOCIATION



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