

COMPREHENSIVE NEIGHBORHOOD SAFETY STRATEGY
COLUMBUS SAFETY ADVISORY COMMISSION
MEETING MINUTES
Thursday, December 13, 2018



Commissioners Present:

Janet Jackson, Chair; Andrea Morbitzer, Dr. Chenelle Jones, Dr. Vlad Kogan, Erin Synk, Oleatha Waugh, LaShaun Carter, Emily Buster, Matt McCrystal, Ellen Moore Griffin

Commissioners Absent:

Brooke Burns, Tiffany White, Pastor Jason Ridley, Traci Shaw, Dr. Reginald Wilkinson, Tammy Fournier-Alsaada, Mary Wehrle

Staff Present:

Elon Simms, Bryan Clark, George Speaks, Jeff Furbee, DC Tom Quinlan, Lt Tim Myers, Lt. Van Erwin III, Denise Bauer, Lt Jeff Lipp, Cmdr Bodker & IAB Staff, John Oswalt, Jennifer Edwards (Baker & Hostetler), Rich Coglianesse (City Attorney)

WELCOME

Chair Janet Jackson called the meeting to order at 1:12 pm and welcomed the Columbus Community Safety Advisory Commission ("Safety Commission") to the 13th meeting of the group and the last meeting of 2018.

SAFETY COMMISSION MEETING MINUTES

Chair Jackson asked for a motion to approve the minutes as presented from the November 14, 2018 meeting. Motion to approve the minutes as corrected was offered by Commissioner Synk and seconded by Commissioner Jones. Motion carried by show of hands.

UPDATE FROM THE HIRING SUBCOMMITTEE MEETING

The hiring subcommittee has met four times since the last commission meeting. Chair Andrea Morbitzer presented a brief overview of those meetings:

1. Civil Service Commission - met with representative to take a deeper dive into charter guidelines and were able to see a COPE scenario
2. Columbus State Community College – Criminal Justice program – trend analysis from their students – seeing 50% reduction in interest in students becoming police officers
3. Former recruiting department sergeant from CPD – history of CPD recruiting
4. Polygraph, oral review board, and background review professionals explained the entire process on vetting applicants

UPDATE FROM THE TRAINING SUBCOMMITTEE MEETING

The training subcommittee has met once since the last commission meeting. Co-Chair Matt McCrystal presented a brief overview of this meeting. Committee requested and has reviewed the CPD cadet basic training materials provided to us by Commander Meader. These materials were from the OPOTA-required courses only and we have requested materials from the CPD-specific courses for review.

UPDATE FROM THE 21ST CENTURY POLICING SUBCOMMITTEE MEETING

The 21st Century Policing subcommittee has met once since the last commission meeting. Chair Chenelle Jones presented a brief overview of this meeting. The committee reviewed the materials from the roundtable discussions and decided on several topics that would be of greatest interest for future meetings: scenario-based research, CIT training, assignments, and community-based listening sessions. Many thanks to Officer Traci Shaw for her invaluable input to the committee.

UPDATE FROM THE HOT TOPICS SUBCOMMITTEE

Chair Vlad Kogan shared that this subcommittee has not yet met. He shared a checklist with commissioners to get feedback on which topics from the list are most important to the commissioners; commissioners may email Dr Kogan with input. Chair Jackson asked if we could schedule commission meeting topics for CALEA certification and Juvenile Justice.

PRESENTATION – COLLECTIVE BARGAINING AND LABOR LAW IN GENERAL

Chair Jackson introduced the presenter for today's topic:
Jennifer Edwards – Partner, Baker & Hostetler, LLP

Ms. Edwards provided background information on the collective bargaining negotiation process between the City of Columbus and the Fraternal Order of Police - Lodge 9 that has been ongoing since the expiration of the previous contract on December 8, 2017. The report from the fact finder, consisting of findings on 17 items (out of 38 total) still at issue after negotiations, was issued on November 27 and was not rejected by either party. The document was deemed accepted on December 4, 2018. The changes to the contract are as follows:

I. Non-economic Issues

A. Citizen Complaints

1. Concern: the current collective bargaining agreement (CBA) disqualified certain citizen complaints.
 - a. Resolution: changed time to file complaint from 60 days after incident to 90 days

B. Discipline and Oversight of Officers

1. Concern: CBA limited discipline and oversight of officers
 - a. Resolution: created ability of non-sworn employees to file complaints against FOP members alleging discrimination

Q: How is discrimination defined in this new rule?

A: It does not specifically define it, but the default would be the existing definition of discrimination for all city employees

2. Concern: CBA did not allow discipline of officers if the investigation of the citizen complaints took longer than 180 days.

- a. Resolution: eliminated language prohibiting discipline because the investigation went beyond 180 days.

Q: Who makes the request to extend the investigation beyond 90 days?

A: Commander of Internal Affairs Bureau

3. Concern: CBA allows personal cell phone inspections during disciplinary investigations

- a. Resolution: fact finder adopted FOP's proposal to create limited restrictions on inspecting members' personal cell phones during disciplinary investigations (only relates to non-criminal investigations)

Q: Constitutional protection against self-incrimination?

A: Language of the new contract includes "in the absence of a search warrant"

Q: Public records requests related to work-related conversations between officers?

A: Language of the new contract includes "unless otherwise required by law"

Q: Which officers are issued cell phones by the city?

A: Commanders and above, since they are exempt from overtime

4. Concern: lowest level of supervision must issue discipline

- a. Resolution: deleted that requirement and created an affirmative right for higher levels of the chain of command to review.

Q: How far up the chain does that right go? Does it include the Safety Director?

A: The Safety Director is the only person who can suspend or terminate an officer and can override a decision made by the Chief.

5. Concern: FOP wanted to limit the ability to bypass progressive discipline in "critical nature" incidents by defining "critical nature"

- a. Resolution: fact-finder rejected this proposal and maintained current language in the CBA which allows

flexibility in the application of progressive discipline

6. Concern: FOP wanted to change the CBA to allow for 240 hours of leave forfeiture in lieu of suspension
 - a. Resolution: fact-finder rejected this proposal and maintained current language in the CBA which limits leave forfeiture in lieu of suspension to 120 hours

Q: Why is this in the City's interest?

A: A higher leave forfeiture ceiling would allow for more egregious offenses to be handled without involving the Safety Director in a decision to suspend or terminate.

7. Concern: FOP had proposed to allow the Chief to issue suspensions, a right currently reserved for the Safety Director, according to City Charter.
 - a. Resolution: the fact-finder rejected this proposal since it went counter to the charter, thus maintaining the Safety Director as the issuer of suspensions.
8. Concern: CBA currently erased misconduct records after a certain period of time based on the type of incident in question – FOP wanted to maintain or shorten administrative use and/or retention periods
 - a. Resolution: CBA will now start the “clock” on the date that the discipline is issued, rather than the incident which gave rise to the Documented Constructive Counseling (DCC). Does not apply to other forms of discipline; all current administrative use and retention period timelines still apply to these.

C. Effective Management of Workforce

1. Concern: CBA restricted the division's right to effectively manage its workforce
 - a. Resolution: fact-finder's report creates the right for the Chief/Division to appeal to an arbitrator through an expedited process if the Labor Relations Committee does not approve of any proposed new/modified job descriptions/positions.
2. Concern: CBA did not allow for division input into aptitude test for certain positions
 - a. Resolution: report creates the right for the job-appropriate Deputy Chief to review and approve tests to ensure they fairly measure job-related skills, knowledge, and/or abilities.
3. Concern: Assignment changes were not available to those officers who have had an 8-hour (or more) suspension – FOP wanted to bump that to 120-hours or less.
 - a. Resolution: report holds the line at 8-hour suspension

D. Marijuana Use

1. Concern: FOP members were not held to the same standard as other City employees when it came to drug and alcohol testing.
 - a. Resolution: included medical marijuana as an “illegal drug” unless use becomes legal under federal law.
 - b. Resolution: revised how blood alcohol levels from .02 - .039 are treated, consistent with the federal regulations for CDL drivers and other City policies and CBAs.

Q: How does the division handle prescription opiate use?

A: Officers are required to report use to supervisors if the drug interferes with ability to perform regular duties; officer is placed on restricted duty

E. Unfair Access to Information

1. Concern: CBA provided FOP members with unfair access to information and contained barriers to full investigations.
 - a. Resolution: report held the line against the FOP's proposals:
 - 1) to provide greater rights to member witnesses and the focus officer in investigations;
 - 2) to unreasonably narrow the scope of an investigation; and
 - 3) to prohibit discipline if the scope of an investigation is exceeded.

II. Economic Issues

A. Wages

1. Increased wages 3% for 2017 (retroactive), 2018 and 2019.
2. Created new F-step to take effect in December 2019 for all officers ending their ninth year.
3. Reduced the rank differential between sergeant and lieutenant and between lieutenant and commanders from 18% to 15% for those promoted to lieutenant or commander on or after January 1, 2020.
4. Shift differential increased from \$.90/hr to \$1.25/hr

B. Pension Pick-up

1. Reduced City's pension pick-up (currently 1.50%) by 0.25% in 2018 (new level will be 1.25%) and by 0.50%

in 2019 (new level will be 0.75%)

C. Insurance Coverage

1. Recommended significant changes to the FOP health insurance and prescription drug plans, including plan redesign, increased cost-sharing and increased premium contributions. These changes align FOP with other City employees.

Q: Where can we find individual salaries for sworn personnel?

A: Business First website; SERB website

PRESENTATION – CPD DISCIPLINARY PROCESS

Chair Jackson introduced the presenter for today's topic:

Lt. Timothy Myers, Discipline-Grievance Liaison

I. Key Terms

A. Discipline – two definitions used

1. CPD core value – exhibiting proper conduct and self-control in the face of adversity through a commitment to training and organization standards
2. The process by which the Division of Police ensures that an employee's conduct conforms to established standards.

B. Positive Corrective Action

1. An effort by a supervisor to achieve voluntary behavioral modification through encouragement and persuasion.

C. Progressive Discipline

1. Documented Constructive Counseling

- a. administrative use – nine months following the date of the discipline
- b. retention – one year following the date of issuance, as long as there is no subsequent corrective/disciplinary action
- c. since 2012, there have been 2149 DCCs issued

2. Written Reprimand

- a. administrative use – three years following the date of the incident
- b. retention – three years following the date of the incident, so long as there is no subsequent action of record
- c. since 2012, there have been 408 written reprimands issued

3. Suspension or Demotion (or leave forfeiture up to 120 hours)

- a. administrative use – four years following the date of the incident, provided no subsequent action of record of the same or similar nature has occurred
- b. retention – six years following the date of the incident, so long as there is no subsequent action of record
- c. since 2012, there have been 101 suspensions, demotions, or leave forfeitures

4. Termination

- a. administrative use – four years following the date of the incident, provided no subsequent action of record of the same or similar nature has occurred
- b. retention – throughout employment/re-employment/reappointment
- c. since 2012, there have been eight terminations

Q: Why take leave forfeiture in lieu of suspension?

A: Days of suspension negatively affect seniority, which may impact eligibility for transfers, promotions, etc.

Q: What happened in the eight termination cases?

A. Misuse of time, long-term marijuana use, solicitation of prostitutes on duty, untruthfulness

D. Just Cause

1. Seven Tests for Just Cause:

- a. Notice
- b. Reasonable of the Rule
- c. Thoroughness of the Investigation
- d. Fairness of the Investigation
- e. Proof
- f. Equal Treatment

g. Penalty

II. Discipline Process

A. Investigation

1. Can come from multiple sources: Internal Affairs (citizen complaint), chain of command

B. Immediate Supervisor

1. Review and send up the chain of command to the Deputy Chief
2. Approves discipline to be issued or can send it on to Discipline/Grievance Section for a just cause review, and then send it on to Chief for review if rises to the level
3. Chief is only person who can approve an action which deviates from the normal progressive discipline process

C. Serious Incidents

1. Employee and FOP representative sit down for a pre-disciplinary conference with the Chief
2. Chief makes recommendation to the Director of Public Safety for suspension or termination
3. Chief may make a leave forfeiture offer in lieu of suspension, which the officer may or may not choose to accept.

III. Rules of Conduct

- A. Broad precepts of authority, responsibility, or conduct which carry the full force and effect of a direct order from either the Chief of Police or the Director of Public Safety and which remain effective until cancelled or superseded by a direct written order from either of the aforementioned.

- B. The rules are the most authoritative directives issued and will be the basis for formal disciplinary action.

- C. Lt Myers presented statistics on disciplinary actions based on each rule of conduct, by race, and by gender. Discussion followed about finer details on these statistics; can be requested by public records process.

Q: In the statistics for discipline by race, DCCs track with percentages, but suspensions and leave forfeitures for black officers are double the number of white officer by percentage. Why?

- A. In looking at the specific cases, none stand out to Lt Myers as unusual in terms of disciplined meted out for the offenses

IV. Arbitration Results

- A. Disciplinary action sustained - 32%
- B. Disciplinary action reversed - 33%
- C. Disciplinary action sustained in part - 35%

V. Sustained Department Charge Trends

- A. Lt Myers presented statistics on different categories of violations since 2008
1. Use of force
 2. Use of firearms
 3. Violation of division rules or directives
 4. Obedience to laws and ordinances
 5. Unbecoming conduct
 6. Untruthfulness

PRESENTATION – ARBITRATION AND DISCIPLINE

Chair Jackson introduced the presenter for today's topic:

Rich Coglianese, Senior Attorney, Columbus City Attorney's Office

Questions that were directed to Mr Coglianese from earlier presentations:

1. Public records are those things which documents the functions of the office – for the purposes of a cell phone, what does that mean? Any texts related to things outside the mundane; e.g., "I'm going to be late"
2. Other questions will be answered within the presentation

I. Why is discipline part of a collective bargaining agreement?

- A. Ohio Revised Code 4117.08 specifies the mandatory subjects of bargaining
1. Discipline affects a terms and condition of employment
 2. Cannot discipline without just cause

3. Must follow progressive discipline course to fix the problem early, except in cases of a critical nature

II. The Framework for Discipline

A. Constitutional issues

1. Loudermill case

- a. At a minimum, requires notice and opportunity to respond
- b. Can be extended to include:
 - 1) right to representation
 - 2) notified 24 hours in advance of interview
 - 3) access to documents that relate to the investigation
 - 4) apprised of allegations and known basic facts
 - 5) only asked questions that relate to the allegations
 - 6) interview must be recorded

2. Due Process

- a. Is there a property right? State law determines whether a government employee has a property right in his or her job – job can only be taken away for certain reasons
- b. Pre-deprivation rights
 - 1) Notice
 - a) investigations must be conducted by the chain of command, the Equal Opportunity Office, personnel assigned to IAB, or the Office of the Public Safety Director
 - b) employee must be told of allegations and known basic facts before interview
 - c) employee is given copy of citizen complaint or written summary of allegations
 - d) once investigation that might result in discipline is complete, member shall be immediately notified of result
 - 2) Right to representation from the FOP
 - 3) Disclosure
 - 4) Access to records
 - 5) The Chief may recommend appropriate discipline
 - a) if the Chief suspends, demotes or terminates an employee, that employee has the right to a hearing before the Director of Public Safety (Columbus City Charter)
 - 6) Departmental hearing in front of the Director of Public Safety
 - a) member is entitled to representation
 - b) Safety Director has ultimate authority to determine whether charges are sustained and level of discipline
 - c) not bound by discipline recommendation from the Chief
 - d) member must receive a written statement of all charges and specifications from the Chief
 - e) allowed to question adverse witnesses
 - f) allowed to call witnesses
 - g) recorded by the City
 - h) closed to the public unless otherwise mutually agreed
- c. Post-deprivation rights
 - 1) According to the CBA, the member can request a hearing in front of the Civil Service Commission
 - 2) Selection of Arbitrator
 - a) randomly chosen from a panel of six, provided by the American Arbitration Assn
 - b) once chosen, that person is unavailable until everybody has been selected
 - c) must hold arbitration within 60 days of selection
 - 3) Authority of Arbitrator
 - a) conduct a fair and impartial hearing
 - b) record testimony from both parties
 - c) apply generally accepted arbitration rules
 - d) no authority to add to, detract from, modify, or otherwise change any of the terms or provisions of the contract
 - e) can determine if there are mitigating factors
 - f) can review the appropriateness of the disciplinary action (corrective, not punitive)

- g) can fashion a remedy different from the one imposed
- e) decision is final and binding
- 4) Decision of Arbitrator --must make two determinations
 - a) whether a cause for discipline exists
 - b) whether the amount of discipline was proper under the circumstances
- 5) Court of Appeals
 - a) decisions of arbitrators are very rarely overturned, except for instances of:
 - i. fraud
 - ii. misconduct
 - iii. partiality
 - iv. exceed powers
 - b) does the award draw its essence from the contract?
 - c) does the award conflict with contract?
 - d) can the award be rationally derived from the contract?
 - e) does the award violate public policy?

Q: Where does the effect on the community come into play in this process?

A: When the case is argued in front of the arbitrator, the city attorney will point out secondary harms in addition to the primary cause for the termination, suspension, etc.

3. Garrity case

- a. May compel employee to give statement
- b. Compelled statement cannot be used in a criminal matter
- c. If statements are compelled, the employee must answer of face discipline

New Business

Commissioner McCrystal reported that on November 15, 2018, the United States Commission on Civil Rights put out a report entitled, Police Use of Force – An Examination of Modern Policing Practices. Mr Simms will send out a link to this report that includes many relevant topics to this commission's work.

Meetings for 2019 will be scheduled before the end of 2018.

Meeting was adjourned by Chair Jackson at 4:40pm with warm holiday greetings to all.

Respectfully submitted,

Ellen Moore Griffin
Recording Secretary