

**COMPREHENSIVE NEIGHBORHOOD SAFETY STRATEGY
COLUMBUS SAFETY ADVISORY COMMISSION
MEETING MINUTES
Thursday, November 1, 2018**



Commissioners Present:

Janet Jackson, Chair; Brooke Burns, Andrea Morbitzer, Erin Synk, Oleatha Waugh, Tiffany White, LaShaun Carter, Dr. Reginald Wilkinson, Traci Shaw, Emily Buster, Tammy Fournier-Alsaada, Matt McCrystal,

Commissioners Absent:

Dr. Chenelle Jones, Dr. Vlad Kogan, Pastor Jason Ridley, Ellen Moore Griffin

Staff Present:

Elon Simms, Bryan Clark, George Speaks, Jeff Furbee, Kate Pishotti, Cmdr Bob Meader, DC Tom Quinlan

WELCOME

Chair Janet Jackson called the meeting to order at 2:00 pm and welcomed the Columbus Community Safety Advisory Commission (“Safety Commission”) to the 11th meeting of the group.

SAFETY COMMISSION MEETING MINUTES

Chair Jackson reported a correction on the minutes presented from the October 18, 2018 meeting. Commissioner noted that his question (page 8 - question #6) needs to be revised from “Will a review of the judiciary system be a part of this process?” to “Will a review of the intersection of law enforcement and the judiciary system be a part of this process?” So noted.

Commissioner Fournier-Alsaada questioned the completeness of the minutes – discussion followed. Several commissioners commented that the minutes from the October 18 meeting are quite comprehensive and representative of the entirety of the meeting. Motion to approve the minutes as corrected was offered by Commissioner Wilkinson and seconded by Commissioner Carter. Motion carried by show of hands.

UPDATE FROM THE HIRING SUBCOMMITTEE MEETING

The first meeting of the hiring subcommittee was held recently. Chair Jackson asked for a brief overview of that meeting from chair Andrea Morbitzer. Four meetings are scheduled over the next two months: recruiting, testing, selection process and next steps. The first meeting will include a recruiting officer from the Franklin

County Sheriff's Office and the Columbus Division of Police to gather information about current methods with an eye to setting benchmarks.

Chair Jackson asked Commissioner Morbitzer to provide dates/times/locations of these meetings to the entire commission, so that anyone wishing to attend may do so.

Old Business

At the October 18, 2018 meeting, a question was raised by a member of the public as to whether or not a meeting would be held to capture public comment about this process and residents' comments about the Columbus Division of Police in general. Chair Jackson shared that the meeting will happen, but a date has not been set. Public notices will go out in a timely fashion.

PRESENTATION – COLLECTIVE BARGAINING AND LABOR LAW IN GENERAL

Chair Jackson introduced the presenters for today's topic:

Ron Linville – Partner, Baker & Hostettler, LLP

Pam Gordon – Managing Attorney, City Attorney's Office, Columbus

Mr. Linville opened his presentation with his educational and professional background in the area of collective bargaining and labor law. Mr. Linville currently serves as the Chief Negotiator for the collective bargaining process between the City of Columbus and the Fraternal Order of Police (FOP) Commissioner Waugh asked for clarification about whether or not we will hear from the labor side of the collective bargaining process during this meeting. Russ Carnahan is the attorney for the FOP and could be asked to be here at a later time.

I. Governance – Private and Public Sector

A. Private Sector

1. National Labor Relations Act (NLRA) was enacted in 1935 and guarantees basic right of employees to organize into unions, engage in collective bargaining, and engage in collective action

2. Establishment of National Labor Relations Board (NLRB)

a. primarily responsible for administering and enforcing the NLRA

b. five members appointed by the President and confirmed by the Senate

B. Public Sector

1. Overview of legal action related to public employers/employees, culminating in the passage of the Ohio Public Employee Collective Bargaining Act (Ohio Revised Code - Chapter 4117) in 1983.

2. State Employment Relations Board (SERB) makes bargaining unit determinations, polices fairness in bargaining. and enforces mandatory content of agreements

a. three members appointed by the Governor

II. Bargaining Process and Good Faith

A. SERB

B. Employee Organization – synonymous with union

C. Exclusive Bargaining Representative – in this case, the FOP

D. Bargaining Unit – group of people with same interests in the police department

1. Rank-and-file police officers are in one bargaining unit

2. Sergeants, Lieutenants, and Commanders are in a different bargaining unit

3. Deputy Chiefs and Chief are not represented by the FOP

E. Terms and Conditions of Employment

1. Mandatory bargaining topics: wages, hours, terms and other conditions of employment

a. continuation, modification, or deletion of an existing provision of a CBA

2. Prohibited subjects: conduct and grading of civil service exams, establishment of eligibility lists for entry positions, original appointments from eligibility list

F. Good Faith

1. reasonable schedule/locations for bargaining sessions

2. must keep an open mind – can't reject a position out-of-hand

3. both parties must come to the table and demonstrate an intent to reach agreement or resolve questions arising under agreement

G. Unilateral Change - employer does not have the right make changes to the terms and conditions of employers without bargaining

H. Collective Bargaining Agreement

1. Must be reduced to writing and signed

2. Must contain grievance procedure and dues deduction

3. Cannot expire later than three years from the date of execution

4. May supersede state law in some cases

5. Midterm Changes

a. duty to bargain

- 1) cannot make any unilateral changes on any mandatory subject without first negotiating with the union
- 2) Union not required to negotiate agreed terms during term of CBA
- 3) if mandatory subject, must offer to meet and negotiate with union if not included in CBA; e.g., addition of body cameras as mandatory equipment
- 4) if permissive subject, no duty to bargain if not included in CBA

6. Direct Dealing

- a. employer is prohibited from “dealing directly” with employees concerning terms and conditions of employment
- b. cannot undermine the union by announcing bargaining strategies or unilateral changes in mandatory subjects without first dealing with the union

III. Impasse Process

A. If negotiations break down to the point that a decision cannot be reached, both parties must request a fact-finder panel from SERB.

1. A five-person panel is selected by SERB, then each party throws out two names each, with the one remaining being chosen as the fact finder.
2. A hearing is scheduled to air the views of both sides in front of the fact-finder
3. A report is produced by the fact-finder
 - a. not later than seven days after findings and recommendations are sent, City and FOP may reject recommendations by a 3/5 vote
 - b. if neither rejects, a CBA shall be executed between the parties, including the fact-finding panel’s recommendations, except as otherwise modified by the parties by mutual agreement
 - c. if there is no agreement within seven days, parties shall submit to final offer settlement procedure (conciliation)

B. Conciliation

1. Parties select one conciliator from list of five provided by SERB within five days of receiving list (similar to fact-finder panel process)
2. Conciliator shall hold a hearing with 30 days of SERB’s order to submit to a final offer settlement procedure
3. Parties present their offers to the conciliator and the conciliator shall resolve the dispute by selecting, on an issue-by-issue basis, from between each of the party’s final settlement offers, considering the following factors:
 - a. past collective bargaining agreements
 - b. issues related to other public and private employees doing comparable work

- c. interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service
- d. the lawful authority of the public employer
- e. the stipulations of the parties
- f. other factors that are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement

IV. Unfair Labor Practice

- A. Conduct that violates Chapter 4117 of the Ohio Revised Code
 - 1. Can be committed by both employers and union
 - 2. Charge must be filed with SERB within 90 days of occurrence and served upon charged party before filing
 - 3. SERB Investigations Section conducts initial review to determine if allegations would constitute violation
 - a. can be committed by either employer
 - b. most often involve failure to collectively bargain in good faith

V. Overview of current Columbus/FOP Collective Bargaining Agreement

- A. Contract expired December 8, 2017
- B. Bargaining started September 2017
- C. 22 sessions were held before impasse reached, with more than 30 unresolved issues
- D. Five days of hearings before fact-finder, Mr. Goldberg
- E. Report expect from fact-finder on November 27, 2018
- F. Both sides must vote within seven days

Discussion Points:

- Q: Who is at the table during the bargaining process?
- A: Private negotiations involve representatives from the City of Columbus (finance, human resources, etc.), and the FOP representatives

- Q: Potential consequences of the City of Columbus refusing to bargain?
- A: see Unfair Labor Practice section

Q: How often does the bargaining happen?

A: Legally, the contract cannot be longer than three years

Q: Since the police department is not currently operating under a contract, how long can that drag out?

A: See section V

Q: How are the residents of the city represented in the collective bargaining process?

A: The public's interests are represented by the City of Columbus employees at the bargaining table.

Q: Are the new recruits in the academy represented by the FOP?

A: No - not until they are fully-sworn police officers and complete their probationary period

Q: Promotion selection process – when officers take tests to get promoted to the next level, they often “go to the back of line” in terms of shift selection, days off, etc. Is this in the contract?

A: Yes - this is based on seniority by rank

Q: Fair-share provision was struck down – could one divert dues to another non-profit organization?

A: No – for public employees, paying money (fair-share fee) to union even if one didn't want to join the union was deemed unconstitutional by the US Supreme Court

Q: Can a member of the union decide to not be a part of the union?

A: The answer is different given specific union rules and, with the recent fair-share ruling by the Supreme Court, the answer becomes even less clear.

Q: What is membership in the union falls below 50%?

A: There is a process through SERB by which the union members can petition to hold a vote to terminate the relationship with the union – vote must be held near the end of the contract.

Q: Because SERB is a state agency, do the mediators/conciliators come from all over the state, too? Wouldn't it make more sense for them to be local?

A: Very good point – they generally are local, but do not have to be

Ms. Gordon introduced herself to the Commission with information on her employment history and her current position with the City Attorney's Office. Ms. Gordon oversees four attorneys whose primary responsibility is to represent the City of Columbus in legal matters relating to employment contracts. She highlighted several sections of the CBA that directly relate to the questions raised during Mr. Linville's presentation.

I. Sanctity of the Contract – Article 2

- A. City and/or FOP cannot make any unilateral change to the contract without negotiating for new terms.
- B. Section 2.7 states that the City agrees to continue all existing practices and benefits during the term of the contract.
 - 1. Benefit is defined as anything that is continuous, ongoing and is a cost to the City and/or is of monetary value to the member, such as being provided with a vehicle to take to and from work.
 - 2. Practice is defined as anything that is continuous, ongoing and has no cost to the City and/or is of no monetary value to the office, such as days off.

II. Management Rights – Article 7

- A. Section 7.1 "Except to the extent otherwise limited or modified by this contract, the City retains the right and responsibility, regardless of the frequency of exercise, to operate and manage its affairs in each and every respect....The exercise of management rights that allegedly violate specific provisions of this Contract are subject to the Grievance Procedure."

III. Internal Investigation Procedures – Article 8

- A. How are investigations handled?
- B. Right to representation from the FOP
- C. All internal investigations interviews are recorded
- D. Polygraph examination process is outlined
- E. Complaints – citizen (can be anonymous) complaint must be received within 60 days of the offense, unless it is prima facie criminal activity
- F. Member under investigation is provided access to all evidence related to the case prior to the interview
- G. Investigation Outcome – has to be completed within 90 days of receipt of the complaint against the member; may be extended by agreement with FOP

IV. External Investigation Procedures – Article 9

- A. This section applies when a City entity outside the Department of Public Safety makes a

complaint against a member of the bargaining unit. Safety Director may order the member to cooperate in the investigation, in which case, all benefits afforded under Article 8 would apply. For example, a civilian employee of the police department files a sexual harassment complaint against a police officer.

- B. It also deals with complaints filed against a member by a non-City entity. The Division may order the member to appear before the investigating entity, in which case, the member would be able to meet with a lodge representative prior to complying with the order.

V. Corrective Disciplinary Action and Records – Article 10

- A. No member shall be terminated, demoted, suspended, or required to forfeit leave time without just cause (7-point standard applied: notice of rule/policy, reasonableness of rule/policy, investigation completed, was investigation fair and objective, did investigation provide substantial evidence, consistency in disciplinary actions, reasonableness of penalty related to seriousness of the offense and past record)
- B. Also outlines policies on positive corrective action, progressive action (documented constructive counseling, written reprimand, suspension, termination)
- C. Retention of records is also outlined in this section
 - 1. Documented constructive counseling – one year
 - 2. Written reprimands – three years
 - 3. Suspension/forfeiture of leave in lieu of suspension - at least six years
 - 4. Demotion – never removed from the file
 - 5. Record of sustained untruthfulness – never removed from the file

VI. Grievance Procedure – Article 12

- A. Definition – “any unresolved question or dispute regarding the City’s interpretation and application of terms of this contract.”
- B. Process of filing grievance:
 - 1. Direct Supervisor
 - 2. Deputy Chief
 - 3. Chief
 - 4. Director of Public Safety (disciplinary grievances start at this step)
 - 5. Arbitration
- C. Arbitrator is chosen at random from a panel of six permanent arbitrators for the duration of the contract.
- D. Arbitration proceedings are not public and are not recorded, and decision is final and binding.

The entire CBA document is online at the City of Columbus' website at <https://www.columbus.gov/hr/Labor-Relations/>

Discussion points:

Q: Wasn't there a recent article in the Dispatch relating to arbitration?

A: Yes, there have been several – will be provided to Commissioners

Q: How many officers in IAB and how many complaints do they handle?

A: This will be covered in a future meeting.

Q: If an officer has an excessive use of force complaint in his/her file, how long does that stay in the file?

A: It depends on the disciplinary outcome of the complaint. If it resulted in a suspension, then it would stay for at least six years.

Q: Since all records related to the Division of Police are "public" records, these progressive disciplinary actions are destroyed once they're removed from the personnel file, right?

A: Correct – they are kept elsewhere, but not in the personnel file.

Q: What is the public's ability to request these removed, but not destroyed, records?

A: Through a public records request.

Q: Can an internal investigation be moved outside the department, like a police-involved shooting?

A: The contract, as it stands now, would require the investigation to be handled internally.

Q: If an officer and the City are co-defendants in a lawsuit brought by a citizen, does the City separate itself from the officer in the case

A: It depends on the case, but often the defendants are represented by different lawyers, provided by the City.

New Business

The subcommittee meetings that will be happening over the next several meetings – are these subject to the public records requirements? We will get this answer back to the commission.

Next meeting is in the process of being rescheduled to November 14, 2018. Final details will be forthcoming.

Meeting was adjourned by Chair Jackson at 5:05pm.